

41 OF 1981



APPEAL

TO

HER MAJESTY IN COUNCIL

(PRIVY COUNCIL)

APPEAL FROM  
THE COURT OF APPEAL OF JAMAICA  
NO. C.A. 28 OF 1980

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING

PLAINTIFFS / APPELLANTS

ELIJAH BECKFORD

AND

ERROL MILLER

AND

THE ATTORNEY GENERAL

THE SUPERINTENDENT OF

PRISONS — SAINT CATHERINE

RESPONDENTS

DISTRICT PRISON

INDEX TO JUDGE'S BUNDLES

NOTICE OF APPEAL

TO HER MAJESTY - IN COUNCIL

CIVIL APPEAL NO. 28 OF 1980

(JAMAICA)

NO.	ITEMS	PAGES
1.	Notice of Motion of Noel Riley, Anthony Forbes and Clifton Irving	1 - 2
2.	Affidavit of Sylvester Morris in support of Motion	3 - 4
3.	Affidavit of Noel Riley in support of Motion	5 - 7
4.	Supplementary Affidavit of Noel Riley in support of Motion	8 - 11
5.	Affidavit of Anthony Forbes in support of Motion	12 - 14
6.	Supplementary Affidavit of Anthony Forbes in support of Motion	15 - 17
7.	Affidavit of Clifton Irving in support of Motion	18 - 20
8.	Supplementary Affidavit of Clifton Irving in support of Motion	21 - 23
9.	Affidavit of Noel Haig Smith	24 - 25
10.	Affidavit of Roy Jones in support of Motion	26 - 27
11.	Supplementary Affidavit of Frank Knight in support of Notice of Motion	28 - 29
12.	Certificate to Exhibit F. K. 1	30
13.	Certificate to Exhibit F. K. 2	31
14.	Certificate to Exhibit F.K. 3	32
15.	Notice of Motion of Elijah Beckford and Errol Miller	33 - 34
16.	Affidavit of Elijah Beckford in support of Motion	35 - 38
17.	Affidavit of Errol Miller in support of Motion	39 - 42
18.	Affidavit of Roy Anthony Jones in support of Notice of Motion	43 - 44
19.	Supplementary Affidavit of Frank Knight in support of Notice of Motion re: Beckford and Miller	45 - 46
20.	Certificate to Exhibit F.K. 1 (re Beckford)	47

NO.	ITEMS	PAGES
21.	Certificate to Exhibits F.K. 2	48
21A.	Certificate to Exhibits F.K. 3 referred to in Suit M 39: All Applicants	48A
22.	Affidavit of Ruth Doorbar in support of Motions	49 - 50
23.	Certificate to Exhibit R. D. 1	51
24.	Certificate to Exhibit R. D. 2	52
25.	Certificate of Exhibit R. D. 3	53
26.	Certificate of Exhibit R. D. 4	54
27.	Certificate of Exhibit R. D. 5	55
28.	Affidavit of Alwyn Courtney Harry	56 - 59
29.	Affidavit of Michael Barrington Erskine in support of Motion of all Applicants	60 - 61
30.	Certificate to Exhibit M.B.E. 1	62
31.	Order on Motions	63
32.	Written Judgement on Motions of Mr. Justice Parnell	64 - 80
33.	Written Judgement on Motions of Mr. Justice Ross	81 - 99
34.	Written Judgement on Motion of Mr. Justice Carey	100 - 111
35.	Minutes of House of Representatives	112 - 114
36.	Minutes of Senate	115 - 120
37.	Ministry Paper No. 19	121 - 123
38.	Report of Special Select Committee of Representatives on National Security - Ministry Paper No. 19	124 - 125
39.	Report of Special Select Committee of the House of Representatives on National Security	126 - 129
40.	Notice on Grounds of Appeal	130 - 132
41.	Application for Leave to Appeal to Her Majesty in Council (b) Affidavit in support (c) Order of the Court Appeal granting leave	133 - 135 136 - 137
42.	Reasons for Judgement of Court Appeal	138 - 171
43.	Judgement of the Court of Appeal	172
44.	Exhibit N.R. 1 and A. 2 referred to in Affidavits of Noel Riley and Elijah Beckford.	173

NO.	ITEMS	PAGES
45.	Exhibit B and N.R. 2 referred to in Affidavits of Noel Riley and Elijah Beckford	174
46.	Exhibit A 1 referred to in Affidavit of Elijah Beckford	175
47.	Exhibit A referred to in Affidavits of Anthony Jones	176 - 184
48.	Exhibit A referred to in Affidavits of Neville Smith	185 - 187
49.	Exhibit F.K. 1 referred to in Affidavit of Frank Knight	188 - 189
50.	Exhibit F.K. 2 referred to in Affidavit of Frank Knight	190 - 193
51.	Exhibit F.K. 3 referred to in Affidavit of Frank Knight	194 - 197
52.	Exhibit F.K. 1 re: M. 39 referred to in Affidavit of Frank Knight	198 - 201
53.	Exhibit F.K. 2 re: M. 39 referred to in Affidavit of Frank Knight	202 - 203
54.	Exhibit (Commentary) F.K. 3 referred to in Affidavit re: Beckford and Miller	204 - 215
55.	Exhibit R.D. 1 referred to in Affidavit of Ruth Doorbar	216 - 217
56.	Exhibit R.D. 2 referred to in Affidavit of Ruth Doorbar	218 - 219
57.	Exhibit R.D. 3 referred to in Affidavit of Ruth Doorbar	220 - 221
58.	Exhibit R.D. 4 referred to in Affidavit of Ruth Doorbar	222 - 223
59.	Exhibit R.D. 5 referred to in Affidavit of Ruth Doorbar	224 - 226
60.	Exhibit M.B.E. 1 referred to in Affidavit of Michael Barrington Erskine	227 - 229



NOTICE OF MOTIONSUIT NO. M. 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING

APPLICANTS

A N D

THE ATTORNEY GENERAL  
The SUPERINTENDENT OF  
PRISONS, ST. CATHERINE  
DISTRICT PRISON.

RESPONDENTS

IN THE MATTER OF AN APPLICATION BY NOEL  
RILEY, ANTHONY FORBES, AND CLIFTON IRVING  
UNDER SECTION 25 OF THE FIRST SCHEDULE TO  
THE JAMAICA (CONSTITUTION) ORDER IN COUNCIL  
1962.

TAKE NOTICE that the Supreme Court will be moved on the 17th day of March, 1980 at 10 o'clock in the forenoon, or soon thereafter as Counsel can be heard, by the several Counsel on behalf of the abovenamed Applicants for the hearing of <sup>/an</sup> application by the said Applicants under Chapter 3 of the Constitution of Jamaica that certain provisions of Section 14-24 thereof have been, are being and/or are likely to be contravened in relation to them and that this Honourable Court do grant the following reliefs, namely:-

A Declaration that the execution of the said Applicants at this time and in the circumstances leading up to and surrounding the issue of the death warrants, would be unconstitutional and illegal being contrary to Section 17 (1) of the said Constitution of Jamaica.

AND TAKE NOTICE that the ground of the applicants are:-

That the Applicants have been subjected to Torture and /or Inhuman and/or Degrading Treatment within the meaning of and contrary to Section 17 (1) of the Constitution of Jamaica, in that:-

(a) Their execution was delayed for a considerable period of time., which delay was significantly caused and/or contributed to be the "de facto" suspension of the death penalty;

...../2

(b) the applicants were led reasonably, to believe and/or strongly hope that their executions would not be carried out by virtue of:-

- (i) the aforesaid suspension of the death penalty
- (ii) the fact that studies were undertaken into the question of suspending the death penalty by the National Security Committee of the House of Representatives; and
- (iii) the debates and resolutions passed in the House of Representatives and the Senate on the 30th of January, 1979 and the 9th February, 1979.

AND FURTHER TAKE NOTICE that upon the hearing of the said Application the Applicants will rely, in support of the Motion herein upon their Affidavits and such other Supplementary Affidavits as may be filed in further support hereof.

(Sgd.) Terrance Ballantyne  
TERRENCE BALLANTYNE  
ATTORNEY AT LAW FOR THE  
APPLICANTS.

TO: THE ATTORNEY GENERAL  
79-83 Barry Street,  
Kingston.

TO: SUPERINTENDENT OF PRISONS,  
ST. CATHERINE DISTRICT PRISON,  
Spanish Town,  
St. Catherine.

FILED by TERRENCE BALLANTYNE, Attorney-at-Law of No. 11 Duke Street, Kingston,  
Attorney-at-Law for and on behalf of the Applicants herein.

AFFIDAVIT IN SUPPORT OF MOTION

SUITE NO. M. 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN MISCELLANEOUS

BETWEEN

1. NOEL FILEY
2. ANTHONY FORBES
3. CLIFTON IRVING - APPLICANTS

A N D

1. THE ATTORNEY GENERAL
2. THE SUPERINTENDENT OF PRISONS,  
ST. CATHERINE DISTRICT PRISON -RESPONDENTS

---

IN THE MATTER OF AN APPLICATION BY NOEL  
RILEY, ANTHONY FORBES, CLIFTON IRVING  
under Section 25 (1) OF THE FIRST SCHEDULE  
TO THE JAMAICA(CONSTITUTION) ORDER IN  
COUNCIL 1962.

---

I SYLVESTER MORRIS, Attorney-at-Law whose true place of  
abode is 38 West Kirkland Heights, St. Andrew whose postal address is 1 Duke  
Street, Kingston make oath and say as follows:-

1. That the Applicants ANTHONY FORBES was convicted for Murder  
at the Home Circuit Court on the 7th day of March, 1975 and was sentenced  
to suffer the penalty prescribed by law.
2. That the Applicant Clifton Irving was convicted for Murder  
at the Home Circuit Court on the 22nd day of March, 1976<sup>/and</sup> was sentenced to  
suffer the penalty prescribed by law.
3. That I am informed and verily believe that the sentence of  
the Court will be carried out sometime in <sup>/the</sup> week beginning the 28th day  
of May, 1979.

.Contd. 2/

- 2 -

4. That I make this Application in Support of a Motion for under Section 25 (1) of the First Schedule of the Jamaica (Constitution) Order in Counsel 1962.

Sworn to at Kingston )  
 )  
 on the 28th day of May, 1979 )  
 )  
 This day of May, )  
 )  
 1979. )

Sgd. SYLVESTER MORRIS

BEFORE ME:

JUSTICE OF THE PEACE FOR THE PARISH  
 OF KINGSTON.

FILED by Terrence C. Ballantyne at No. 11 Duke Street, Kingston, Attorney-at-Law  
 for and on behalf of the Applicant.

AFFIDAVIT IN SUPPORT OF MOTION

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
 ANTHONY FORBES  
 CLIFTON IRVING - APPLICANTS

A N D

THE ATTORNEY GENERAL  
 THE SUPERINTENDENT OF PRISONS,  
 ST. CATHERINE DISTRICT  
 PRISON - RESPONDENTS

---

IN THE MATTER OF AN APPLICATION  
 BY NOEL RILEY UNDER SECTION 25  
 (1) OF THE JAMAICA (CONSTITUTION)  
ORDER IN COUNCIL 1962

---

I, NOEL RILEY, of no occupation whose present place of abode and postal address is at Saint Catherine District Prison, Spanish Town in the parish of Saint Catherine, the applicant in this cause make oath and say as follows:-

1. On the 7th day of March, 1975, I was convicted at the Home Circuit Court on a charge of Murder and was sentenced to suffer death being the penalty prescribed by Law.
2. On the 23rd day of February, 1976 an application for leave to appeal on my behalf was dismissed by the Court of Appeal of Jamaica.
3. I subsequently applied for special leave to appeal to Her Majesty in Council and on the 18th day of July, 1978, the said application was refused by Her Majesty in Council.
4. I am presently in the custody of the Superintendent of Prison in charge of the Saint Catherine District Prison.

...../2

- 2 -

5. Since the date of my conviction and particularly since the refusal of my application for special leave as aforesaid, I have been subjected to extreme psychological torture and anguish, resulting in my physical and mental deterioration, and on the one hand being led to hope that my execution would not be carried out as a result of the "de facto" suspension of Capital Punishment since 1976 and the fact that on and off since the 12th day of May, 1977 the House Committee on National Security has been considering whether to recommend to the House of Representatives that a Committee be established to examine whether Capital Punishment should be retained, and, on the other hand not knowing if and when a death warrant would be issued ordering my execution.

6. On the 18th day of October, 1978, the said House Committee recommended that there should be no change in the existing law. Following which the issue as to whether the Death Penalty should be suspended pending a detailed study on the effect of Capital Punishment on Society was debated in the House of Representatives on the 30th day of January, 1979 and defeated by vote of twenty-three votes to twenty.

7. Following this debate the House of Representatives unanimously adopted a resolution stating as follows:-

"Whereas for sometime national consideration has been given as to whether Capital Punishment should be continued. And whereas during that period of time many persons have been awaiting execution following the completion of all steps for legal review of their sentence of death. Be it resolved that this Honourable House recommend to the Governor General and Privy Council that the cases of all persons now awaiting execution be reviewed.

8. By reason of the foregoing I and other persons awaiting execution were given cause to hope that our execution would not be carried out.

9. On the 9th day of February, 1979, the Senate adopted a resolution by ten votes to five votes that Capital Punishment be suspended for eighteen months pending a detailed study and assessment /and psychological and a report on the sociological effect of Capital Punishment in today's Jamaica. As a result of the adoption of this resolution

I was once again led to believe and/or to hope that my execution would not be carried out and that a committee would be established to carry out such a study and assessment.

10. I am informed and verily believe that consequent upon the adoption of the aforesaid resolution, the Minister of Justice is in the process of establishing such a Committee.

11. I am also informed and verily believe that it is intended, in the very near future to table a bill in the Senate for the suspension of the death sentence as a form of punishment.

12. In the light of the paragraphs nine and ten above there is a strong possibility that the death penalty will be suspended pending a report of the Committee and the result of the Bill to be tabled and having regard to the irrevocable nature of the death penalty, my execution which was scheduled for the 29th day of May, 1979, and which has been stayed as a result of the motion would be cruel and inhuman in that it would irrevocably deprive me of the benefit outcome of the aforesaid measures.

13. I make this application in support of a motion for a declaration under section 25 of the Jamaica (Constitution) Order in Council 1962 that my execution at this time would be contrary to Section (1) of the said Constitution and illegal.

SWORN TO AT SAINT CATHERINE DISTRICT PRISON)

in the Parish of Saint Catherine )

this 4th day of June, 1979 )

(s). N. Riley  
NOEL RILEY  
APPLICANT

BEFORE ME:-

(S). D. Ryan

---

SUPERINTENDENT ST. CATHERINE  
DISTRICT PRISON

This Affidavit is filed by Terrnce Ballantyne, of No. 11 Duke Street, Kingston, Attorney-at-Law for and <sup>on</sup>behalf of the abovementioned named Applicant.

SUPPLEMENTARY AFFIDAVIT  
IN SUPPORT OF MOTION

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA.

IN MISCELLANEOUS.

BETWEEN	NOEL RILEY	
	ANTHONY FORBES	
	CLIFTON IRVING	- APPLICANTS
A N D	THE ATTORNEY GENERAL	
A N D	THE SUPERINTENDENT OF	
	PRISONS, ST. CATHERINE	
	DISTRICT PRISON.	- RESPONDENTS

IN THE MATTER OF AN APPLICATION BY NOEL  
RILEY UNDER SECTION 25 (1) OF THE JAMAICA  
(CONSTITUTION) ORDER IN COUNCIL 1962.

I, NOEL RILEY of no occupation whose present place of abode and Postal address is at Saint Catherine District Prison, Spanish Town, in the Parish of Saint Catherine, one of the Applicants in this cause make oath and say as follows:-

1. That during my stay at the above-mentioned Prison I have become aware, through daily newspaper, of the debates in Parliament with respect to the questions raised on Capital Punishment.
2. On the 31st day of January, 1979, the Daily Gleaner at pages 1 and 15 published excerpts of the Honourable Hugh Small's Speech in moving the resolution for the review of the cases of persons awaiting execution, in which he is reported as having said that in all

...../2



the circumstances since Parliament had given them some sense of hope it would be callous to proceed with a mass execution without recommending a review of their cases. A copy of pages 1 and 15 of the Daily Gleaner dated the 31st day of January, 1979, is now produced and shown to me and is marked N.R. 1.

3. That on the 4th day of February, 1979 the Sunday Gleaner at pages 12 and 23 published excerpts of the Honourable Prime Minister's Speech in Parliament in support of the Resolution recommending a review of the cases of the persons awaiting execution in which he is reported to have said:-

"It would be callous, cruel and unusual punishment for those 79 now to face the restoration of Capital Punishment which had been suspended while Parliament studied the question."

4. I am informed and verily believe that since the filing of the Notice of Motion herein the Minister of Justice has established a committee to "consider and report within a period of 18 months whether liability under the Criminal Law in Jamaica to suffer death as a penalty for murder should be abolished, limited or modified, and if so to what extent, by what means and for how long and under what conditions, persons who would otherwise have been made to suffer Capital Punishment should be detained and what changes in the existing Law and the penal system would be required." In support hereof I hereby attach herewith as exhibit a copy of page one (1) of the Daily Gleaner of the 8th day of June, 1979. marked N.R. 2.

5. I am informed and verily believe that the Report of the Commission of Enquiry into incidents which occurred at Saint Catherine District Prison in 1974 stated at paragraph 6 of the said report which was entitled "Interim Report:-

"During the course of the week which commenced on March 14, 1975, we learnt that warrants authorising the execution of four of the condemned men had been issued. These executions were scheduled to take place on March 25 and 26, 1975. On March 24, 1975, we made representations for these executions to be stayed until our report had been submitted. We were informed on that evening that a brief respite had been granted and the executions re-scheduled for April 2nd and 3rd, 1975. Since we had not yet examined the particular cases and circumstances of those four men, we proceeded immediately to concentrate our attention in that direction. As a result we submitted our Interim Report in April 1, 1975, and subsequently learnt unofficially that a stay had been granted for an unspecified period. The Commission was gratified by this decision, particularly as the conduct of any executions before the completion of our inquiry and submission of our Report would have greatly embarrassed us, and would probably have made it impossible for us to complete the due execution of our Commission.

...../4

- 4 -

6. This Supplementary Affidavit is in Support of  
Motion filed on my behalf on the 4th day of June, 1979.

SWORN to at SAINT CATHERINE DISTRICT PRISON)

in the Parish of Saint Catherine )

this 11th day of June 1979 ) (S). Noel Riley

NOEL RILEY  
APPLICANT

BEFORE ME:-

---

SUPERINTENDENT ST. CATHERINE

DISTRICT PRISON.

This Affidavit is filed by TERRENCE BALLANTYNE, of 11 Duke Street,  
Kingston, Attorney-at-Law for and on behalf of the abovementioned  
Applicant.

AFFIDAVIT IN SUPPORT OF MOTION

SUIT No. M. 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING

APPLICANTS

A N D

THE ATTORNEY GENERAL

THE SUPERINTENDENT OF  
PRISONS, ST. CATHERINE  
DISTRICT PRISON

RESPONDENTS

---

 IN THE MATTER OF AN APPLICATION  
 BY ANTHONY FORBES UNDER SECTION 25  
 (1) OF THE JAMAICA (CONSTITUTION)  
 ORDER IN COUNCIL, 1962.

I, ANTHONY FORBES, of no occupation, whose present place of abode and postal address is Saint Catherine District Prison, Spanish Town in the Parish of Saint Catherine the Applicant in this cause make oath and say as follows:-

1. On the 7th day of March, 1975, I was convicted at the Home Circuit Court on a charge of Murder of Horatio Henry and was sentenced to death being the penalty prescribed by law.
2. On the 23rd day of February, 1976 an application for leave to appeal on my behalf was dismissed by the Court of Appeal when my Counsel informed the Court that he was unable to advance any argument on my behalf.
3. The Applicant did not apply for leave to Appeal to Her Majesty in Counsel.
4. I am presently in the Custody of the Superintendent of Prisons in charge of the Saint Catherine District Prison.
5. For the past four (4) years and two (2) months after my conviction I have been an inmate on death Row at the above mentioned prison and in particular for the last three (3) years and three (3) months been subjected to extreme psychological torture and physical and mental deterioration resulting on the one hand from the uncertainty and considerable delay following the determination of my appeal. And on the other hand being led to hope that my execution

...../3

would not be carried out as a result of the "de facto" suspension of Capital Punishment since 1976 and the fact that on and off since the 12th day of May, 1977 the House Committee on National Security had been considering whether to recommend to the House of Representatives that a committee be established to examine whether Capital Punishment should be retained, and, on the other hand not knowing if <sup>/and</sup> when a death warrant will be issued ordering my execution.

6. On the 18th day of October, 1978 the said House Committee recommended that there should be no change in the existing Law. Following which the issue was to whether the Death Penalty should be suspended pending a detailed study on the effect of Capital Punishment on society was debated in the House of Representatives on the 30th day of January, 1979 and defeated by a vote of 23 votes to 20 votes.

7. Following this debate in the House of Representatives unanimously adopted a resolution stating as follows:-

WHEREAS for sometime national consideration has been given as to whether Capital Punishment should be continued AND WHEREAS during that period of time many persons have been awaiting execution following the completion of all steps for local review of their sentence of death.

Be it resolved that this Honourable House recommend to the Governor General and Privy Council that the cases of all persons now awaiting execution be reviewed.

8. By reason of the foregoing I <sup>and</sup> other persons awaiting execution were given cause to hope that our execution would not be carried out.

9. On the 9th day of February, 1979 the Senate adopted a resolution by 10 votes to 5 votes that Capital Punishment be suspended for 13 months pending a detailed study and assessment and report on the sociological and psychological effect of Capital Punishment in today's Jamaica. As a result of the adoption of this resolution I was once again led to believe and/or hope that my execution would not be carried out and that a committee would be established to carry out such study and assessment.

10. I am informed and verily believe that consequent upon the adoption of the aforesaid resolution, the Minister of Justice is in the process of establishing such a committee.

...../3

- 3 -

11. I am also informed and verily believe that it is intended in the very near future a bill will be tabled in the Senate for the Suspension of the death sentence as a form of punishment.

12. In the light of paragraphs 9 & 10 above there is a strong possibility that the death penalty will be suspended pending the report of the committee and the result of the bill to be tabled, and having regard to the irrevocable nature<sup>of</sup> the death penalty my execution which was scheduled for the 29th day of May, 1979 and which has been stayed as a result of my Motion, would be cruel and inhuman in that it would irrevocably deprive me of the benefit outcome of the aforesaid measures.

13. I make this Application in support of a motion for a declaration under section 25 of the Jamaica (Constitution) Order in Council, 1962 that my execution at this time would be contrary to section 17 (1) of the said constitution and illegal.

SWORN TO AT the Said Saint Catherine District Prison)

in the Parish of Saint Catherine )

This 4th day of June 1979 )

BEFORE ME:-

(s). D. Ryan  
SUPERINTENDENT OF SAINT  
CATHERINE DISTRICT PRISON

(S). ANTHONY FORBES  
ANTHONY FORBES  
APPLICANT.

This Affidavit is filed by Terrence Ballantyne, Attorney-at Law of No. 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicant.

SUPPLEMENTARY AFFIDAVIT  
IN SUPPORT OF MOTION

SUIT NO. M. 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS.

BETWEEN	NOEL RILEY ANTHONY FORBES CLIFTON IRVING	-- APPLICANTS
A N D	THE ATTORNEY GENERAL	
AND	THE SUPERINTENDENT OF PRISONS ST. CATHERINE DISTRICT PRISON - RESPONDENTS	

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IN THE MATTER OF AN APPLICATION  
BY ANTHONY FORBES UNDER SECTION  
25 (1) OF THE JAMAICA (CONSTITUTION)  
ORDER IN COUNCIL 1962.

I, ANTHONY FORBES of no occupation whose present place of abode and postal address is the Saint Catherine District Prison, Spanish Town, in the Parish of Saint Catherine, one of the Applicants in this cause make oath and say as follows:-

1. That during my stay at the above mentioned Prison I have become aware, through the daily newspapers, of the debates in Parliament with respect to the questions raised on Capital Punishment.

2. On the 31st day of January, 1979 the Daily Gleaner at pages 1 and 15 published excerpts of the Honourable Hugh Small's Speech in moving the resolution for the review of the cases of persons awaiting execution, in which he is reported as having said that in all the circumstances since Parliament had given them some sense of hope it would be callous to proceed with a mass execution without recommending a review of their cases. A copy of pages 1 and 15 of the Daily Gleaner dated 31st day of January, 1979, is now produced and shown to me and is marked N.R. 1 .

...../3

-2-

3. That on the 4th day of February, 1979 the Sunday Gleaner at pages 12 and 23 published excerpts of the Honourable Prime Minister's Speech in Parliament in support of the resolution recommending a review of the cases of the persons awaiting execution in which he is reported to have said:-

"It would be callous, cruel and unusual punishment for those 79 now to face the restoration of Capital Punishment which had been suspended while Parliament studied the question."

A copy of pages 12 and 23 of the Sunday Gleaner dated the 4th day of February, 1979 is now produced and shown to me and marked N.R. 2.

4. I am informed and verily believe that since the filing of the Notice of Motion herein the Minister of Justice has established a committee to "consider and report within a period of 18 months whether liability under the Criminal Law in Jamaica to suffer death as a penalty for murder should be abolished, limited or modified, and - if so to what extent, by what means and for how long and under what conditions persons who would otherwise have been made to suffer Capital Punishment should be detained and what changes in the existing Law and the penal system would be required."

In support hereof I hereby attach herewith as exhibit a copy of page one (1) of the Daily Gleaner of the 8th day of June, 1979 marked N.R.3

...../3



5. I am informed and verily believe that the Report of the Commission of Enquiry into incidents which occurred at the Saint Catherine District Prison in 1974 stated at paragraph 6 of the said report which was entitled "Interim Report" the following:-

"During the<sup>course</sup> of the week which commenced on March 14th, 1975, we learnt that warrants authorising the execution of four of the condemned men had been issued. These executions were scheduled to take place on March 25 and 26, 1975. On March 24, 1975, we made representations for these executions to be stayed until our Report had been submitted. We were informed on that evening that a brief respite had been granted and the executions re-scheduled for April 2nd and 3rd, 1975. Since we had not yet examined the particular cases and circumstances of these four men, we proceeded immediately to concentrate our attention in that direction. As a result we submitted our Interim Report on April 1, 1975, and subsequently learnt unofficially that a stay had been granted for an unspecified period. The Commission<sup>was</sup> gratified by this decision, particularly as the conduct of any executions before the completion of our Report would have greatly embarrassed us, and would probably have made it impossible for us to complete the due execution of our Commission.

6. This Supplementary Affidavit is in support of a motion filed on my behalf on the 4th day of June 1979.

SWORN to at the SAINT CATHERINE DISTRICT PRISON  
in the Parish of Saint Catherine  
this 11th day of June, 1979

(Sgd). Anthony Forbes  
ANTHONY FORBES  
APPLICANT

BEFORE ME:

(Sgd.)  
SUPERINTENDENT, ST. CATHERINE  
DISTRICT PRISON

This Affidavit is filed by TERRENCE BALLANTYNE of 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the abovenamed Applicant.

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING - APPLICANTS

A N D

THE ATTORNEY GENERAL

THE SUPERINTENDENT OF PRISONS

ST. CATHERINE DISTRICT PRISON - RESPONDENT

---

IN THE MATTER OF AN APPLICATION

BY CLIFTON IRVING UNDER SECTION 25 (1)

OF THE JAMAICA (CONSTITUTION)

ORDER IN COUNCIL, 1962.

I, CLIFTON IRVING, of no occupation, whose present place of abode and postal address is Saint Catherine District Prison, Spanish Town in <sup>the</sup> Parish of Saint Catherine make oath and say as follows:-

1. On the 22nd day of March, 1975 I was convicted in the Home Circuit Court for the Murder of Vernon James and was sentenced to death, being the penalty prescribed by Law.

2. An Application to appeal on my behalf was heard by the Court of Appeal on the 15th to the 19th day of November 1976 and from the 13th to the 17th day of December, 1976, and was dismissed on the 10th day of January, 1977.

3. My Attorney-at-Law wrote to Solicitors in London requesting their assistance to obtain leave for me to appeal to Her Majesty in Council.

4. I am informed and verily believe that this appeal was abandoned in October, 1978.

5. I am presently in the custody of the Superintendent of Prison in charge of the Saint Catherine District Prison.

6. Since the date of my conviction, and in particular since my application for special leave to appeal to Her Majesty in Council was abandoned I am subjected to extreme psychological

...../2

torture and anguish resulting in my physical and mental deterioration on the one hand being led to hope that my execution would not be carried out as a result of the "de facto" suspension of capital punishment since 1976 and the fact that on and off since the 12th day of May, 1977, the House Committee on National Security had been considering whether to recommend to the House of Representatives that a Committee be established to examine whether Capital Punishment should be retained, and on the other hand, not knowing if and when a death warrant would be issued ordering my execution.

7. On the 18th day of October, 1978 the said House Committee recommended that there should be no change in the existing law. Following which the issue as to whether the Death Penalty should be suspended pending a detailed study on the effect of Capital Punishment on Society was debated in the House of Representatives on the 10th day of January, 1979, and was defeated by a vote of 23 votes to 20 votes.

8. Following this debate the House of Representatives unanimously adopted a resolution stating as follows:-

WHEREAS for sometime national consideration has been given as to whether capital punishment should be continued.

AND WHEREAS during that period of time many persons have been awaiting execution following the completion of all steps for legal review of their sentence of death be it resolved that this Honourable House recommend to the Governor General and Privy Council that the cases of all persons now awaiting execution be reviewed.

9. By reason of the foregoing I and other persons awaiting execution were given cause to hope that our executions would not be carried out.

10. On the 9th day of February, 1979 the Senate adopted a resolution by 10 votes to 5 votes that Capital Punishment be suspended for 18 months pending a detailed study and assessment and report on the sociological and psychological effect of capital punishment in today's Jamaica. As a result of the adoption of this resolution I was once again led to believe and/or to hope that my execution would not be carried out and that a committee would be established to carry out such study and assessment.

11. I am informed and verily believe that consequent upon the adoption of the aforementioned resolution, the Minister of Justice is in the process of establishing such a committee.

12. I am also informed and verily believe that it is intended in the very near future to table a bill in the Senate for the .....

- 3 -

--suspension of the death sentence as a form of punishment.

13. Inthe light of paragraphs 9 and ten above there is a strong possibility that the death penalty will be suspended during the report of the Committee and the result of the Bill to be tabled, and having regard to the irreversiblenature of the death penalty my execution which was scheduled for the 30th day of May, 1979 and which has been stayed as a result of my motion, would be cruel and inhuman in that it would irrevocably deprive me of the benefit of a favourable outcome of the aforesaid measures.

14. I make this application in support of a motion for a declaration under Section 25 of the Jamaica (constitution) Order in Council 1962 that my execution at this time would be contrary to Section (17) (1) of the said Constitution and illegal.

SWORN TO AT Saint Catherine District Prison )

inthe Parish of Saint Catherine )

this 4th day of June, 1979 )

(Sgd.) Clifton Irving  
CLIFTON IRVING  
APPLICANT

BEFORE ME:-

(s). D. RYAN

SUPERINTENDENT OF SAINT CATHERINE  
DISTRICT PRISON.

This Affidavit is filed by Terrence Ballantyne, Attorney-at-Law of No. 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicant.

SUPPLEMENTARY AFFIDAVIT  
IN SUPPORT OF MOTION

SUIT NO. M. 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING

- APPLICANTS

A N D

THE ATTORNEY GENERAL

A N D

THE SUPERINTENDENT OF  
PRISONS, ST. CATHERINE  
DISTRICT PRISON

- RESPONDENTS

IN THE MATTER OF AN APPLICATION  
BY CLIFTON IRVING UNDER SECTION  
25 (1) OF THE JAMAICA (CONSTITUTION)  
ORDER IN COUNCIL 1962.

I, CLIFTON IRVING of no occupation whose present place of abode and postal address is at Saint Catherine District Prison, Spanish Town, Saint Catherine one of the applicants in this cause, make oath and say as follows:-

1. That during my stay at the above mentioned Prison I have become aware, through the Daily Newspaper of the debates in Parliament with respect to the questions raised on Capital Punishment.

2. On the 31st day of January, 1979, The Daily Gleaner at pages 1 and 15 published excerpts of the Honourable Hugh Small's Speech in moving the resolution for the review of the cases of persons awaiting execution, in which he is reported as having said in all the circumstances since Parliament had given them some sense of hope it would be callous to proceed with a mass execution without recommending a review of their cases. A copy of pages 1 and 15 of the Daily Gleaner dated the 31st day of January, 1979 is now produced and shown to me and is marked N.R. 1.

3. That on the 4th day of February, 1979 the Sunday Gleaner at pages 12 and 23 published excerpts of the Honourable Prime Minister's speech in Parliament in support of the resolution recommending a review of the cases of the persons awaiting execution in which he is reported to have said:-

"It would be callous, cruel and unusual punishment for those 79 now to face the restoration of Capital Punishment which has been suspended while Parliament studied the question."

A copy of pages 12 and 23 of the Sunday Gleaner dated the 4th day of February, 1979 is now produced and shown to me and marked N.R. 2.

4. I am informed and <sup>verily</sup> believe that since the filing of the Notice herein the Minister of Justice has established a committee to consider and report within a period of 18 months whether liability under the Criminal Law in Jamaica to suffer death as a penalty for Murder, should be abolished, limited or modified, and if so to what extent, by what means and for how long and under what conditions, persons who would otherwise have been made to suffer Capital Punishment should be detained and what changes in the existing law and the penal system would be required." In support hereof I hereby attach herewith as exhibit a copy of Page one (1) of the Daily Gleaner of the 8th day of June, 1979, marked N.R. 3 .

...../3

5. I am informed and verily believe that the Report of the Commission of Enquiry into incidents which occurred at Saint Catherine District Prison in 1974 stated at paragraph 6 of the said report which was entitled "Interim Report" the following:-

"During the course of the week which commenced on March 14, 1975, we learnt that warrants authorising the execution of four of the condemned men had been issued. These executions were scheduled to take place on March 25 and 26, 1975. On March 24, 1975, we made representations for these executions to be stayed until our Report had been submitted. We were informed on that evening that a brief respite had been granted and the executions re-scheduled for April 2nd and 3rd, 1975. Since we had not examined the particular cases and circumstances of these four men, we proceeded immediately to concentrate our attention in that direction. As a result, we submitted our Interim Report on April 1, 1975, and subsequently learnt unofficially that a stay had been granted for an unspecified period. The Commission was gratified by this decision particularly as the conduct of any executions before the completion of our Report would have greatly embarrassed us, and would probably made it impossible for us to complete the due execution of our Commission.

6. This Supplementary Affidavit is in support of Motion filed on/behalf on the 4th day of June, 1979.

SWORN TO AT SAINT CATHERINE DISTRICT PRISON)

inthe Parish of Saint Catherine )

this 11th day of June 1979 )

(Sgd) Clifton Irving  
CLIFTON IRVING  
APPLICANT

BEFORE ME:-

(SGD). D. RYAN

SUPERINTENDENT OF SAINT CATHERINE

DISTRICT PRISON

This Affidavit is filed by TERRENCE BALLANTYNE, Attorney-at-Law of 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicant.

AFFIDAVIT OF NEVILLE HAIG SMITH

SUIT NO. m.34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING

- APPLICANTS

A N D

THE ATTORNEY GENERAL  
THE SUPERINTENDENT OF PRISONS,  
ST. CATHERINE DISTRICT PRISON - RESPONDENTS

---

 IN THE MATTER OF AN APPLICATION  
 BY NOEL RILEY under Section 25  
 (1) of the Jamaica (Constitution)  
 Order in Council 1962.

I, NEVILLE HAIG SMITH, of 9 Glendon Circle, Kingston 6 in the Parish of Kingston, do hereby make oath say as follows:-

1. I am the Governor-General's Secretary and as such Secretary of the Privy Council.
2. In my capacity as Secretary to the Privy Council I receive petitions and representations made on behalf of condemned prisoners in connection with the exercise of the Prerogative of Mercy.
3. In the case of Noel Riley and Anthony Forbes, the Legal Aid Clinic by letter dated the 17th November 1978 wrote to the Governor-General in connection with the exercise of the Prerogative of Mercy stating inter alia, that the Clinic "intend then to forward the Petition for Mercy on behalf of Noel Riley as soon as this can be done. In the case of the Co-defendant Anthony Forbes, we do not intend to pursue an appeal to the Privy Council in England."
4. In the case of Clifton Irving, his Attorney by letter dated the 15th November, 1978 informed the Privy Council "that the Petition for Leave to Appeal will no longer be proceeded with."
5. It is the practice of the Privy Council to await the exhaustion or abandonment of all appeals to the Courts before the final determination of the question of whether the Prerogative of Mercy should be exercised.
6. In the case of Noel Riley, Anthony Forbes and Clifton Irving, the final determination was made after the communications received from



- 2 -

their Attorneys in November, 1978 and referred to in this paragraph.

7. In the case of Elijah Beckford, a Petition on his behalf for Mercy was submitted to the Local Privy Council on 4th March 1977 and was considered and rejected by the <sup>/Local</sup> Privy Council on the 15th November 1977:

8. That subsequent to 15th November, 1977 a further undated Petition was submitted by Elijah Beckford and this was further considered by the Local Privy Council and rejected on 24th April, 1979.

9. That in the case of Errol Miller two Petitions on his behalf for Mercy were submitted to the Local Privy Council one in February, 1977 and one again on 4th March, 1977. Both were considered and rejected by the Local Privy Council on 15th November, 1977.

10. That the executions of Noel Riley, Anthony Forbes and Clifton Irving were scheduled to be carried out on 29th May, 1979, while that of Elijah Beckford and Errol Miller were scheduled for 12th June, 1979.

11. A copy of <sup>the</sup> letter mentioned and referred to in paragraph 3 is attached hereto and marked "A" for identity.

SWORN to at Gordon House

in the Parish of Kingston

this 11th day of March, 1980

before me:

(Sgd) Neville H. Smith

.....  
NEVILLE HAIG SMITH

.....  
JUSTICE OF THE PEACE

THIS AFFIDAVIT is filed by the Director of State Proceedings, 79-83 Barry Street, Kingston, Attorney-at-Law for and on behalf of the Respondents.

AFFIDAVIT OF ROY ANTHONY JONES

SUIT NO, 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

IN THE MATTER OF AN APPLICATION  
BY NOEL RILEY, ANTHONY FORBES and  
CLIFTON IRVING under section 25  
(1) of the Jamaica (Constitution)  
Order in Council 1962.

I, ROY ANTHONY JONES, Attorney-at-Law, with offices at 31½  
Olivier Place, Kingston, do hereby make oath and say as follows:-

1. I live and reside at 5 East Path, Calabar Mews, Kingston 10 in the parish of Saint Andrew and my postal address is 31½ Olivier Place Kingston.
2. On the 30th of January, 1979 I was present at the House of Representatives during the debate on the suspension of Capital Punishment.
3. I heard the speech of the Prime Minister, Honourable Michael Manley in support of the Amendment to the resolution which amendment called for the suspension of capital punishment pending a detailed report of its sociological and psychological effect on Jamaican society.
4. I have since received a proof of Hansard of the Prime Minister's Speech made in that debate which accurately represents the aforesaid Speech and I attach hereto as Exhibit A, a photocopy of the said proof.
5. I was also present and heard the speech of the Minister of Youth and Sports, the Honourable Hugh Small, in that debate on the aforesaid date, and following the approval of the resolution that capital punishment be retained by a vote of 24 to 19 votes, I heard the Honourable Hugh Small move a resolution recommending the review of the cases of all persons awaiting execution following the completion of all steps for the legal review of their sentences.
6. I also heard the Speech of the said Minister of Youth and Sports in support of the aforesaid resolution which was unanimously adopted.
7. I have since received a copy of the proof of Hansard of the Honourable Hugh Small's speech in relation to the resolution referred to in

paragraph 6 hereof which accurately represents the aforesaid speech, and I attach hereto as Exhibit B a photocopy of the said proof.

SWORN TO AT 31½ Olivier Place

in <sup>the</sup> Parish of Kingston

this 11th day of June 1979

(SGD.) R.A. Jones

.....  
ROY ANTHONY JONES

(Sgd.) R. Thwaites

.....  
JUSTICE OF THE PEACE"

Filed by Terrence Ballantyne, Attorney-at-Law of No. 11 Duke Street,  
Kingston, Attorney-at-Law for and on behalf of the Applicant.

## SUPPLEMENTARY AFFIDAVIT OF

FRANK KNIGHT IN SUPPORT OF

NOTICE MOTION

SUIT NO. M. 34 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BEWEEN

NOEL RILEY  
 ANTHONY FORBES  
 CLIFTON IRVING - APPLICANTS

A N D

THE ATTORNEY GENERAL  
 SUPERINTENDENT OF  
 PRISONS, ST. CATHERINE  
 DISTRICT PRISON - RESPONDENTS

IN THE MATTER OF AN APPLICATION  
 BY NOEL RILEY, ANTHONY FORBES AND  
 CLIFTON IRVING 25 (1) OF THE JAMAICA  
 (CONSTITUTION) ORDER IN COUNCIL 1962

I, FRANK KNIGHT, being duly sworn make oath and say as follows:—

1. That I reside and have my true place of abode at 3 Armon Jones Crescent, in the Parish of Saint Andrew, and my postal address is Kingston 6, in the Parish of Saint Andrew.

2. That I am a member of the Royal College of Psychiatrists and have been practising since 1963. I have been a Consultant Psychiatrist since 1968, and I am currently Senior Lecturer at the University of the West Indies and a Consultant Psychiatrist at the University of the West Indies Hospital.

3. That on the 14th day of August, 1979, along with Dr. FREDERICK L. Hickling, I examined Noel Riley, Anthony Forbes and Clifton Irving at the Saint Catherine District Prison in the Parish of Saint Catherine, with a view to assess the extent to which their mental health had been affected by the de facto suspension of the death penalty, by

...../2

- 2 -

postponements in carrying out the death penalty on them, by public debate on the matter of Capital Punishment, by recommendation about Capital Punishment, and reports of the above mentioned examinations were completed on the 17th day of January, 1980; a copy of these reports along with a commentary on the reports are now produced and shown to me and marked F.K. 1, F.K. 2, F.K. 3, and F.K. 4.

4. That the commentary to the reports were jointly prepared and agreed /by Dr. F.W. Hickling and myself but was not signed by him because of his departure from the Island before it was typed.

That I make this Affidavit in support of a Notice of Motion filed by the Applicants.

Sworn to at 31½ Olivier Palce )  
 in the Parish of Kingston )  
 this 13th day of March, 1980 )  
 Before me: )  
 )  
 )  
 )  
 )

\_\_\_\_\_  
 JUSTICE OF THE PEACE for the  
 Parish of :

\_\_\_\_\_  
 FRANK KNIGHT

Filed by TERRENCE BALLANTYNE, of No. 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicant s herein.

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING - APPLICANTS

A N D

THE ATTORNEY GENERAL

SUPERINTENDENT OF PRISONS

ST. CATHERINE DISTRICT PRISON - RESPONDENTS

---

THis is the paper writing marked F.K. 1 referred to in the Affidavit  
of FRANK KNIGHT, sworn before me in this Motion on the 13th day of March, 1980.

(Sgd.) Ronald G. Thwaites  
JUSTICE OF THE PEACE FOR THE  
PARISH OF KINGSTON.

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING - APPLICANTS

A N D

THE ATTORNEY GENERAL  
SUPERINTENDENT OF PRISONS  
ST. CATHERINE DISTRICT  
PRISON - RESPONDENTS

---

This is the paper writing marked F.K. 2 referred to in the Affidavit of  
FRANK KNIGHT, sworn before me in this Motion on the 1<sup>st</sup> day of March, 1980.

(SGD.) Ronald G. Thwaites

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JUSTICE OF THE PEACE FOR THE PARISH  
OF KINGSTON.

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING -- APPLICANTS

A N D

THE ATTORNEY GENERAL

SUPERINTENDENT OF PRISONS

ST. CATHERINE DISTRICT

PRISON -- RESPONDENTS

---

This is the paper writing marked F.K. 3 referred to in the Affidavit of  
FRANK KNIGHT, sworn before me in this Motion on the 13th day of March, 1980.

(Sgd.) Ronald G. Thwaites

JUSTICE OF THE PEACE FOR THE PARISH  
OF KINGSTON.



NOTICE OF MOTION

SUIT No. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

ELIJAH BECKFORD

ERROL MILLER - APPLICANTS

A N D

THE ATTORNEY GENERAL  
THE SUPERINTENDENT OF  
PRISONS, ST. CATHERINE  
DISTRICT PRISON. - RESPONDENTS

---

IN THE MATTER OF AN APPLICATION BY  
ELIJAH BECKFORD AND ERROL MILLER UNDER  
SECTION 25 OF THE FIRST SCHEDULE TO  
THE JAMAICA (CONSTITUTION) ORDER IN  
COUNCIL 1962.

TAKE NOTICE that the Supreme Court will be moved on the 17th day of March 1980 at 10 o'clock in the forenoon, or so soon thereafter as Counsel can be heard, by the several Counsel on behalf of the above named Applicants under Chapter 3 of the Constitution of Jamaica that certain provisions of Section 14 - 24 thereof have been, are being and/or are likely to be contravened in relation to them and that this Honourable Court do grant the following reliefs, namely:-

A DECLARATION that the execution of the said Applicants at this time and in the circumstances leading up to and surrounding the issue of the death warrants, would be unconstitutional and illegal being contrary to Section 17 (i) of the said Constitution of Jamaica.

...../2

AND TAKE NOTICE that the Ground of the Application is:-

That the Applicants have been subjected to Torture and/or inhuman and/or Degrading Treatment within the meaning of and contrary to Section 17 (1) of the Constitution of Jamaica, in that:-

(a) Their execution was delayed for a considerable period of time, which delay was significantly caused and/or contributed to by the "de facto" suspension of the death penalty, and

(b) The Applicants were led reasonably, to believe, and/or strongly hope that their executions would not be carried out by virtue of -

- (i) the aforesaid suspension of the death penalty
- (ii) the fact that studies were undertaken into the question of suspending the death penalty by the National Security Committee of the House of Representatives, and
- (iii) the debates and resolutions passed in the House of Representatives and the Senate on the 30th of January, 1979 and the 9th February, 1979.

AND FURTHER TAKE NOTICE that upon the hearing of the said Application the Applicants will reply, in support of the Motion herein upon their Affidavits and such other Supplementary Affidavits as may be filed in further support hereof.

(Sgd.) Terrence Ballantyne  
TERRENCE BALLANTYNE  
ATTORNEY-AT-LAW FOR THE  
APPLICANTS

TO: THE ATTORNEY GENERAL  
79-83 Barry Street,  
Kingston.

TO: SUPERINTENDENT OF PRISONS,  
St. Catherine District Prison,  
Spanish Town,  
ST. CATHERINE.

Filed by Terrence Ballantyne, Attorney-at-Law of No. 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicants herein.

AFFIDAVIT IN SUPPORT OF MOTION

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN	1.	ELIJAH BECKFORD	
	2.	ERROL MILLER	APPLICANTS
A N D	1.	THE ATTORNEY GENERAL	
	2.	THE SUPERINTENDENT	
		ST. CATHERINE DISTRICT PRISON	
			RESPONDENTS

---

IN THE MATTER OF AN APPLICATION BY  
ELIJAH BECKFORD under Section 25 (1)  
of the Jamaica (Constitution) Order in  
Council 1962.

I, ELIJAH BECKFORD, cultivator, whose place of abode is Georgia, Hanover,  
and whose postal address is Saint Catherine District Prison, Spanish Town,  
in the parish of Saint Catherine, Applicant in this cause make oath and  
say as follows:

1. On the 9th day of May, 1975 I was convicted at the Lucea Circuit Court on a charge of Murder and was sentenced to suffer death, the penalty prescribed by law.
2. I appealed <sup>/against</sup> the said conviction and on the 6th day of November, 1975, the Application for Leave to Appeal on my behalf was ~~dismissed~~ by the Court of Appeal.
3. I subsequently contacted the Kingston Legal Aid Clinic for assistance in appealing my case to the Judicial Committee of the Privy Council in England in forma pauperis.
4. I was informed by the Officers of the Kingston Legal Aid Clinic that there was no legal point in my case which would warrant an appeal to the Judicial Committee of the Privy Council in England.
5. I was informed in April 1977 and I verily believe that a Petition for Mercy had been prepared on my behalf and forwarded to the Governor General of Jamaica, by the <sup>/Kingston</sup> Legal Aid Clinic, on or about the 25th of March, 1977,

...../2

- 2 -

6. I am presently and have been since my conviction in the custody of the Superintendent of the Saint Catherine District Prison.

7. Since the date of my conviction and particularly since the refusal of my appeal by the Court of Appeal of Jamaica, I have been in a perpetual state of tension and anxiety, resulting in physical and mental deterioration, not knowing if or when a warrant would be issued for my execution especially having regard to the fact that no execution had been carried out since around April 1976.

8. Subsequently to the delivery of the Petition for Mercy on my behalf to the Governor General I learned in or around May, 1977 that a Ministry paper had been tabled in the House of Representatives by the Minister of Justice recommending an enquiry into the question of whether Capital Punishment should be retained in Jamaica, and that the matter had been referred to the National Security Committee of the House of Representatives for study.

9. By reason of the foregoing I am reasonably led to believe and/or hope that my execution would not be carried out and especially so when for a further period of more than 18 months since the sending of the Petition for Mercy to the Governor General no death warrant was issued for my execution in death row.

10. In October 1978, I learned that the House Committee had recommended that there should be no change in the existing law relating to Capital Punishment. It was then announced in the press that a "conscience vote" was to be taken in Parliament on the question of whether the death penalty should be further suspended pending further study, however, I heard nothing more for quite some time.

11. On the 30th day of January, 1979 the issue of whether the Death Penalty should be further suspended pending a detailed study of the effect of its use on society was debated in the House of Representatives, and was defeated by a narrow margin of 23 to 20 votes.

12. At the end of this debate the House of Representatives adopted the following resolution moved by the Minister of Youth and Sports, Honourable Hugh Small:

WHEREAS for sometime national considerations had been given as to whether Capital Punishment should be continued.

AND WHEREAS during that period of time many people have been awaiting execution following the completion of all steps for

sentence to death.

Be it resolved that this Honourable House recommend to the Governor  
General and Privy Council that the cases of persons now awaiting  
execution to be reviewed.

13. It was reported in the newspaper and I verily believe that in support of the aforesaid resolution, the Honourable Prime Minister had stated during the debate that in regards to persons awaiting execution, but whose execution had been suspended, it would be "callous, cruel and unusual," for such persons now to be executed. In support hereof I attach hereto marked A1 for identity a copy of page twenty-three of the Daily Gleaner of 4th, 1979.

14. It was further reported in the newspapers and I verily believe that in moving the aforesaid resolution the Honourable Minister of Youth and Sports had stated that,

"In all the circumstances, since Parliament had given them (the persons on death row) some hope it would be callous to proceed with a mass execution without recommending a review of their cases." In support hereof I attach hereto marked A2 for identity a copy of page fifteen of the Daily Gleaner dated 31st January, 1979.

15. By reason of the resolution and statements quoted in paragraphs 12, 13, and 15 above, I and other persons awaiting execution were given further cause to hope and expect that our executions would not be carried out.

16. On the 9th day of February, 1979 the Senate adopted a resolution by 10 votes to 5 votes that Capital Punishment be suspended for 18 months pending a detailed study and assessment and report on the sociological and psychological effect of Capital Punishment in today's Jamaica. As a result of this adoption I formed the belief that a Committee was to be set up at an early time to carry out such assessment and that no executions were to be carried out.

17. I am informed and verily believe that consequent upon the adoption of the aforesaid resolution, the Minister of Justice has established such a Committee and in support hereof I attach hereto marked "B" for identity a copy of the Daily Gleaner dated the 8th June 1979.

18. I am also informed and verily believe that a Bill is to be tabled in the Senate in the very near future for the suspension of the Death sentence as a form of punishment.

19. In the light of paragraphs seventeen and eighteen above, there is a strong possibility that the death penalty will <sup>/be</sup> suspended in accordance with the Bill to be tabled pending the report of the committee and having regard to the irrevocable nature of death, my execution which is scheduled for the 12th day of June, 1979, would be cruel and inhuman in that it would be irrevocably deprive me of the benefit of the aforesaid measures.

20. I make this application in support of a motion for declaration under Section 25 of the Jamaica (Consitution) Order in Council 1962 that my execution at this time would be contrary to Section 17 (1) of the said Constitution and illegal.

SWORN TO AT Saint Catherine District Prison

inthe Parish of Saint Catherine

this            day of June, 1979

---

ELIJAH BECKFORD  
APPLICANT

---

JUSTICE OF THE PEACE

This Affidavit is filed by Terrence Ballantyne, Attorney-at-Law of 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicant.

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

1. ELIJAH BECKFORD  
2. ERROL MILLER APPLICANTS

A N D

1. THE ATTORNEY GENERAL  
2. THE SUPERINTENDENT,  
SAINT CATHERINE DISTRICT  
PRISON RESPONDENTS

IN THE MATTER OF AN APPLICATION BY ERROL  
MILLER under section 25 (1) of the Jamaica  
(Constitution) Order in Council 1962.

I, ERROL MILLER, Mason and Fisherman whose place of abode is 13  
Glasspole Avenue, Kingston 2 and postal address is Saint Catherine District  
Prison, Spanish Town in the Parish of Saint Catherine, the Applicant in this  
cause, make oath and say as follows:

1. On the 28th day of October 1975, I was convicted at the Home Circuit  
Court on a charge of Murder and was sentenced to suffer death being the penalty  
prescribed by law.

2. That on the 5th day of February, 1976 my application for leave to  
Appeal was refused by the Court of Appeal of Jamaica, my Attorney not having  
been present in Court.

/grounds for

3. I was informed by my Attorney that there were good and substantial  
an Appeal to the Judicial Committee of the Privy Council in England and  
I so appealed in forma pauperis.

4. My Petition for Special leave to Appeal to Her Majesty in Council  
was dismissed on the 8th day of December, 1978.

5. I contacted the Kingston Legal Aid Clinic and was informed and  
verily believe that a Petition for Mercy was prepared by them and delivered  
to the Governor General in February 1977.

6. I am informed and verily believe that a second petition for Mercy  
from citizens in Eastern Kingston was forwarded to the Governor General in  
February 1977.

...../2

7. Since the date of my conviction and particularly since the refusal of my appeal by <sup>/the</sup> Privy Council in England, I have been in a perpetual state of tension and anxiety, resulting in physical and mental deterioration, not knowing if or when a warrant would be issued for my execution especially having regard to the fact that <sup>/no</sup> executions had been carried out since around April 1976.

8. Subsequent to the delivery of the Petition for Mercy on my behalf to the Governor General, I learned in or around May 1977 that a Ministry paper had been tabled in the House Of Representatives by the Minister of Justice recommending an enquiry into the question of whether Capital Punishment should be retained in Jamaica, and that the matter had been referred to the National Security Committee of the House of Representatives for study.

9. By reason of the foregoing I was reasonably led to believe and/or hope that my execution would not be carried out and especially so when for a further period of more than 13 months since the sending of the petition for Mercy to the Governor General no death warrant was issued for my execution nor for the execution of any one who had been sentenced to death and was similarly incarcerated in death row.

10. In October 1978, I learned that the House Committee had recommended that there should be no change in the existing law relating to Capital Punishment. It was then also announced in the press that a "conscience vote" was to be taken in Parliament on the question of whether the death penalty should further be suspended pending further study, however, I heard nothing more for quite some time.

11. On the 30th day of January, 1979 the issue of whether the Death Penalty should be further suspended pending a detailed study of the effect of its use on society was debated in the House of Representatives, and was defeated by a narrow margin of 23 to 20 votes.

12. At the end of this debate, the House of Representatives adopted the following resolution moved by the Minister of Youth and Sports, Honourable Hugh Small:

WHEREAS for sometime national consideration has been given as to whether Capital Punishment should be continued,  
And whereas during that period of time many persons have been awaiting



20. I am also informed and verily believe that a Bill is to be tabled in the Senate in the very near future for the suspension of the Death Sentence as a form of punishment.

21. In the light of paragraphs seventeen and eighteen above, there is a strong possibility that the death penalty will be suspended in accordance with the Bill to be tabled pending the report of the Committee and having regard to the irrevocable nature of death, my execution which is scheduled for the 12th day of June, 1979, would be cruel and inhuman in that it would irrevocably deprive me of the benefit of the aforesaid measures.

22. I make this application in support of a motion for a declaration under Section 25 of the Jamaica (Constitution) Order in Council 1962 that my execution at this time would be contrary to Section 17 (1) of the said Constitution and illegal.

SWORN TO AT Saint Catherine District Prison

in the Parish of Saint Catherine

this 11th day of June 1979

Before me:-

.....  
ERROL MILLER  
APPLICANT

.....  
JUSTICE OF THE PEACE.

This Affidavit is filed by Terrence Ballantyne, Attorney-at-Law of No. 11 Duke Street, Kingston, Attorney-at-Law for and on behalf of the Applicant.

- 2 -

7. I have since received a copy of the proof of Hangard of the Honourable Hugh Small's speech in relation to the resolution referred to in paragraph 6 hereof which accurately represents the aforesaid speech, and I attach hereto as Exhibit B a photocopy of the said proof.

SWORN TO AT 31½ Olivier Place

in the parish of Kingston

this 11th day of June, 1979

.....  
ROY ANTHONY JONES

Before me:-

.....

JUSTICE OF THE PEACE.

- 2 -

commentary on the reports are now produced and shown to me and marked F.K. 1, F.K. 2, and F.K. 3.

4. That the commentary to the report were jointly prepared and agreed by Dr. F.W. Hickling and myself but was not signed by him because of his departure from the island before it was typed.

5. That I make this Affidavit in support of a Notice of Motion filed by the Applicants.

SWORN TO AT 31½ Olivier Place       )  
in the parish of Kingston       )  
this 13th day of March, 1980       )  
before me       )  
\_\_\_\_\_ -)

(Sgd.) Frank Knight  
FRANK KNIGHT.

JUSTICE OF THE PEACE FOR THE  
PARISH OF KINGSTON.

FILED by TERRENCE BALLANTYNE, of No. 11 Duke Street, Kingston, Attorney-at-Law  
for and on behalf of the Applicants herein.

SUIT NO. M. 39 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

ELIJAH BECKFORD

ERROL MILER

APPLICANTS

A N D

THE ATTORNEY GENERAL

SUPERINTENDENT OF PRISONS

ST. CATHERINE DISTRICT

PRISON

RESPONDENTS

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THIS IS THE PAPER WRITING MARKED F.K. 1 referred to in the Affidavit of

FRANK KNIGHT, sworn before me in this Motion on the 13th day of June, 1980.

(Sgd.) Ronald G. ThwaitesJUSTICE OF THE PEACE FOR THE PARISH  
OF KINGSTON

SUITS NOS. M. 34 AND M. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING  
ELIJAH BECKFORD  
ERROL MILLER

- APPLICANTS

A N D

THE ATTORNEY GENERAL  
THE SUPERINTENDENT OF PRISONS,- RESPONDENTS  
ST. CATHERINE DISTRICT PRISON

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This is the paper writing marked F.K. 3 referred to in the Affidavit of FRANK KNIGHT re Suit M. 39 and sworn before me in this Motion on the 13th day of March, 1980.

(Sgd. Ronald G. Thwaites  
JUSTICE OF THE PEACE FOR THE PARISH  
OF KINGSTON.

AFFIDAVIT IN SUPPORT OF MOTIONSUITS NOS. M. 34 AND M. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANECUS

BETWEEN

1. NOEL RILEY
2. ANTHONY FORBES
3. CLIFTON IRVING
4. ELIJAH BECKFORD
5. ERROL MILLER - APPLICANTS

A N D

1. THE ATTORNEY GENERAL
2. THE SUPERINTENDENT OF PRISONS  
ST. CATHERINE DISTRICT PRISON - RESPONDENTS

---

IN THE MATTER OF AN APPLICATION BY  
NOEL RILEY, ANTHONY FORBES, CLIFTON  
IRVING, ELIJAH BECKFORD and ERROL  
MILLER under Section 25 (1) of the  
Jamaica (Constitution) ORDER IN  
COUNCIL 1962

I, RUTH RAE DOORBAR, being duly sworn make oath and say as follows:-

1. That I reside and have my true place of abode at Port Antonio in the Parish of Portland and my Postal Address is P.O. Box 65 in the Parish of Portland.

2. That I am a Consultant Psychologist attached to the Department of Correctional Services and I am the holder of a Doctorate in Clinical Psychology and I am <sup>/as a</sup> licensed Clinical Psychologist in the State of New Jersey, in the United States of America and I am employed to the Ministry of Health on a sessional basis at five (5) hospitals in Jamaica.

3. That I carried out Psychological Tests on the above mentioned applicants, NOEL RILEY, ANTHONY FORBES, CLIFTON IRVING, ELIJAH BECKFORD AND ERROL MILLER, concluding with a final examination on the 12th day of March, 1980. A copy of a report of my findings are now produced and shown to me and marked "R.D. 1, R.D. 2, R.D. 3, R.D. 4, and R.D. 5."

...../2

- 2 -

5. That I make this Affidavit in support of a Notice of Motion  
filed by the Applicants.

(sgd) Ruth R. Doorbar  
RUTH RAE DOORBAR

SWORN TO AT 31½ Olivier Place  
in the Parish of Kingston  
this 18th day of March, 1980

(sgd.)  
\_\_\_\_\_  
JUSTICE OF THE PEACE FOR THE  
PARISH OF KINGSTON.

FILED BY TERRENCE BALLANTYNE, of No. 11 Duke Street, Kingston, Attorney-at-Law  
for and on behalf of the Applicants herein.

SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING

- APPLICANTS

A N D

THE ATTORNEY GENERAL

SUPERINTENDENT OF PRISONS  
ST. CATHERINE DISTRICT  
PRISON

- RESPONDENTS

---

This is the paper writing marked R.D. 1 referred to in the Affidavit of RUTH DOORBAR, sworn before me in this Motion on the 12th day of March, 1980.

(Sgd.) Ronald Thwaites  
JUSTICE OF THE PEACE FOR  
THE PARISH OF KINGSTON



SUIT NO. M. 34 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY

ANTHONY FORBES

CLIFTON IRVING

- APPLICANTS

A N D

THE ATTORNEY GENERAL

SUPERINTENDENT OF PRISONS  
ST. CATHERINE DISTRICT  
PRISON

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This is the paper writing marked R.D. 2 referred to in the Affidavit  
of RUTH DOORBAR, sworn before me this 12th day of March, 1980.

(Sgd.) Ronald Thwaites  
JUSTICE OF THE PEACE FOR THE  
PARISH OF KINGSTON.

J. No. 62-1979  
SUIT NO. M. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN MISCELLANEOUS

BETWEEN	ELIJAH BECKFORD	
	ERROL MILLER	- APPLICANTS
A N D	THE ATTORNEY GENERAL	
	SUPERINTENDENT OF PRISONS	
	ST. CATHERINE DISTRICT	
	PRISON	- RESPONDENTS

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This is the paper writing marked R.D. 3 referred to in the Affidavit of RUTH DOORBAR, sworn before me in this Motion on the 12th day of March, 1980.

(Sgd.) R.G. Thwaites

JUSTICE OF THE PEACE.

SUIT NO. M. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

ELIJAH BECKFORD

ERROL MILLER

- APPLICANTS

A N D

THE ATTORNEY GENERAL

THE SUPERINTENDENT OF PRISONS  
ST. CATHERINE DISTRICT PRISON

- RESPONDENTS

---

This is the paper writing marked R.D. 4 referred to in the Affidavit of RUTH DOORBAR, sworn before me in this Motion on the 12th day of March, 1980.

(Sgd.) R.G. Thwaites  
JUSTICE OF THE PEACE FOR THE  
PARISH OF KINGSTON.

SUIT NO. M. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

ELIJAH BECKFORD

ERROL MILLER

- APPLICANTS

A N D

THE ATTORNEY GENERAL

THE SUPERINTENDENT OF  
PRISONS, ST. CATHERINE  
DISTRICT PRISON

- RESPONDENTS

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This is the paper writing marked R.D. 5 referred to in the Affidavit of RUTH DOORBAR, sworn before me in this Motion on the 12th day of March, 1980.

JUSTICE OF THE PEACE FOR  
THE PARISH OF:

AFFIDAVIT OF ALWYN COURTNEY HARRY

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING  
ELIJAH BECKFORD  
ERROL

- APPLICANTS

A N D

A N D

THE ATTORNEY GENERAL  
THE SUPERINTENDENT OF PRISONS,  
SAINT CATHERINE DISTRICT PRISON

- RESPONDENTS

IN THE MATTER OF AN APPLICATION  
BY NOEL RILEY, ANTHONY FORBES,  
CLIFTON IRVING, ELIJAH BECKFORD,  
ERROL MILLER UNDER SECTION 25 (1)  
OF THE JAMAICA (CONSTITUTION)  
ORDER IN COUNCIL 1962.

I, ALWYN COURTNEY HARRY being sworn make oath and say as

follows:-

1. I am a Roman Catholic Priest in charge of the St. Anne's Catholic Church and residing at St. Anne's Rectory, 5 3/4 Percy Street, Kingston, in the Parish of Kingston and my postal address is 5 3/4 Percy Street, Kingston.
2. I have been trained in Moral Theology and Human Relationships to University level. I have wide experience <sup>/as a priest</sup> consultant. In addition, I have 25 years experience as a priest doing confessional work both when I was attached to St. George's College and later when I was doing parish work and then in the Seminary I was rector of St. Michael's Seminary for 11 years where I did more consultation of a professional nature.
3. I am also the official representative of the Jamaica Council of Churches to the men in the condemned cells at the Saint Catherine District Prisons. I have held this position from about 1970. I minister to all the men at the condemned cells once they wish to see me, whether or not they are of the Roman Catholic Faith.
4. At present there are approximately 82 men and I see to it that I am available to see each condemned man at least once every two months.

...../2

5. I have attended at the execution of 12 condemned men during this period of 10 years. I would estimate that there were approximately 24 more men hanged during that period.

6. As regards the applicants Noel Riley, Anthony Forbes, Clifton Irving, Errol Miller and Elijah Beckford, I have ministered and continue to minister to all five of them.

7. I was aware that there was a de facto suspension of Capital Punishment since about April 1976 till early 1979 and during this time there have been various debates in Parliament and eventually a conscience vote both in the House of Representatives and in the Senate concerning this question.

8. All five applicants, to my knowledge, were aware of all this and I have had an opportunity of observing the effect of these events upon them.

9. In general I would say all five applicants lived on the hope that there would be an abolition of the death penalty or at least that there would be no executions until Parliament had considered a detailed and scientific study of the effect of capital punishment.

10. Even though the applicants knew that the conscience vote in the House of Representatives had not been concluded in their favour, it seemed to me that they actually rejoiced in the closeness of the vote and continued to expect that they would not be hanged or, at least that nothing would be done until a scientific study of capital punishment had been made.

11. I personally was amazed when the death warrants were issued and I went over to see the persons against whom the warrants had been issued. Among the first group were Noel Riley, Anthony Forbes, and Clifton Irving.

12. I would say that all had a frightened animal-like reaction to the news. This reaction, is in my view, quite different from the vast majority of those to whom I have ministered up to the time of their execution. Certainly it was far more intense than anything that I have observed before.

13. It seemed to me that of all the five, Noel Riley's reaction to the serving of the death warrant on the recent and last occasion has been the most marked.

...../3

- 3 -

14. I would also say that this frightened animal-like reaction was also transferred to the other men in the condemned cells against whom no warrants had been issued.

15. In the case of the other executions which I have attended there is always a tenseness in the atmosphere among warders and other prisoners. However, on this occasion the atmosphere was far more intense than is usual. This I noted on each of my visits to the men subsequent to the issue of the warrants when, in all the course of speaking to me they conveyed this intense feeling.

16. As regards my own views I am not settled in my mind as to whether I am in support of or am opposed to Capital Punishment.

17. I am however clear in my own mind that in the particular circumstances of the delay, and the hope built up in the minds of these Applicants that the issue of the death warrants for their execution is inhuman and degrading, and amounts to torture, in the ordinary meaning of those words.

18. I say this on the basis of a close knowledge of each of these Applicants and also on the basis of my detached judgement of each one separately and in relation to the particular circumstances of each of them.

19. In my professional studies as a priest and from my experience of dealing with people in this capacity, I feel that I am qualified to express an assessment as to whether particular circumstances amount to torture or are inhuman or degrading.

20. On the subsequent issue of the warrants for the applicants Errol Miller and Elijah Beckford, I was very disturbed; particularly in the case of Elijah Beckford because in addition to the delays in their executions and the hope built up in both their minds, I have always considered Beckford to be a mentally disturbed person.

21. In the case of the Applicants there existed also what I have described as the frightened almost animal-like reaction to the issue of the warrant.

22. Although it is difficult to describe, there is no question in my mind that once an execution is imminent there is a considerable change in the atmosphere in the prisons. I can say that among some of the prison warders and in particular among the more recent warrants to the prison services they prefer not to have to take part in the execution.

...../4

23. The procedure of the execution is that about three minutes before the appointed time the gate leading into the death cell compound is opened and about four warders who are to assist in the execution come in .

24. The cell door is opened, the condemned man is brought down. His hands are bound behind his back and he is blindfolded. He is led off into the adjoining compound where the gallows is situated. As a Minister I will walk with him to this compound.

25. His face is then fully covered over. The rope is put around his neck while the warders ensure that the hands are properly tightened up. His legs are then tied together.

26. At this stage I would be about 10 yards from him. A signal is given and then a lever is drawn which opens the trap door. The body then falls through the trap door; the body falls right through. The head falls below the level of the trap door but I cannot say how far down.

27. There is a horrifying thud from the sound of the trap door and the fall of the body which I understand can be heard throughout the prison compound for a considerable distance.

28. I would describe the effect upon the condemned man just prior to execution as follows:-

While in the cell we normally pray together or sing. As the men come in to take him from the cell I still continue to pray. The condemned man usually recites a prayer but at this stage it is in a shrill also shrieking manner which can be heard throughout the entire area of the death cell, and continues right through until the sound of the thud of the trap door and the falling body, suddenly cuts off the shrill sound.

29. As soon as the doctor has declared that the condemned man is dead a black flag is hoisted on top of the entrance of the prison and a notice is put up or is supposed to be put up.

Sworn to at 31½ Olivier Place

in the Parish of Kingston

this 12th day of March, 1980

Before me:

(Sgd.) Alwyn Harry  
ALWYN COURTNEY HARRY

(Sgd.) Ronald Thwaites  
JUSTICE OF THE PEACE



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING  
ELIJAH BECKFORD  
ERROL MILLER - APPLICANTS

A N D  
A N D

THE ATTORNEY GENERAL  
THE SUPERINTENDENT OF PRISONS,  
ST. CATHERINE DISTRICT PRISON  
- RESPONDENTS

---

IN THE MATTER OF AN APPLICATION BY  
NOEL RILEY ET AL UNDER SECTION 25  
(1) OF THE JAMAICA (CONSTITUTION) ORDER  
IN COUNCIL 1962.

I, MICHAEL BARRINGTON ERSKINE being duly sworn hereby make oath and say  
as follows:-

1. I live and reside at 5a Widcombe Road, Kingston 6, in the parish of Saint Andrew.
2. I am an Attorney-at-Law duly qualified to practice in the several Courts of Jamaica with offices at 31½ Olivier Place in the Parish of Kingston.
3. I have in connection with this Motion attended the Saint Catherine District Prison with Mr. Earle Witter of Counsel and obtained from the records ~~thereat~~ the names, dates of execution and dates of convictions of all persons executed at that institution since, and including the year 1958 up to the year 1972.
4. I am informed and verily believe that the records ~~thereat~~ before the year 1958 do not contain the date of convictions.
5. Armed with the aforementioned information, I attended the offices of the Director of Public Prosecutions and obtained from records ~~thereat~~ the dates of the refusal of the final appeal of the executed men, whether this was to the Court of Appeal or to the Judicial Committee of the Privy Council in such cases as were disclosed from the aforementioned records, for a period of ten years commencing with Uriel Whyte who was executed on the 20th day of November, 1962.
6. The reason for commencing with the aforementioned case is that I am informed and verily believe that the records for the cases before this do not reside at the Offices of the Director of Public Prosecutions but at the Attorney General's Department and are not readily

- 2 -

available

7. The cases within this period are fifty-six in number and of this amount I have obtained from the records at the Offices of the Director of Public Prosecutions, forty cases disclosing the dates of the final appeals, and I attach hereto marked "MBE 1" a chart which I have made from <sup>the</sup> records of the aforesaid cases
8. The Sixteen cases which have been omitted from the said chart are omitted either because the relevant records were not found at the Offices of the Director of Public Prosecutions or because the records disclosed that the executed person had taken steps to appeal to the Judicial Committee of the Privy Council but there is no date recorded as to when this appeal was determined.
9. I have calculated the period of time between the date of dismissal of the final appeal and the date of execution in each of the forty cases referred to in paragraph 7 hereof and also the average time between these two dates.
10. The longest time between the two dates above referred to is 22.28 weeks and the shortest time is 2 weeks. The average time is 9.44 weeks.

SWORN BY THE SAID

MICHAEL BARRINGTON ERSKINE

at 31½ Olivier Place

in the Parish of Kingston

on the 17th day of March, 1980

Before me:-

(Sgd.) Ronald Thwaites

JUSTICE OF THE PEACE

FOR THE PARISH OF KINGSTON.

(Sgd.) Michael B. Erskine  
MICHAEL BARRINGTON ERSKINE

FILED BY TERRENCE BALLANTYNE of No. 11 Duke Street, Kingston, Attorney-at-Law  
for and on behalf of the Applicants herein.

SUITS NOS M. 34 and M. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
ANTHONY FORBES  
CLIFTON IRVING  
ELIJAH BECKFORD  
ERROL MILLER - APPLICANTS

A N D

THE ATTORNEY GENERAL  
THE SUPERINTENDENT OF PRISONS  
ST. CATHERINE DISTRICT  
PRISON - RESPONDENTS

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This is the paper writing marked M.B.E. 1 referred to in the Affidavit of  
MICHAEL BARRINGTON ERSKINE sworn before me in this Motion on the 17th day  
of March, 1980.

(Sgd.) Ronald G. ThwaitesJUSTICE OF THE PEACE FOR THE  
PARISH OF KINGSTON.

ORDER ON MOTIONS

SUITS NO. M. 34 OF 1979

and M. 39

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

NOEL RILEY  
 ANTHONY FORBES  
 CLIFTON IRVING  
 ELIJAH BECKFORD  
 ERROL MILLER - APPLICANTS

A N D

THE ATTORNEY GENERAL  
  
 THE SUPERINTENDENT OF PRISONS  
 ST. CATHERINE DISTRICT  
 PRISON. - RESPONDENTS

CORAM:

The Hon Mr. Justice Parnell and the Hon. Mr.

Justice Ross and the Hon. Mr. Justice Carey on the 17th - 19th March,  
 1979.

UPON reading the Notice of Motion on behalf of  
 the Applicants NOEL RILEY ET AL herein together with the Affidavits of  
 the said Applicants sworn to on the 26th day of June, 1979, and other  
 Affidavits in support of the said Motions.

UPON hearing Mr. Dennis Daly and Mr. Earle Witter  
 and Mr. Delano Harrison of Counsel for the Applicants NOEL RILEY, ANTHONY  
 FORBES and CLIFTON IRVING and Mr. R.N.A. Henriques and Mr. R. Small of  
 Counsel for the Applicants ELIJAH BECKFORD and ERROL MILLER and Mr. Rance  
 Langrin of Counsel for the first-named Respondent and Mr. H. Fraser  
 of Counsel for the second-named Respondent.

IT IS ORDERED that the said Motions be dismissed  
 with costs against the Applicants.

BY THE COURT.

(Sgd.) \_\_\_\_\_  
 R E G I S T R A R

FILED by L. JACK HINES of No. 31½ Olivier Place, Kingston, Attorney-at-Law  
 for and on behalf of the applicants.

## IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

(Constitutional Redress Court)

Suits M. 34/79 and M.39/79

BETWEEN	NOEL RILEY et al	APPLICANTS
AND	THE ATTORNEY GENERAL & SUPERINTENDENT OF PRISONS - SAINT CATHERINE DISTRICT	RESPONDENTS
AND	ELIJAH BECKFORD ERROL MILLER	APPLICANTS

CORAM PARNELL, ROSS AND CAREY JJ

Dennis Daly       )  
Earl Witter       ) for (Applicants)  
Delano Harrison) Riley, Forbes and Irving

R.N.A. Henriques ) for (Applicants)  
Richard Small     ) Beckford and Miller

R. Langrin        )  
N. Fraser         ) for the respondents

March 17, 18, 19, 80

March 25)

Parnell J.

The five applicants are under sentence of death following their conviction for murder. Warrants authorising their execution have been issued by the Governor-General. Execution has been stayed pending the determination of a motion filed on their behalf pursuant to section 25(1) of the Constitution.

It is claimed that the proposed execution if carried out "at this time" would be a breach of Section 17(1) of the Constitution and that this Court should so declare.

I shall outline in full, what section 17 of the Constitution has provided:

17.       1) "No person shall be subject to torture or to inhuman or degrading punishment or other treatment".
- 2) "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 infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day".

Before August 6, 1962, and after, convicted murderers were and have been executed following the due process of law and practice established in this country. And the practice as I know it and which has been outlined

- 2 -

in the Constitution, is that after all the judicial steps which are open to the condemned man have been exhausted, his case is considered by the Privy Council of Jamaica with a view to the tendering of recommendation to the Governor-General (formerly the Governor). And the recommendation will be based on the record of the case, the written and confidential report of the trial judge together with such other information which the Governor-General may require. No time limit has been given by the Constitution concerning the final determination of any given case which may result in a decision that the death sentence should be carried out or that it should be commuted. The exercise of the royal prerogative is not something which may be hurried; it is too delicate to be pushed and too important to admit of anything which is not flavoured of wise and sober judgment. When a particular case is being considered with a view to recommending the direction which the prerogative of mercy should take, it is not only the right of the convicted which is of concern. The public interest and the public rights are also involved. What time may have been consumed in a tranquil Jamaica in 1961-1962 to arrive at a decision in any given case may very well not be enough in a fast moving and turbulent period in the seventies.

A careful study of the Constitution shows that the Founding Fathers were men of vision and they envisaged that the constitution should be so framed and the powers granted should be so circumscribed, so as to admit of growth and change. The judges of the Supreme Court are required to approach their difficult task of construing the constitution in such a way that it is shown clearly that they do understand what is required of them when a problem arises. The oracle of Apollo is not available at the Supreme Court building or elsewhere to consult.

When is punishment or treatment inhuman or degrading?

The contention of the applicants is not that the death penalty simpliciter is torturing, inhuman or degrading - an argument which would have been barred by the constitution itself - but that:

"that execution of the said applicants (Beckford and Miller) at this time and in the circumstances leading up to and surrounding the issue of the death warrants, would be unconstitutional and illegal being contrary to Sec. 17(1) of the said Constitution of Jamaica".

In the application of Riley, Forbes and Irving, the notice of Motion seeks a declaration that:

- 3 -

"the hanging<sup>of</sup> the accused Noel Riley, Anthony Forbes, and Clifton Irving is unconstitutional and illegal, contrary to Sec. 17 (1) of the Constitution."

Common Factors to be relied on

- (1) Each of the Applicants is contending that he has been subjected to torture, inhuman or degrading treatment or a combination of all these elements;
- (2) Each has alleged that his execution was delayed for a considerable period of time and this was caused or contributed to by a "de facto" suspension of the death penalty;
- (3) Hope was engendered within each breast that execution would not be carried out by virtue of:
  - (a) The de facto suspension of the death penalty.
  - (b) The fact that studies were undertaken into the question of suspending the death penalty by the National Security Committee of the House of Representatives;
  - (c) The debates and resolutions passed in the House of Representatives and the Senate on the 30th January, 1979, and the 9th February, 1979, respectively.

Picture at a Glance

The evidence which has been put before the Court paints a picture as under:-

No.	Applicant	Date Convicted	Date Appeal Dismissed	Judicial Comm. of Privy Council	Execution Date
1	Noel Riley	7. 3. 75	23. 2. 76	18. 7. 78	29.5.79
2	Anthony Forbes	7. 3. 75	23. 2. 76	Did not apply	29.5.79
3	Clifton Irving	22. 3. 76	10. 1. 77	Abandoned	29.5.79
4	Elijah Beckford	9. 5. 75	6.11. 75	October 1976 Did not apply	12.6.79
5	Errol Miller	28.10.75	5. 2. 76	6.12. 76	12.6.79

There were certain events which are said to have given hope to the applicants that the death penalty would not be carried out. The first, is the de facto suspension of the death penalty to which I have already adverted to. The other events may be depicted as shown hereunder:-

No.	Date	Event	Remarks
1	May 1977	Ministry paper tabled in the House of Representatives re retention of Capital Punishment.	Matter referred to National Security Committee of the House
2	October 1978	House Committee recommended no change in existing law.	
3	30. 1. 79	Debate in the House of Representatives whether death penalty should be suspended	"on a conscience vote motion defeated 23 to 20.

...../4

No.	Date	Event	Remarks
4	30. 1. 79	Resolution of House requesting a review of all cases of men awaiting execution	Resolution adopted
5	9. 2. 79	The Senate debated a resolution that Capital punishment be suspended for 18 months pending a detailed study and assessment and a report on the sociological and psychological effect of capital punishment in the Jamaica of today.	Resolution carried 10 - 5

A supplementary affidavit of the applicant Noel Riley shows that a Commission of Inquiry was held into certain incidents which occurred at the St. Catherine District Prison in 1974. Before the report of the Commissioner was complete, warrants were issued authorising the execution of four of the condemned men who were interested in any report or recommendation, which was to be sent in. As a result of representations made, the executions which should have taken place on March 25 and 26, 1975 were stayed. The Commission then examined the cases of the four concerned men and sent in an interim report.

The Court is permitted to take judicial notice of the appointment of the Commission of Inquiry by the Governor-General. Proclamation 1/1975 naming the Commission headed by Dr. Lloyd Barnett was gazetted in the Jamaica Gazette Extraordinary of January 2, 1975. The terms of reference are clearly set out in the proclamation.

Certain statistics from the evidence

1. About 82 men were in the condemned cells at the Saint Catherine District Prison awaiting a final determination of their fate as at March 12, 1980: This is disclosed in the Affidavit of Roman Catholic Priest Alwyn Harry.
2. No execution has taken place since April 1976.
3. Since the last execution and up to May 18, 1979, twenty-one cases of conviction for murder involving the death sentence have been commuted.
4. The records of the Registrar of the Supreme Court show the following:-

<u>Year</u>	<u>Number Commuted</u>
1976	6
1977	3
1978	7
1979	5

And of this amount, the following facts emerge:



<u>Waiting Period Since Conviction</u>	<u>Number Involved</u>
7 years	1
6 years	3
5 years	1
4 years	4
3 years	2

The remainder had to wait for a period ranging between 15 months to 2 years following their conviction.

What is clear is that at least from as early as in January, 1975 official action had been taken to consider a question which was likely to affect the fate of men convicted for murder. And in the meantime, the Privy Council did not go to sleep. Where cases merited the exercise of the Prerogative of Mercy, at least those of 21 men were considered and determined.

#### Evidence of Torture?

An interesting Affidavit has been filed by Fr. Alwyn Harry. He is a priest consultant who ministers to all condemned men in the cells who require spiritual counselling. Father Harry has been trained in Moral Theology and Human Relationships. In the case of the five applicants, he saw them all. Paragraphs 17-19 of his affidavit are as follows:

- Para. 18: "I am however clear in my own mind that in the particular circumstances of the delay, and the hope built up in the minds of those applicants that the issue of the death warrants for their execution is inhuman and degrading, and amounts to torture, in the ordinary meaning of those words."
- Para. 18 "I say this on the basis of a close knowledge of each of these applicants and also on the basis of my detached judgement of each one separately and in relation to the particular circumstances of each of them."
- Para. 19: "In my professional studies as a priest and from my experience of dealing with people in this capacity, I feel that I am qualified to express an assessment as to whether particular circumstances amount to torture, or are inhuman or degrading."

The deponent, in good faith, is putting forward a finding which is the province of the Court.

#### Medical evidence

The five applicants were medically examined by Dr. F.W. Hickling and Dr. F. Knight and they have submitted a joint report. The summary of the report is very interesting. I understand the substance of the medical report to be as follows:

.....

- 6 -

1. Clinical features of psychological disturbance in the five men were detected and are clearly related in a causative way to mental stresses during the time they had been under sentence of death. The stresses have been the result of discussion, comment and debate in the media, in the Senate and in the House of Representatives.
2. Anxiety and depression are prominent clinical features found in all the men.
3. One doctor (F.W.H.) is of the opinion that a psychiatrist is eminently qualified and suited to assess the nature and degree of torture on an individual; that all five men could be regarded as having been subjected to acts which could be regarded as inhuman and degrading treatment. But the treatment could not be regarded as torture.
4. The other doctor (F.K.) is of the view that the question of torture based on an examination of the alleged tortured victim is outside the scope of a medical report, as is the question of inhuman treatment since the latter raises moral issues and involves value judgements which are inappropriate in a medical report.

The stand by Dr. Knight seems to me to be fair, reasonable and in accordance with the experience of mankind. There are several matters which may "torture" or disturb a man's mind. The sudden loss of a loved one; the guilt following his being discovered in wrong doing, the loss of wealth or reputation; the arrest and conviction on a serious charge. Indeed, the applicant Noel Riley in his affidavit dated May 30, 1979 has admitted the fact of his conviction for murder was enough to subject him to what he has called "extreme psychological torture and anguish."

Paragraph 4 of his Affidavit states in its opening the following"--

"Since the date of my conviction and particularly since the refusal of my application for special leave as aforesaid, I have been subjected to extreme psychological torture and anguish, resulting in my physical and mental deterioration."

This particular applicant is saying in effect that the "Torture" or "inhuman treatment" which he has alleged as the ground to found his motion for his seeking redress started as a natural consequence of his being convicted on a capital charge followed by his losing his final judicial attempt to have his conviction quashed or varied. The result of these events has put into operation a state or condition which has brought about physical and mental deterioration.

#### Irving's admission

The applicant Irving has made the identical admission as to the physical and mental deterioration of which he complains. Paragraph 5 of his

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- 7 -

affidavit dated May 30, 1978, shows that the germ of his ailment was planted after his conviction and nourished by the abandonment of his application for special leave to appeal to the Judicial Committee of the Privy Council.

Beckford and Miller also confess

The applicants Beckford and Miller have made a similar confession as to the cause of their ailment. In paragraph 7 of Beckford's Affidavit dated June 1979, and in paragraph of Miller's affidavit of the same month, each is stating in clear words what started the torture and anguish.

Stand of Anthony Forbes

The applicant Forbes in paragraph 4 of his affidavit dated May 30, 1989, states in part as follows:

"For the past four years and two months after my conviction, I have been an inmate on Death Row at the abovementioned prison and in particular for the last three years and three months have been subjected to extreme psychological torture and physical and mental deterioration resulting on the one hand from the uncertainty and considerable delay following the determination of my appeal. And on the other hand being led to hope that my execution would not be carried out as a result of the 'de facto' suspension of capital punishment since 1976, etc".

As I have already pointed out, this applicant lost his appeal to the Court of Appeal on February 23, 1976.

If his subjection to "torture" and "mental deterioration" started 3 years and 3 months prior to the date of his affidavit, that date would almost run from the 23rd February 1976, when he lost his appeal. He did not take any action to seek special leave to appeal to Her Majesty in Council.

Even if it is assumed that there was inordinate delay in the fixing of the execution date in the case of each of the applicants, what is very clear from the evidence is that the alleged "torture" which the medical evidence does not support or the alleged mental anguish which in turn caused the alleged "inhuman treatment" did not wholly flow as a direct result of and as a consequence of any such inordinate delay. The embryo can be traced to a mental state or psychological condition which naturally followed the mere conviction for murder or the dismissal of leave to appeal from a conviction of murder or a loss of the final judicial step in a battle to save life.

Where an applicant complains that his fundamental right has been contravened or is likely to be contravened in relation to himself, he must

identify the right in question, show a proper respondent and prove on a balance of probabilities what he has set out to do.

The evidence which I have so far examined, satisfies me that the applicants are bound to fail. On the question of proof of what they allege, I have said enough to show that they cannot succeed.

However, as the matter is so important, I shall outline other reasons why they cannot succeed.

#### History of Sec. (17(1) of Constitution

That no person shall be subjected to torture or to inhuman or degrading punishment or other treatment is a concept which has a long history. The dignity of man should not be violated in the nature of the punishment which is prescribed for his transgression. The "torture" mentioned in the section is the cruelty inherent in the method of punishment. The punishment which is said to be inhuman or degrading must satisfy an objective test.

The Bill of Rights of 1689, has a long preamble setting out grievances against the late King James the Second. One of these grievances is mentioned in paragraph 11 as follows:-

"And excessive fines have been imposed; and illegal and cruel punishments inflicted."

King James the Second had permitted several transgressions against the rights and liberties of the people. The Bill of Rights was enacted on the 16th December, 1689 in order to declare certain rights to settle the succession of the crown.

Section 10 of the Bill declared as follows:

"That excessive bail ought not to be required, nor excessive fines imposed; nor cruel and unusual punishments inflicted."

Blackstone in his commentaries has outlined some of the punishments used in the middle of the 18th century  
Cutting off the hand or ears, slitting the nostril, branding in the hand or cheek. See IV. 376 of Blackstone Commentaries. Coke in his Institutes (3 Ist. 210) finds scriptural passages to support the severe punishment which a person convicted of treason had to suffer. Drawing, Quartering, ripping of the bowels while the victim was alive and then the severing of the head. And this was done in public to the delights of some and to the

horror of others. Breaking an offender on wheel, suspending him on a gibbet and even castration of a virile man were allowed. An outline of the cruel and inhuman treatment to which offenders were subjected during the period leading up to the Bill of Rights in "A History of English Criminal Law by Radzinowicz

See Volume 2 pages 1-8. The prohibition of cruel and inhuman punishment was based primarily on the principle that the punishment should fit the crime and the method should be in accordance with civilised standards of decency, humanity and proportionment.

In order to prevent a return to the era when punishment was a dreaded and shocking spectacle, many countries with a written constitution have provided against its revival. The Universal Declaration of Human Rights has pronounced against it. See article 5. Execution as a form of punishment for certain well defined crimes has never been regarded as a cruel or inhuman. So long as the execution is instantaneous and substantially painless, that is enough.

It is my view that Sec. 17 (1) of the Constitution must be examined in the light of its history and where appropriate, in the further light of the cases decided by enlightened Courts in countries which have a similar provision.

The 8th amendment to the Constitution of the United States, declares as follows:-

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

In 1945 one Willie Francis was convicted of murder and sentenced to be electrocuted for the crime. A death warrant was prepared for execution on May 3, 1947. On that day he was placed in the official electric chair in Louisiana in the presence of the authorized witnesses. The executioner touched the switch but because of some mechanical defect, death did not result. He was removed from the chair and returned to the prison. A new death warrant for execution on May 9, 1949 was issued by the Governor. But proceedings were immediately launched to prevent execution and one of the grounds relied and was based on the 8th amendment to the effect that:

"because he once underwent the psychological strain of preparation for electrocution, now to require him to undergo this preparation again subjects him to a lingering or cruel and unusual punishment."

- 10 -

Both the Supreme Court of Louisiana and the United States Supreme Court rejected the contention. See *Louisiana ex rel. Francis v. Resweber* (1947), 329 U.S. 459. Before August 6, 1962, there was no form of punishment awarded in Jamaica at the direction of the Courts which was regarded as torturing, inhuman or degrading. What the Constitution had done is to give the Court power to invalidate any new form, type or description of punishment which is found to be inhuman or degrading. I am fortified in this view by a decision of the Privy Council in *Runyowa v. The Queen*, (1966) 2 W.L.R. 877. A section of the Rhodesia and Nyasaland Constitution was in terms similar to Section 17(1) of the Constitution of Jamaica. One of the questions which arose for consideration was whether a person who associated with others who used petrol or other inflammable liquid against the person or another or to destroy or cause damage to a building could suffer death on conviction as if he had been a principal. Was the sentence inhuman or degrading? Lord Morris giving the judgement of the Board has this to say:

"The provision contained in Section 60 of the Constitution enables the Court to adjudicate as to whether some form or type of description of punishment newly devised after the appointed day or not previously recognised is inhuman or degrading but it does not enable the court to declare an enactment imposing a punishment to be ultra vires on the ground that the Court considers that the punishment laid down by the enactment is inappropriate or excessive for the particular offence".  
(1966) 2 W.L.R. 877 at 891 E.

#### Complaints of the applicants

When the complaint of the five applicants is carefully examined it amounts to this:

- 1) It is not unconstitutional for the death sentence to be carried out on a conviction for murder;
- 2) What is unconstitutional is to carry out the death sentence on a man with an anguished mind which resulted from a long delay awaiting execution coupled with hope held out that the sentence would not be carried out.
- 3) The "anguished mind" had brought about a state of torture or inhuman or degrading treatment. When the argument is pushed to its logical conclusion, the sentence of death - so long as it remains a lawful sentence in Jamaica - could never be carried out. Almost every convicted man in the cell awaiting the sentence of death, suffers some kind of anxiety or mental torture. Once he can secure a moralist or an exponent of the principle for the abolition of the death penalty or a sympathiser, to support his cause, evidence would be produced suitable to support a move designed to stay or

stop this execution.

What should be regarded as material which is fit for the consideration of those persons who advise the Governor-General, is used as evidence before the Constitutional Court in a motion seeking redress if the material is not accepted or acted on by the Governor General advisors.

Effect on the Applicants - debated in  
Both Houses

Mr. Daly, in his submissions, was not afraid to face the problems in his path. When asked by the Court to outline the acts complained of which caused the torture or the inhuman or degrading treatment he mentioned the following:

- (1) The act of the executive in introducing a motion in the House of Representatives;
- (2) The act of the legislators in considering the resolutions and passing them;
- (3) The failure of the Legislature to take appropriate steps concerning the rights of subjects. A bill should have been introduced to commute death sentence while debate was going on.
- (4) The comments made during the debates raised the hopes of the applicants.

Mr. Henriques put his argument forcefully and concisely. He contended that the inordinate delay between the final judicial act and the date set for execution, is "inhuman and degrading" within the meaning of Section 17 (1) of the Constitution. He contended further that even without the medical evidence concerning the state of the men, waiting for 3½ years before execution is "inhuman treatment" within the meaning of the 17th section of the Constitution.

For my part, I am prepared to assume - and Mr. Daly conceded this - that the appropriate Minister responsible for Justice did inform the Governor General of the action that was being taken designed to deal with the question of capital punishment. I shudder <sup>/to</sup> think that a responsible Minister knowing that a paper dealing with capital punishment was being prepared to lay on the table of the house, would conceal this very important fact from the Governor-General. And having been advised of what was being proposed, it would have been prudent for the Governor-General and the Privy Council to refrain from taking any action which would have resulted in the ordering of the execution of any of the condemned men before the

position was made clear to them of the result of the study of, and the debate on the subject in question. Whereas the Parliament of Jamaica, short of passing an Act, cannot interfere with the exercise of the Royal Prerogative, those who are responsible for its exercise are bound to take note of what step has been taken in Parliament which is likely to influence their conduct and to behave like reasonable men until the will of Parliament is known.

#### What happened in England

In 1948, when the Criminal Justice Bill was passing through the House of Commons a clause was inserted on a free vote to abolish the death penalty for an experimental period of five years. The majority of the House of Commons voted for the abolition of the death penalty but as the House of Lords had not voted on the matter, no change in the law had been effected. Finding himself in a tight spot, the Home Secretary, Mr. Chuter Ede announced, <sup>/that</sup> he proposed to advise the King to exercise the prerogative of mercy in every case of the death sentence being pronounced until a definite decision had been come to by Parliament. When the Bill reached the House Of Lords, what was done by the Home Secretary was severely attacked by the Lord Chief Justice, Lord Goddard. It was claimed that the Home Secretary came near to suspending or dispensing powers <sup>/which</sup> the Stuarts claimed and which was prohibited by the Bill of Rights to which I have already adverted.

In England, the duty of tendering advice touching the exercise of the Royal Prerogative rests with a Minister who has a seat in the Commons. But this is not so under our Constitution. I, therefore, reject the argument of Mr. Henriques that no explanation has been given to the Court as to what could have caused or contributed to the delay which is complained of.

Equally, I reject any contention that a debate in Parliament or any resolution voted thereon even <sup>/it</sup> may have raised hope of a reprieve in the mind of a condemned man, is capable in law of contributing to torture or to inhuman or degrading treatment. Under the Constitution, Parliament may raise and discuss any subject which concerns the proper government of the country. Where a person or body of persons is only doing what is permitted by law, the act of that person or body of persons is not capable



of being as a ground to support any claim that another persons constitutional right has been breached.

I was of the view that hope does not cause torture nor is it any part of what may be a contributing cause to inhuman treatment. The effect of hope finds an echo in Shakespeare's works:

Duke: "So then you hope of pardon  
from Lord Angelo?

Claudio: "The miserable have no other  
medicine but only hope:  
I have hope to live, and am  
prepared to die."

Measure for measure  
Act 3, Scene 1 (1-4)

And if I am permitted to cite another author, I will refer to Oscar Wilde in "The Ballard of Reading Gaol." Wilde who was a brilliant author and dramatist, once served a prison term for two years.

" We did not dare to breathe a prayer  
or give our anguish scope!  
Something was dead in each of us,  
And what was dead was hope."

#### Certain Comments

In my judgement, this case has raised fundamental issues touching the working of some of the organs which the Constitution has outlined in general and clear terms.

The Gover-General and his Privy Council cannot be directed how and in what manner, the prerogative of mercy may be exercised. This Court cannot devise a time-table for that august body; within their board room no Writ may run, and no attorney may seek to enter.

An Act of Parliament and the force of public opinion are subjects permitted to seek entry into their conclave. Wisdom, good judgement, and foresight are permitted to knock at their door, if during a particular discussion, it is clear that they may be of assistance.

The People's Parliament is supreme. At any time, the legislators may discuss any matter that is considered desirable in the public interest. And Parliament may take its time. No Court is permitted to inquire into its internal operation. It is only public opinion which may force its pace or alter its course.

I do<sup>not</sup> think it is necessary for me to discuss the question which

Mr. Langrin has raised, namely -whether on the facts of the case, the Crown and the Superintendent of Prisons are proper respondents. What I will say in passing is that if a man has a constitutional right which has been breached, he should be able to vindicate it. Someone should answer.

I have not discussed any of the cases which Mr. Henriques analysed with his usual skill and emphasis. Nor have I adverted in this judgement to any of the authorities cited by Mr. Langrin. And I have done this deliberately not for any disrespect for the research and industry by them displayed but for the reason that I do not think that on the facts, any of the cases is of any <sup>/assistance</sup> in my arriving at a conclusion.

Some Special Features outlined

(1) Noel Riley and Anthony Forbes were tried jointly. The application of Riley for special leave to appeal to Her Majesty in Council was dismissed on July 18, 1978.

Although Forbes did not exercise his right to apply for special leave, it would not be suggested that executing Forbes before the result of his co-defendant's application was known, would have been reasonable, acceptable and in accordance with sound practice.

In July 1978, the recommendation of the House Committee that capital punishment should be retained had not been debated. The debate was on January 30, 1979. A Resolution of the House requested that there should be a review of all the cases of the men now "awaiting execution." Excerpts of the speeches delivered during the debate have been exhibited. The number of men awaiting execution as on the date of the debate was given as 79.

To review 79 cases with the special features which each may contain, is not a light assignment.

(2) The execution date 29.5.79 for Riley and Forbes, is almost four months from the end of the debate in the Honourable House of Representatives and nine months from the final result of the Judicial process which the applicant Riley had set in motion. Is that inordinate delay on the part of those responsible in finally determining the fate of these two men? I have no hesitation in saying that in the Jamaica of today, the answer is a resounding no. And if it is necessary, I would

find this as a fact.

(3) In the case of Irving, his application for special leave to appeal was abandoned in October, 1978. A period of nearly six months elapsed between that date and the date set for this execution. But he was one of 79 awaiting execution at the date of the debate. He was convicted about four months before the House Committee was named in May 1977. In his case, no inordinate delay has been shown.

(4) When the cases of Beckford and Miller went before the Court of Appeal in November, 1975 and in February 1976 respectively, the Commission appointed to inquire into the cases of certain condemned men had already reported. The affidavit of Riley shows that an Interim Report was submitted on April 1, 1975. From this, I am entitled to draw the inference - and I do so - that from an official standpoint, consideration was <sup>/being</sup> given to the question of the retention of the death penalty before Beckford and Miller were convicted of murder. And when the last execution took place in April 1976, the result of Miller's Application for leave to appeal to Her Majesty in Council had not yet been known.

Summary of case

(1) Where an application alleges that his fundamental right enshrined under Section 17 (1) of the Constitution has been breached, he is expected to show that the punishment which he claims to be inhuman, degrading or torturing is one which has been ordained since August 6, 1962. And he must demonstrate that on a balance of probabilities and having regard to the historical evolution of the provision and to the thinking of the modern and reasonable man, the punishment or treatment amounts to torture, or it is to be regarded as inhuman or degrading.

(2) Where a prescribed punishment or treatment is attacked as being in contravention of Section 17 (1), it is a question of law whether there is any evidence or sufficient evidence to support any such claim. Whether or not torture or inhuman or degrading treatment has been established or is likely to be established is a question of fact.

(3) If the complaints are to be examined in the light of inordinate delay, I find that this has not been proved. And if they are to be examined on the basis of subjection to torture or to inhuman or degrading punishment

or treatment, hold that the evidence advanced is not capable of supporting any such claim.

(4) The Constitutional Court has no power to dictate to either Parliament or the Privy Council how and in what manner, the internal affairs of each of these organs should be regulated. An in particular it is not competent to formulate a schedule or time-table for each to follow.

(5) No condemned man has any constitutional right to demand his own execution before the time which may be appointed by the Governor-General. And he cannot obtain an order of mandamus (a prerogative order) against the Privy Council when it is required to consider the prerogative of mercy. Mandamus does not lie against the Crown.

(6) Although it is open to a condemned man or to those who support him to muster public opinion in his favour, he is not permitted to obtain any judicial order which would have the effect of directing how the prerogative of mercy should be exercised.

(7) As I see it, the case of each applicant boils down to this:  
That in the social and political climate which has prevailed in Jamaica over the past five years, a man awaiting execution has a legal right recognised by the Constitution to demand that reasonable dispatch should be displayed in a decision touching the exercise of the royal prerogative and which concerns his fate. If a failure to act within a reasonable time is demonstrated, then a decision ordering his execution may be challenged in the Constitutional Court. The remedy sought is a declaration which - is discretionary and although the facts to support the motion are overburdened with ethical and disputable issues which are not justiciable, the prayer should nevertheless be favourably considered. If the argument has to show the reflection which I have attempted to depict, then it is very clear what the result ought to be.

#### Final Comments

Mr. Earl Witter replied to the submissions of Mr. Langrin, on behalf of applicants Riley, Forbes and Irving, One of the broad propositions of Mr. Langrin was put in this form:

"The terms of the motion relate to a declaration which would challenge the validity of the death penalty."

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-17-

In a spirited and eloquent reply, which was charged with a certain amount of emotion, Mr. Witter urged that this Court should seize the opportunity to pronounce upon the degree, severity, enormity and finality of the death sentence.

Attractive as his invitation is, I must decline it. Whether or not the death penalty should be retained in Jamaica is a vexed question. There is a division of opinion among the Members of Parliament in both Houses.

The issue is strongly charged with politics and embellished with philosophy. There is no need for the judges to enter the arena nor should they rashly allow themselves to be touched by the stain of this farrago.

In my judgement, these motions fail and should be dismissed with costs.

ROSS J:

In these cases the applicants by motion seek a declaration that the execution of the said applicants at this time and in the circumstances leading up to and surrounding the issue of the death warrants, would be unconstitutional and illegal being contrary to section 17 (1) of the Constitution of Jamaica.

The grounds of the applications as set out in the said motion are that the applicants have been subjected to torture and/or inhuman and/or degrading treatment within the meaning of and contrary to section 11 (1) of the Constitution of Jamaica in that:

- (a) Their execution was delayed for a considerable period of time which delay was significantly caused and or contributed to by the "de facto" suspension of the death penalty, and
- (b) The applicants were led reasonably to believe and or strongly hope that their executions would not be carried out by virtue of;
  - (i) The aforesaid suspension of the death penalty;
  - (ii) The fact that studies were undertaken into the question of suspending the death penalty by the National Security Committee of the House of Representatives, and
  - (iii) The debates and resolutions passed in the House of Representatives and the Senate on the 30th January, 1979 and 9th February, 1979.

Section 17 of the Constitution of Jamaica states:

- (1) "No person shall be subjected to torture or to inhuman or degrading punishment or other treatment;
- (2) 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 infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day."

(6th August, 1962).

In his submission on behalf of the applicants Beckford and Miller, Mr. Henriques states that it would not be <sup>/a</sup> part of his argument that the death penalty, per se, is unconstitutional as he conceded that <sup>/the</sup> authorities indicated clearly that the death penalty, per se, would not be a contravention of section 17 of the Constitution.

It may be convenient here to set out briefly the history of these matters:-

Noel Riley and Anthony Forbes were tried together and convicted of murder on 7th August, 1975, their appeals to the Court of Appeal were dismissed on 23rd February, 1976. Riley then sought leave to appeal to the Judicial Committee of the Privy Council, and he was refused leave on 18th July, 1978. Forbes did not seek leave to appeal to the Judicial Committee of the Privy Council. The Legal Aid Clinic on behalf of Riley and Forbes, by letter dated 17th November, 1978, wrote to the Governor-General stating, inter alia, that the Clinic "intends to forward the petition for mercy on behalf of Noel Riley as soon as this can be done. In the case of the co-defendant Anthony Forbes, we do not intend to pursue an appeal to the Privy Council in England."

Clifton Irving was convicted of murder on 22nd March, 1976, and his appeal to the Court of Appeal was dismissed on 10th January, 1977; then by letter dated 15th November, 1978, his attorney informed the Privy Council "that the petition for leave to appeal will no longer be proceeded with."

Mr. N.H. Smith, the Governor-General's secretary and secretary to the Privy Council in his Affidavit of 11th March, 1980, stated, inter alia, that "it is the practice of the Privy Council to await the exhaustion or abandonment

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of all appeals to the courts before the final determination of the question of whether the Prerogative of Mercy shall be exercised" and that "in the case of Noel Riley, Anthony Forbes and Clifton Irving, the final determination was made after the communications received from their attorneys in November, 1978."

The applicant Elijah Beckford was convicted for murder on 9th May, 1975, and on the 6th November, 1975, his application for leave to appeal was dismissed by the Court of Appeal; he did not seek leave to appeal to the Judicial Committee of the Privy Council as he was advised that there was no legal point to warrant such an appeal. A petition on his behalf for mercy was submitted to the local Privy Council on 4th March, 1977, and this was considered and rejected by the local Privy Council on 15th November, 1977; subsequently a further undated petition was submitted by Elijah Beckford and this was also considered by the Local Privy Council and rejected on 24th April, 1979.

In the case of Errol Miller he was convicted of murder on 28th October, 1975, and on 5th February, 1975, his appeal was dismissed by the Court of Appeal; then on 8th December, 1976, his petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed. Two Petitions on his behalf for mercy were submitted to the local Privy Council. One in February, 1977, and another on 4th March, 1977. Both were considered and rejected by the Privy Council on 15th November, 1977.

Finally the executions of Noel Riley, Anthony Forbes and Clifton Irving were scheduled to be carried out on 29th May, 1979, while the executions of Elijah Beckford and Errol Miller were scheduled for 12th June, 1979. Evidence was also adduced that from about April, 1976, no executions had taken place and that around May 1977, Ministry paper was tabled in the House

...../21



of Representatives by the Minister of Justice recommending an enquiry as to whether capital punishment should be retained, and the matter was referred to the National Security Committee of the House for study. In October, 1978, the House Committee recommended that there should be no change in the law relating to capital punishment; on the 30th January, 1979, a motion that the death penalty should be further suspended pending a detailed study was debated in the House of Representatives and defeated; after this<sup>/a</sup> resolution was adopted by the House recommending to the Governor-General and Privy Council that the cases of all persons now awaiting execution should be reviewed. Then the Senate on 9th February, 1979, adopted a resolution that capital punishment be suspended for 18 months pending a detailed study and consequent on this the Minister of Justice appointed a Committee to study the matter.

It is against this back-ground that the motions have been filed in these matters seeking the declaration set out above.

Mr. Henriques, for the applicants Beckford and Miller said that their motion was brought under the provisions of section 25 of the Constitution which section confers jurisdiction on the court to hear complaints by citizens where there has been an infringement of sections 14-24 of the Constitutions; the complaint here is made under section 17 (1) set out above. He submitted that because of substantial delay, through no fault of the applicants they have been subjected to inhuman treatment and the delay complained of was in respect of the period between the last judicial act on the part of the applicants and the issue of the warrants.

The issue before the court, as he saw it was that when a man is condemned to die, he suffers and that through no fault of his own he has been kept in that state for 3½ years, a totally unjustified delay. No reason, he says, had been put forward for the delay and it should

...../22

be the case that where a person is under sentence of death it should be carried out quickly and not kept hanging over his head.

He further submitted that the debates which took place in Parliament only made matters worse as the hopes of the applicants were raised and then dashed. No execution has been carried out from April, 1976, and the de facto suspension of the death sentence made it worse, as nothing was done.

Among the documents filed on behalf of the applicants were affidavits by Fr. Harry and a report and affidavit of Dr. Knight and Dr. Hickling, psychiatrists, as to the mental condition of the men and in a summary of their report they stated (inter alia):

"It is our opinion that the clinical features of psychological disturbances in the 5 condemned men examined by us are clearly related, in a causative way, to the mental stresses they have undergone during the time they have been under sentence to death. These stresses have in turn been the result of discussion, comment and debate in the public media and in the Senate and House of Representatives. The most prominent clinical features were those of anxiety being related to their uncertainty through their hopes being alternatively raised and lowered."

Mr. Henriques went on to point out that even without the Affidavits of Fr. Harry and the psychiatrists as to the state of the men, he would still argue that the suspension of the death sentence amounted to inhuman treatment, as looking at the objective test, if a person is kept in such circumstances with a sentence of death hanging over him, then he must certainly be in anguish or be subject to some suffering which must be inhuman. Reliance was placed on the judgement of Lord Diplock in Abbott's case to which I will refer later.

Mr. Henriques was followed by Mr. Daly who first dealt with the history of the matter in relation to each of the other

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three applicants: Riley, Forbes and Irving. He went on to point out that during the time since the sentences were imposed on the applicants there had been a de facto suspension of capital punishment -- this was from April, 1976, and in May, 1977, a House Committee was set up to deliberate and decide whether there should be an investigation as to the desirability or otherwise of retaining the death penalty. So even before all the judicial proceedings had been concluded there was this hope, says Mr. Daly, being held out to them by the action of the Legislature -- the hope that their executions would be suspended pending the outcome of investigations into the desirability of the death penalty continuing and the further hope that as a result their executions would not be carried out.

Mr. Daly stated that on the 18th July, 1978, Riley's appeal to the Privy Council was refused and that no action was taken in regard to carrying out the sentence up to October, 1978 -- but we must bear in mind Mr. Smith's affidavit, which I accept, that it was only in November 1978, that <sup>/Kingston</sup> the Legal Aid Clinic advised the Governor-General that a petition for Riley would be forwarded and that the appeal to the Judicial Committee of the Privy Council was abandoned. In October 1978, he said, the House Committee had decided to recommend that there be no change in the law and in January, 1979, there was a motion in the House that Capital Punishment be suspended -- this motion was debated and defeated. The debate in the House must have raised the hopes of the Applicants; the importance of the debate he suggests, is in its effect on the minds of the applicants, having regard to what was said and the members who said it. Further another motion was at the same time unanimously adopted recommending a review of all the cases by the Governor General.

It was Mr. Daly's submission that the proper course to have been adopted in the situation was that the sentence

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should have been commuted of all persons on death row, while the issue was being debated. Then he went on to say that following on this was the debate in the Senate in February when a motion for suspension of capital punishment was adopted, and the cumulative effect of all this on the minds of the applicants must have been immense.

Mr. Langrin on behalf of the respondent first submitted that there had been no unreasonable delay on the part of the executive in taking the decision that the death sentence should be carried out - he referred to the affidavit of Mr. N.H. Smith in regard to the practice of the Privy Council to await the exhaustion or abandonment of all appeals to the courts before the final determination of the question of whether the Prerogative of Mercy should be exercised. Then he went on to observe that it would not be reasonable for the Privy Council to go ahead and issue a warrant for execution when the condemned men's attorneys are asking that you hold on as a petition for mercy is being sent. He submitted that the three men Riley, Forbes and Irving were pursuing their remedies up to November, 1978, and consequently, the argument put forward on their behalf that a de facto suspension over a protracted period had caused them to suffer torture or degrading treatment is untenable.

In the case of Beckford, he said, his appeal terminated on 6th November 1975, as there was no appeal by him to the Judicial Committee of the Privy Council; but having regard to the manner in which the machinery of the Privy Council operates, this body would not then be expected to make a move to prepare a warrant for his execution as in the normal course of events he would have been expected to pursue his appeal to the Judicial Committee of the Privy Council.

Up to March, 1977, Beckford and Miller were petitioning the Privy Council for mercy. In fact an undated petition by

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Elijah Beckford was rejected as late as 24th April, 1979. He pointed out that in May 1977, a Ministry paper was tabled in the House of Representatives on the subject of whether capital punishment should be abolished and it was only in January 1979 that on a "conscience" vote in Parliament it was decided that there should be no change in the existing law. Since then, a further Committee had been appointed to study, assess and report in regard to the psychological and sociological effects of capital punishment in Jamaica today.

On the question of the reasonableness of the period of time he referred to D.P.P. v Michael Feurtado and Attorney General, Civil Appeal No. 59/79 where Kerr J.A. at page 8 of the judgement states:

"What is reasonable time would depend upon the circumstances of each case, including the nature of the case, the formalities of the pre-trial procedures, the facilities existing and the efforts that have been made to conclude the proceedings."

Kerr J.A. then went on to refer to the judgement of Fox J. in Shirley Chin-See's case - where Fox J. stated:

"Secondly, what is a reasonable time is determined not by an objective quest in vacuo of the ideal, but subjectively by reference to circumstances prevailing in the Corporate Area at the present time."

Among the other submission made by Mr. Langrin were:

- (1) Assuming there was delay such delay would not constitute a contravention of section 17 (1) of the Constitution;
- (2) That nothing in the affidavits has established that the acts complained of were illegal and were the direct cause of mental anguish or expectation on the part of the applicants over and above what would be reasonably expected by the passing of the sentence of death on a person - and he observed

that the two psychiatrists were in disagreement as to whether the applicants had suffered torture, etc.,

(3) Applicants have not proved it is the State which has contravened their constitutional rights under section 17 (1), assuming those rights have been contravened;

(4) In seeking from the courts a declaration that there should be no execution at this time, the applicants on their own argument are asking the court to prolong the torture or punishment and consequently the contravention of section 17 (1) of which they complain.

In considering this matter it is necessary first of all to decide:

- (1) Whether or not there has been substantial or unreasonable delay;
- (2) Whether because there has been substantial delay through no fault of the applicants they have been subjected to torture or inhuman or degrading treatment;
- (3) whether the delay by itself is taken along with the debates and steps taken by Parliament in regard to the issue of capital punishment made matters worse as the hopes of the applicants were raised and then dashed, thereby subjecting the applicants to torture or inhuman or degrading treatment contrary to section 17 (1) of the Constitution;
- (4) Whether, if there is a contravention of section 17 (1) the redress should be the declaration sought, viz, that the executions are <sup>/unconstitutional</sup> or illegal, being contrary to section 17 (1).

- 27 -

To deal first with the question of delay, I formed the impression that it was conceded on behalf of the applicants that no steps could properly have been taken by the Privy Council until the applicants had exercised their rights to appeal or to seek leave to appeal and the appeal or application for leave had been dismissed and the secretary of the Privy Council so informed. I note too, as stated by Mr Smith, the secretary to the Privy Council, that it was the practice of the Privy Council to await the exhaustion or abandonment of all appeals to the courts before the final determination of the question of whether the prerogative of Mercy should be exercised. Mr Smith's affidavit also suggest that it was the general practice for a petition seeking clemency to be filed on behalf of a condemned man after his final appeal had been dismissed.

Now, section 90 and 91 of the Constitution deal with the exercise of the Prerogative of Mercy, the Governor-General acting on the recommendation of the Privy Council. In section 91 it is provided that:

"Where any person has been sentenced to death for an offence against the law of Jamaica, the Governor-General shall cause a written report of the case from the trial judge, together with such other 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 in accordance with the provisions of section 90 of this Constitution".

So whether or not a petition is submitted to the Privy Council the Governor-General has to obtain the report of the trial judge and other information from any source he considers necessary to put before the Privy Council to enable them to advise him on the matter, and it may well be several weeks or months before all the necessary information is available to be put before the Privy Council for their consideration. Then time must be allowed for consideration of the information by the

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Privy Council. As Kerr J.A. said in Michael Fuertado's case

"what is a reasonable time would depend on the  
circumstances of each case."

Bearing all this in mind let us look at the case in regard  
to each applicant:

In the case of Noel Riley, the Legal Aid Clinic by letter dated  
17th November 1978, wrote and informed the Governor-General  
that the Clinic intends to forward the petition for mercy on his  
behalf as soon as this can be done so we know that the petition would  
have reached the Governor-General sometime after 17th November, 1978,  
and it would have been only around this time or after this that the  
steps set out in section 91 of the Constitution would have been  
put in train. The execution of Noel Riley was scheduled to be carried  
out on 29th May, 1979, and in the circumstances related it does not  
seem to me that it can be said that there was substantial or unreasonable  
delay in taking the decision that the sentence of the court should be  
carried out.

The case of Anthony Forbes is similar: In the same letter above  
of 17th November, 1978, in which the Governor-General was informed about  
Noel Riley, he was also advised by the Legal Aid Clinic that they did  
not intend to pursue an appeal on behalf of Forbes to the Privy Council  
in England. After this the usual steps would have been taken and Forbes'  
execution was also scheduled to be carried out on the 29th May, 1979;  
again, the lapse of time between 17th November, 1978, and 29th May, 1979,  
was <sup>/a</sup> reasonable period in which to do all that was required to be done.

Clifton Irving's appeal to the Court of Appeal was dismissed on  
10th January, 1977, but it was only by letter dated 15th November, 1978,  
that his attorney informed the Privy Council that the petition for  
leave to appeal would not be proceeded with;



again in this case the execution was scheduled to be carried out on the 29th May, 1979, and it cannot be said that the time span from 15th November, 1978, to that date could be considered to a substantial <sup>/be</sup> or unreasonable delay.

Next, let us take the case of Elijah Beckford: After his appeal was dismissed a petition on his behalf for mercy was submitted to the local Privy Council on 4th March, 1977, it was considered and rejected by the local Privy Council on 15th November 1977, then subsequently a further undated petition was submitted by Beckford (there is no evidence as to the date of its submission) and this was also rejected on 24th April, 1979, we do not know when this petition was submitted <sup>/but</sup> even if it is so that there was some delay in the consideration of this petition it seems clear that there was this de facto suspension of capital punishment to which I will refer presently.

Finally, we have Errol Miller whose petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 8th December, 1976, following which two petitions for mercy were submitted on his behalf in February 1977, and March 1977, both were rejected by the Privy Council on the 15th November, 1977; his execution was scheduled for 12th June 1979, about nineteen (19) months later, but again, it was during this period that the question of suspension of the death penalty was being debated and that there existed a de facto suspension of capital punishment.

One of the submissions made by Mr. Henriques on behalf of his clients Beckford and Miller was that no reason had been put forward to explain or justify the delay on the part of the Governor General and Privy Council in dealing with their cases.

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and that as a consequence there is no justification of this delay, since no affidavit has been filed stating the reason or reasons for the delay in issuing the warrants for the execution of Beckford and Miller.

In the present circumstances it does not seem to me that any such affidavit is necessary. The applicants Beckford and Miller have in their affidavits set out fully the steps taken in Parliament since May, 1977, to discuss and deliberate on the question of the retention, suspension or abolition of capital punishment, and it is an obvious and irresistible inference that the Governor General and Privy Council would have been aware of what was happening - whether by being advised by the Government or by reading about it in a newspaper, and would in the circumstances, as responsible individuals, whether so requested or not have decided <sup>/that</sup> there should be a suspension of executions until Parliament had come to a decision on the matter. Further, there is no time limit laid down and there should not be any, as to the period which should elapse between the exhaustion of an appeal and the issue of the warrant of execution.

I note that in making his submissions, on the question of delay Mr. Henriques referred only to the period between the last judicial act done on behalf of his clients and the date scheduled for execution; he omitted the time of submission of petitions by or/on behalf of the applicants. It does not seem to me <sup>/that</sup> there is any proper basis for this as I feel sure that members of the Privy Council consider it an important part of their duties to consider carefully any petition forwarded by or/on behalf of condemned men and that they would not come <sup>/the</sup> to a decision in matter until after they had considered the petition. So where a petition or petitions are submitted time must be allowed for their consideration by the Privy Council, as well as of the other matters mentioned in section 91 of the Constitution, to which reference has been

...../31

made.

In his submission Mr. Daley stated that the debate in the House and other actions taken must have raised the hopes of the applicants, and that the importance of the debate is its effect on the minds of the applicants, having regard not only to what was said but the source from which it came and that despite the defeat of the suspension motion, there was another motion passed recommending a review of the cases of persons awaiting execution. As I understand him, he further submitted that the circumstances of the delay in carrying out the sentence of the court together with the alternating hope and despair of the applicants and the debate whether or not to carry out a sentence of the utmost severity, were such that persons awaiting execution must have suffered. The affidavits of the applicants as to the extent of their suffering were supported by affidavits and reports of two psychiatrists, a psychologist and Fr. Harry, a Roman Catholic Priest who had for many years ministered to condemned men at the Saint Catherine District Prison. It seems to me, however, that the reports and affidavits as to the condition of the men disclose nothing more than that they were under severe stress because they were condemned men, uncertain of their fate eventually.

One psychiatrist hazarded an opinion that the men showed evidence of being subjected to acts which could be regarded as inhuman and degrading treatment, but he added that the treatment could not be regarded as torture. The other considered that such an opinion was inappropriate in a medical report. Having read the various affidavits and reports, I find there is no credible evidence that any delay in the executions or any act of Parliament or of Members of Parliament caused any torture or inhuman or degrading treatment to any applicant or any other condemned men and I do not accept the evidence or opinions adduced<sup>/to</sup> this effect.

As I see it, it only normal and natural and to be

...../32

expected that someone under a sentence of death should from that fact itself be subjected to severe mental stress, and no doubt, any report or act by someone which gives cause for hope that the sentence will not be carried out is eagerly grasped with the result that from time to time their hopes are raised. I am quite unable to appreciate how an act which happens to raise the hopes of persons in a situation such as the present one can be said to be torture, inhuman or degrading treatment whether those hopes are realised or dashed.

As I understand the argument here, it is that the delay in the execution of the applicants and particularly when considered along with what was done in Parliament amounted to torture or to inhuman and degrading treatment of the applicants and so constituted a contravention of section 17 (1). It would seem to me that after a person has been sentenced to death any act which results in a postponement of his execution for even a day is an act of inestimable benefit to him and so the de facto suspension of capital punishment conferred a priceless benefit on these five applicants as well as on others then under sentences of death; while it may be that the uncertainty of the situation would naturally cause some mental stress, this would I imagine be as nothing compared to the uncertainty when one is informed that a date has been fixed for one's execution.

When we look at the debate in the House and the other steps taken in regard to the question of the retention, suspension or abolition of the death penalty, the whole purpose of the exercise was for Parliament to investigate and decide what action should be taken in regard to the death penalty. It is natural that in the situation of the applicants their hopes were raised but that is not the fault of the legislators and the applicants themselves could well have gained tremendously from the exercise of the "conscience" vote had it gone the other way. To say that the speeches and other steps taken in Parliament, where the legislators were only lawfully carrying out their functions under the Constitution, have inflicted

torture, inhuman or degrading treatment on the applicants is completely without any factual or legal basis and must needs be rejected. As I have already indicated the delay involved was reasonable in the circumstances and to my mind conferred great benefit on the applicants by postponing the carrying out of the sentence of the court.

In the course of the submissions counsel for the applicants referred to Abbott's case (1979) 1 W.L.R. 1342) in support and so I should deal with it: the attention of the court was directed to the following passage in the judgement of Diplock L.J.:

"That so long a total period should have been allowed to elapse between the passing of a death sentence and its being carried out -is in their Lordship's view greatly to be deplored. It brings the administration of criminal justice into disrepute among law abiding citizens."

But Lord Diplock went on to add:

"Nevertheless their Lordships doubt whether it is realistic to suggest that from the point of view of the condemned man himself he would wish to expedite the final decision as to whether he was to die if he thought that there was a serious <sup>risk</sup> that the decision would be unfavourable. While there is life there is hope."

Mr. Henriques submitted that the period of delay deplored by Lord Diplock was only 8 months, and if Lord Diplock was there deploring a delay of 8 months, how much more would he have deplored a delay of 3½ years, as was the case here with his clients. But it seems <sup>to</sup> me that when Lord Diplock referred to the total period allowed to elapse between the passing of the death sentence and its being carried out he was referred as I understand it, to the period of 6 years which had passed since the death Penalty was passed in the Abbott case, and while deploring the delay Lord Diplock fully appreciated that it was not realistic to suggest that the condemned man would want to expedite the final decision if he felt it was likely to be unfavourable to him.

Then later in the same judgement Lord Diplock had this to say:

"Since the section imposes duties arising under public law upon the designated Minister and upon the Advisory Committee, a person

aggrieved by any failure to perform those duties with reasonable dispatch would, in their Lordship's view be entitled to apply to the High Court for an appropriate remedy in public law such as an order of mandamus requiring the Minister to refer to the Advisory Committee and the Advisory Committee to proceed with the consideration of it. Their Lordships recognise that it is hardly realistic to expect the person primarily affected by tardy performance of those duties, the condemned man himself, to take that course; and delayed performance of a public duty for which no express time limit is set not generally ultra vires."

In the <sup>circumstances</sup> of the instant case can there be any doubt that the applicants would have wanted the expeditious performance of the Governor-General and Privy Council in connection with the issue of the warrants for their executions?

Still later in his judgement Diplock L.J. went on to say:

"In their Lordships view the proposition that, in this instant case, the fact that seven or eight months elapsed before the appellant's <sup>petition</sup> for Reprieve was finally disposed of by the President made his execution at any time thereafter unlawful is quite untenable. Their Lordships accept that it is possible to imagine cases in which the time allowed by the authorities to elapse between the pronouncement of a death sentence and notification to the condemned man that it was to be carried out was so prolonged as to arouse in him a reasonable belief that his death sentence must have been commuted to a sentence of life imprisonment. In such a case, which is without precedent, and, in their Lordship's view would involve delay measured in years, rather than in months, it might be argued that the taking of the condemned man's life was not by "due process of Law", but since nothing like this arises in the instant case, this question is one which their Lordships prefer to leave open."

In the first place although the above comments are obiter dicta they deserve careful scrutiny as opinions of a distinguished judge of the Judicial Committee of the Privy Council; in the second place it is to be noted that he states that the proposition that in the circumstances of that case 7 or 8 months had passed before the petition for a reprieve was disposed of made the execution at any time afterwards unlawful is quite untenable.

What is more, the situation described there is different from the case with which we are concerned in that although the time between the pronouncement of the death sentence and the notification to the condemned man that it was to be carried out covered a period of years much of this

time was taken up with efforts by or on behalf of the condemned <sup>/men</sup> to upset the sentence and conviction, or to have the Prerogative of Mercy exercised and their sentence commuted; further, there is no evidence to suggest that anything was said or done by anyone to arouse in any of the condemned men a reasonable belief that his death sentence must have been commuted to a sentence of life imprisonment; on the contrary, the applicants' complaint is directed to the uncertainty of their position, <sup>having</sup> their hopes raised at one moment and then having them dashed the next moment.

It should further be noted that Lord Diplock put the position no higher than to say that in such a situation as he outlined it might be argued that the taking of the condemned men's lives was not by due process of law. As I see it even in such a situation, it is unlikely that it could be successfully argued that the execution was illegal; what might probably happen in such a case would be that because there were circumstances which had aroused a reasonable belief in the condemned man that his sentence must have been commuted to life imprisonment, the Privy Council would consider the case a proper one in which to recommend to the Governor General that the sentence be commuted, and act accordingly.

As I have found that the applicants were not subjected to torture, inhuman or degrading treatment it will be clear from the above that there has been no contravention of section 17 (1) of the Constitution, and no question of redress arises for consideration.

In this motion the applicants seek a declaration that the execution of the said applicants at this time and in the circumstances leading up to and surrounding the issue of death warrants would be unconstitutional and illegal being contrary to sections 17 (1). The applicants' attorneys have made it clear that they are not saying that the execution of the death penalty is contrary to the Constitution. If therefore it is being alleged that the execution of the applicants is illegal and unconstitutional it can only be so because the sentence of the court which imposed it was for some reason illegal and unconstitutional; <sup>but</sup> no argument was raised to suggest this or for that matter

could properly have been so raised as the appeals against conviction and sentence had all been dismissed; nor was there any authority cited to support a submission that delay or failure to carry out the sentence of a court could render that sentence illegal or unconstitutional.

The Attorneys for the applicants, as far as I understand it, made no attempt to show how the execution came to be illegal or unconstitutional. All that they said was that there had been a failure to carry out the execution without what they considered to be reasonable time, the effect of this failure was to cause torture or amount to inhuman or degrading treatment of the applicants. I have already dealt with this, but even assuming that the failure of the executive did amount to torture or inhuman and degrading treatment, I am unable to see how their failure had or could have the effect of changing a legal sentence of a court into an illegal and unconstitutional sentence.

There is no basis for this in law or logic and all that can be said is that if such treatment had been meted out, it would be only one of the factors which the Privy Council would no doubt take into account in deciding whether or not to recommend clemency.

Of course, in theory, it is possible that they might have the right to come to the Court to ask for an order of mandamus to compel The Governor General to put an end to their alleged torture or inhuman or degrading treatment by issuing the warrant of execution, but that is not realistic.

Looking at the evidence adduced in this case, at the submissions made and the authorities cited, it is clear that this motion is misconceived and must be dismissed.

I would order that the motion be dismissed with costs.



Carey J.:

In general, expedition is one of the imperatives as regards the protection of the right to life, liberty and the security of the person guaranteed under our Consitution. So it is enacted in sec. 15 (3) of the Constitution that a person who is arrested "Shall be brought without delay before a court," and that person "if not tried within a reasonable time shall be released" on bail. Where a person is charged with a criminal offence, he shall be afforded a fair hearing within a reasonable time." See sec. 20 (1). The interpretation of this section latter/was considered by this court in Fuertado v. D.P.P. (unreported) Suit M. 17/79, July 13, 1979, and by the Court of Appeal in the subsequent appeal there: <sup>from</sup> SCCA 59/79, November 16, 1979. But the Constitution does not guarantee that men condemned to suffer death by law, will be executed without delay, nor does it guarantee that "such persons during the period of incarceration will not suffer anguish, anxieties, or depression, that they may not enjoy a feeling of hope or may not be plunged into despair. I have not the least doubt that, in the due and proper administration of criminal justice such sentences ought to be carried out with reasonable despatch. That they may not be tortured or subjected to inhuman or degrading treatment, is a safeguard which they, in common with all other citizens of this country, are entitled, and for which, redress is provided in the Constitution.

The applicants all aver in their applications to this court, that they have been subjected "to torture and/or inhuman and/or degrading treatment within the meaning of and contrary to sec. 17 (1) of the constitution." Accordingly, they each seek a declaration in terms which have already been recited by my Brethren, and consequently, in the interest of brevity, it is wholly unnecessary to rehearse them. For the same reason I gratefully adopt the statement of facts comprehensively detailed by

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Parnell, J.

*Sp* I now set out "in <sup>intense</sup> ~~intense~~" the provision of the Constitution on which these applicants rely:

"17. - (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment .

(2) 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 infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day."

The effect of the latter sub-section is to anticipate and forestall an argument that any punishment permissible by the Laws in force up to Independence, should be struck down as unconstitutional on the ground that it infringed the provisions against inhuman or degrading punishment. To ensure that the matter was put beyond peradventure of a doubt, the provision of sec. 14 (1) recognises that the death penalty is still the lawful sentence for the offence of murder. It is thus stated:

" 14. - (1) No person shall intentionally be deprived of his life save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted."

Degrading punishment may be rendered constitutional; but degrading treatment is not.

This court therefore, cannot be concerned with the Constitutionality of the death penalty as it relates to these applicants; that sentence is by the law of the land mandatory on conviction for murder. [Sec. 2 Offences Against the Person Act.] See also *Runyowa v. R.* [1966] 2 W.L.R. 877, Mr. Henriques, for the applicants Beckford and Miller, expressly and correctly stated that he was not intending to found any argument upon this point. Mr. Daley, on behalf of the other applicants, adopted Mr. Henriques' submissions and was therefore deemed to have accepted the position.

Additionally, the court, it should have been unnecessary to point out, is not called upon to determine or pronounce on the <sup>efficacy</sup> ~~efficiency~~ of this penalty as a <sup>deterrent</sup> ~~deterrent~~ to the many murders being committed nor as to whether it should be

abolished or retained. Mr. Witter, who appeared with Mr. Daley, although conceding that any remarks of his, in this connection, could scarcely further the main line of their arguments, nonetheless, seized the opportunity in this forum to invite us to express our views on the quality, degree, nature and finality of the punishment, especially, as he emphasized, the legislature had vacillated in its approach to the problem. For myself, to accede to this "plea ad misericordiam," would amount to an unwarrantable interference or encroachment in an area which is the peculiar jurisdiction of Parliament. The principle of the separation of powers embodied in the Constitution calls for decorous reticence on the part of the court in this regard. Further, I am in respectful agreement with the words of Lord Simon of Glaisdale in *Milliangos v. Geo. Frank (Textiles) Ltd.* [1975] 3 W.L.R. 758 at p. 792:

"The training and experience of a judge is unsuitable for this type of decision-making unaided: his circumspection is too narrow; his very qualities of keen perception of his immediate problem tend to militate against sound judgement of the wider and more general issues involved. But if courts are to undertake legislative responsibilities, something might be done to equip them better for the type of decision-making which is involved. Official advice and a balanced executive view might be made available by a law officer or his counsel acting as *amicus curiae*."

And lastly, the Court is not, on these motions, required to enquire into or even take cognizance of the facts which led to the convictions of these applicants.

I can now turn to consider the real issues which, in my view, fall to be determined on these motions, having regard to the arguments advanced and the concessions which have been made by learned counsel. They are dichotomous and may be stated in this way:

Firstly, was the delay in executing sentence of death on these applicants so substantial as to establish the torture, or inhuman or degrading treatment forbidden by the Constitution?

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Secondly, was such delay aggravated by the fact that the hopes of these applicants had been repeatedly raised and dashed by a Ministry Paper, debates, motions and resolutions in Parliament acceptable as proof of the torture, or inhuman, or degrading treatment, forbidden by the Constitution?

I begin by noting that the two dyslogistic terms used in sec. 17 (1) to qualify the word "treatment" viz., "inhuman" and "degrading" have nowhere been defined in the Constitution. But they are ordinary English words readily understandable. Since the applicants claim to have been tortured, this word too, beats analysis. "Torture" connotes the infliction of severe physical or mental pain, such as is conjured up by the use of the thumb-screw and the rack, familiar engines of torture at the time of the Inquisition. It comprehends the causing of severe agony, anguish or torture, which all affect the mind of the victim. "Inhuman" in this context suggests cruel, or barbaric or savage treatment. Dr. Barnett in his book "The Constitutional Law of Jamaica" at p. 391, is, I think right in his view that, in addition, this word involves not merely such treatment as results from want of pity or human feeling. "Degrading" is as I understand it, a lowering of the physical, moral or intellectual character of an individual. To qualify as inhuman or degrading treatment, the act or acts, it seems to me, must be deliberate or intentional. The use of these epithets and the inclusion of the word "torture" suggest that the Framers of the Constitution were intending to show that the treatment must comprise acts which are without just cause.

The issues suggested must be seen as having these elements of intention and being without just cause as a leit-motif. Mr. Henriques' contention was that it was "inhuman" treatment to keep these applicants locked away in a condemned cell for such a long time, especially as responsibility for this situation was not attributable to them. He conceded that it was an inevitable condition of prisoners under sentence of death that

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they would suffer anguish but urged, nevertheless, that their long incarceration amounted to treatment within the terms of sec. (17 (1)). He pinned these arguments to the mast of *Abbott v. The Attorney General for Trinidad and Tobago* [1979] 1 W.R.L. 1342 at p. 1348, where Lord Diplock observed:

"Their Lordships accept that it is possible to imagine cases in which the time allowed by the authorities to elapse between the pronouncement of a death sentence and notification to the condemned man that it was to be carried out was so prolonged as to arouse in him a reasonable belief that his death sentence must have been commuted to a sentence of life imprisonment. In such a case, which is without precedent and their Lordships' view, would involve delay measured in years, rather than in months, it might be argued that the taking of the condemned man's life was not "by due process of the law", and that the authorities were likely to

The relevant period for consideration to be noted as likely to contravene the "due process of law provisions" was between pronouncement of sentence and the date /the condemned man was notified of his execution. It was not without significance that Mr. Henriques did not accept that period, but was content that the time should run from the date of the last judicial act, which would of course, effectively exhaust legal redress by way of appeal procedures, to the date of notification of execution. The concession was a realisation that the Jamaican situation was altogether different from that in the United Kingdom and Scotland when capital punishment was then the appropriate sentence for murder. See paragraph 763 of Command Paper No. 8932 Royal Commission on Capital Punishment, for the time lag in those countries.

Sitting, as I often do, in the Circuit Courts, I am very acutely aware that appeals from convictions for murder take anything up to a year to come on for hearing. If thereafter a petition should be made to the Judicial Committee of the Privy Council, a considerable amount of time could have elapsed. Moreover, such Rules as exist regulating petitions to the Judicial Committee, our court of last resort, prescribe no time limits nor is there any requirement that our Privy Council should be advised.

.....

The result is to further postpone consideration of the ultimate fate of persons under sentence of death. The Privy Council, we were told, adheres to a practice of awaiting the exhaustion by prisoners of their remedies by judicial process. Delays which thus result from the machinery of justice and the system itself, would necessarily be measured in years rather than weeks or months.

Some statistical data was produced to reflect the picture of delays during the period between 1962-1970. It was noted that the average time between final judicial act and execution was nine weeks; the shortest being no more than two weeks and the longest 22 weeks. As a historical fact, this was interesting, but unhelpful in the circumstances of these matters before the court. The situation, as is a matter of common knowledge, has altered to a significant degree, since those relative crime-free days. There are at present, a greater number of convictions for murder than was the case in those halcyon days, and consequently, delays caused by the preparation of <sup>/and</sup> the hearing of appeals from these convictions, have become more protracted.

Lord Diplock in his advice in *Abbott v. Attorney General for Trinidad and Tobago* (supra), was, of course, considering provisions in the Trinidad Constitution. It should therefore be emphasized that the provisions for the exercise of the prerogative of mercy here are not "in pari materia" with those of our Commonwealth Caribbean neighbour. From the learned Law Lord's analysis in that case, it appeared that the prerogative is exercised by the President on the advice of a designated Minister who is Chairman of the Advisory Committee, which he may consult, but whose advice he is not obliged to accept. He is, however, required to submit the judge's report and such other information as he may be advised for that body's consideration and to enable them to tender advice to him. By reason of these duties, imposed by their constitutional provisions, a prisoner would be entitled to petition the High Court for an order of mandamus. Lord Diplock adding:-

.....

"Their Lordships recognise that it is hardly realistic to expect the person primarily affected by tardy performance of those duties, the condemned man himself, to take this course; and delayed performance of a public duty for which no express time limit is set is not generally ultra vires."

Abbott v. The Attorney General for Trinidad and Tobago (supra) at pages 1345 - 1347.

In this country, the <sup>exercise</sup> of the prerogative of mercy is beyond judicial review, it is not justiciable. I will return to this aspect later in the judgement, but at this point it is sufficient to say that no prisoner would be entitled as his Trinidad counterpart to petition this court for mandamus to compel the Governor General to exercise the prerogative. (See De Freitas v. Benny [1975] 3 W.L.R. 388 at p. 394.)

It appears to me that in determining whether time is inordinate or excessive or unreasonable or substantial, all the circumstances need to be taken into account. The words of that great judge, Fox, J., (as he was then) in R. v. Chen See (unreported, delivered 8th January, 1968 are appropriate:

".....what is a reasonable time is determined not by an objective quest in vacuo of the ideal, but subjectively, by reference to circumstances prevailing....."

Delay caused by the pendency of appeal proceedings at the instance of the prisoner cannot avail. He is the author of the delay and it would hardly lie in his mouth to complain on that ground. See De Freitas v. Benny (supra at p. 390):

:"The initiative for securing expedition in all these proceedings lay with the appellant;"

I would also, for the same reason, regard delays caused by the prisoner in petitioning the Governor General for clemency as being exempted from consideration.

Assuming for the moment that the "due process" clause to which Lord Diplock alluded in Abbott's case was analogous to Sec. 17 of our Constitution, it is clear that evidence would have to be adduced to show that the condemned men by reason of the passage of time and the

.....

absence of any appeal or petition on their part had been induced to believe that sentence would not be executed upon them and therefore must have been commuted. But this is not the case with respect to <sup>these</sup> applicants; they were under no misapprehension as to their fate. All had petitioned for clemency; all had been refused. I do not for a moment doubt that delay, even inordinate delay, is to be deplored, but delay per se, in my judgement, gives rise to no legal rights. Nothing said in Abbott's case (supra) gives ground for a such a view.

The Governor General has the power, under sec. 90 (1) (b), to grant a respite either indefinite or for a specified period from the execution of the punishment imposed on a prisoner convicted of murder. Even if the delay was inordinate, I do not think that sec. 17 (1) could be successfully prayed in aid as a means of constitutional redress. The mere effluxion of time, I hold, does not come within the definitions I have earlier stated as amounting to the infliction of treatment causing severe agony or anguish; or as cruel, barbaric or savage treatment or as lowering a person's physical, moral or intellectual character. So far as it is necessary, I would concur in holding that the delay in the case of each applicant was not inordinate.

In my view, the obiter dictum of Lord Diplock in Abbott's case, on which Mr. Henriques relies, does not assist him, for delay which can be explained, is not to be held unreasonable. Moreover, that dictum would conflict with our constitutional provisions as to the Governor General's exercise of the prerogative if applied in the manner urged on us by Mr. Henriques.

With respect to the other limb of the dichotomy, on examination of the reports by the medical and other experts, these confirm that the applicants suffered stress, which is directly related to the nature of the sentence imposed upon them. Their awareness of the debates has also contributed to their "anxieties and depression manifestations." It is plain, and Mr. Henriques said as much, that men under sentence of death were bound to suffer anguish.

.....



The question is whether they suffered severe mental or physical pain, or severe agony, or anguish, or was there "treatment" which could be called cruel, barbaric, or savage, or treatment which has lowered their physical, moral or intellectual character?

The onus was clearly on these applicants to show on a balance of probabilities a violation of section 17 (1). Logically, it seems to me, they cannot discharge this duty unless they prove the direct responsibility of some arm of the State armed with coercive powers for their torture or degrading treatment within the scope of those terms as defined. The Act of State must be the dominant or major cause of the anguish or anxieties or depression which are the result of the forbidden treatment, for a person under sentence of death, it has been accepted at the bar, must necessarily suffer anguish, anxieties or depression; these are inextricably bound up with the nature and character of the sentence. To show that the applicants suffered, what they would have suffered at all events, is to fall short of the standard necessary. The evidence adduced, did not, in my view, demonstrate that the state was the major contributor to this anguish, about which the applicants complain.

So far, I have assumed that <sup>there</sup> was some act of state or some act of an arm of the state armed with the coercive powers which subjected these applicants to torture, or inhuman or degrading treatment. It is therefore necessary to consider the nature of the act or acts of State to which critical attention is being drawn. What constituted this torture or inhuman or degrading treatment was the delay, exacerbated or aggravated by the debates, resolutions and motions in Parliament which raised and dashed the hopes of the applicants that their sentences would not be carried out. I have considered the question of delay earlier in the judgement and need not return to it. In the course of these debates, individual contributions varied, according to the speaker's point of view. I ask a rhetorical question:

.....

which of the following points of views, is it being asserted, inflicted on the applicants, severe mental pain or anguish, or constituted cruel, savage or barbaric treatment or lowered their physical, moral or intellectual character? The result of the debates in the Lower House was that the death penalty remained the lawful sentence of the land. But hope springs eternal in the human breast and so while there is life, there is hope. After the debates in the Upper House, the death penalty was not abolished. At the end of all this Parliamentary activity, the people's elect in the lower house were for retention; Vox populi vox Dei: the elected officials were for abolition. Debates, resolutions and motions in Parliament are a legitimate exercise of the Parliamentary process. The members of both Houses were engaged upon their constitutional responsibilities and concerns: it was lawful. It was difficult to appreciate how the discharge of these constitutional responsibilities could possibly result in breaching the constitutional rights of the applicants, viz., subject them to torture or inhuman or degrading treatment. Mr. Daley sought to say, as I understood his arguments, that the debates in House were only prima facie constitutional. If in fact the debates resulted in a breach, then they become unconstitutional. It was, I fear, difficult to follow the logic of this contention. Were Parliament to enact legislation which in the event was struck down by the court as unconstitutional, it is the result of the debates, viz., the legislation it self, which would be held to be in contravention of the Constitution. <sup>the</sup> /debates do not become transmuted into an unconstitutional debate by reason of the judicial decision. If the argument of learned counsel is valid, it would allow a person accused of murder to successfully plead provocation where the provocation arose from the doing of some perfectly lawful act on the part of the deceased. I am quite unable to find that these debates, resolutions or motions were capable of constituting torture or inhuman or degrading treatment as I have defined these terms and so offend against sec. 17 (1) of the Constitution.

.....

/also

It was urged before us that one of the arms, of the Executive, namely, The Governor-General, should have commuted the sentence of these applicants, during the course of what was described as "Parliamentary irresponsibility," His failure to do so was a breach of sec. 17 (1). Precedent for this course when abolition is mooted, was found in the United Kingdom and recently in Canada.

It was quite clear that the Governor-General in deference to the debates in the House, the Ministry Paper, the Resolutions and Motions, refrained from issuing warrants of execution against the applicants. I would characterise his forbearance as merciful; a world away from torture, inhuman or degrading treatment. The House of Representatives in 1978, resolved as follows:-

"WHEREAS for sometime national consideration has been given as to whether Capital Punishment should be continued.

AND WHEREAS during that period of time many persons have been awaiting execution following the completion of all steps for legal review of their sentence of death.

Be it resolved that this Honourable House recommend to the Governor General and Privy Council that the cases of all persons/awaiting execution be reviewed."

Both before and after that Resolution, the Governor-General and his Privy Councillors met to review the cases of the condemned men. In the result some 21 of those persons had their sentences commuted. Mr. Daley said that he did not seek on these motions to impugn the exercise of the Governor-General's discretion. In my judgement, however, the argument suggesting that he should have commuted sentences, plainly does nothing more than question the exercise of the Prerogative of Mercy. The time and manner of its exercise alike give rise to no legal rights.

"At common law this has always been a matter which lies solely in the discretion of the sovereign, who by constitutional convention exercises it in respect of England on the advice of the Home Secretary to whom Her Majesty delegates her discretion. Mercy is not the subject of legal rights. It begins where legal rights end. A convicted person has no legal right even to have his case considered by the Home Secretary in connection with the exercise of the prerogative of mercy.

.....

" In tendering his advice to the sovereign the Home Secretary is <sup>doing</sup> something that is often cited as the exemplar of a purely discretionary act as contrasted with the exercise of quasi-judicial function".

per Lord Diplock in *De Freitas v. Benny* [1975] A.C. at p. 394.

This I respectfully accept as a correct formulation of the law, in this connection. We are bound by this decision.

In the result, having given my consideration to the case of each of these applicants, <sup>I</sup> too would dismiss their applications with costs.

By way of postscript, I recall Mr. Henriques pointing the court to its clear mandate to interpret the Constitution and to carry out serious responsibility regardless of the difficulties. It is not a challenge which we for one moment shirk. For myself, I am mindful of the counsel of the late Justice Oliver Wendell Holmes, Jr., of the American Supreme Court, that the judge should be responsive "to the felt necessities of the time, the prevalent mood and political theories, the **institutes** of public policy avowed or unconscious." The interpretation of this basic document of the Nation, calls for a just balance between ideals to be aimed at and the cold realities of life in this country, the present. In this way, we essay to build a just society for the citizens today, in the hope that it will become more just in the years to come.

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The Prime Minister replied as follows:-

The Coast Guard conducts search and rescue operations, carries out surveillance of the coastline and territorial seas, and assists in the protection of Jamaica's fisheries. The Coast Guard also assists Government agencies and the civil power, especially in the enforcement of laws preventing the illegal entry of narcotics and goods into the Island.

In addition its members participate in training and exercises with military and other naval forces.

From time to time, Coast Guard vessels convey various repair materials and oceanographic equipment for Harbour Master's Department which maintains navigational aids around and off the coast of Jamaica, and for the National Resources Conservation Department. Coast Guard vessels also, on occasion, dump condemned arms and ammunition at sea.

In recent times, missions undertaken by the Coast Guard include:

- (1) Transport of equipment and personnel to M.V. Explorer, a Norwegian oil exploration ship at Pedro Bank on 18th and 19th April, 1978.
- (2) Collection of a technician and unserviceable equipment for return to the Jamaica Defence Force Coast Guard base HMJS CAGWAY.

The Leader of the House moved that the answers to the remaining Questions in the Order Paper be deferred.

Seconded by Mr. Gillete.

Agreed to.

(The Minister of State in the Ministry of Education entered and took his seat)

(Mr. Rhodd entered and took his seat.)

#### GOVERNMENT BUSINESS

The Minister of Parliamentary Affairs by leave withdrew the motion -

WHEREAS the House Committee on National Security has made the following recommendation in relation to Capital Punishment in the following terms "That the Special Select Committee of the House of Representatives on National Security having considered and examined Ministry Paper No. 19 "CAPITAL PUNISHMENT", recommends to the Honourable House of Representatives and the Senate that there be no change in the existing laws relating to capital punishment at this time",

AND WHEREAS the decision in respect of Capital Punishment should be determined on the vote of Parliamentarians as a matter of conscience rather than on Party directive:

BE IT RESOLVED that this Honourable House debate the question of Capital Punishment and arrive at a recommendation as to its retention or otherwise on the (Free Vote) of the Members of the House of Representatives.

The Minister of Parliamentary and Regional Affairs having obtained suspension of the Standing Orders moved.

WHEREAS the House Committee on National Security has made the following recommendations in relation to Capital Punishment in the following terms "That the Special Select Committee of the House of Representatives on National Security having considered and examined Ministry Paper 19 "Capital Punishment", recommends to the Honourable House of Representatives and the Senate that there be no change in the existing Laws relating to capital punishment at this time".

AND WHEREAS the Minister of Justice has made a Minority Report to the Committee;

AND WHEREAS the decision in respect of Capital Punishment should be determined on the Free Vote of Parliamentarians as a matter of conscience;

BE IT RESOLVED that Capital Punishment be retained.

(Mr. Powell entered and took his seat.)

(Dr. King entered and took his seat.)

Dr. Gilmour moved to amend the motion as follows:

Delete the word "retained" and the full stop thereafter appearing after the words "Punishment be" in the 12th Line and substitute therefor the following words:

"Suspended pending a detailed study, -assessment and report of sociological and psychological effect of Capital Punishment in today's Jamaican society".

Seconded by Dr. Gallimore.

The Minister of National Security having spoken for 30 minutes, the Minister of the Public Service moved that the limit time of his speech be extended by 10 minutes.

Seconded by Dr. Gilmour.

Agreed to.

At 5.07 p.m. the House suspended its sitting until 5.21 p.m.

At 5.40 p.m. the House resumed.

(Mrs. V. Thompson entered and took her seat.)

(The Minister of State in the Ministry of Local Government entered and took his seat)

At 7.20 p.m. the Speaker interrupted.

The Leader of the House moved suspension of the Standing Orders to enable the House to continue its sitting beyond 7.30 p.m. to complete the business of the day.

Seconded by Mr. Gillette.

Agreed to.

On Dr. Gilmour's amendment being put the House divided as follows:

Ayes - Mr. Bell, Mr. R. Brown, Mr. Cocke, Mr. Dunkley, Dr. Duncan, Mr. Edwards, Dr. Eldemiro, Dr. Gallimore, Dr. Gilmour, Mr. Kirby, Mr. Leakey, Mr. Lewis, M.N. Manley, Mr. Patterson, Mr. Powell, Mr. Ramtallie, Mr. Rochesrer, Mr. Ross, Mr. Small, Mr. Spaulding, Mr. Stephenson, Mr. Vaz - 20.

Noes - Mr. Allen, Mr. Birch, Mr. M. Brown, Mr. V. Brown, Mr. Cheddisingh, Mr. Dewar, Mr. Gillette, Mr. Jones, Dr. King, Mr. Lawson, Dr. D.R. Manley, Mr. McGann, Mrs. McGregor, Mr. Mullings, Mr. Munn, Mr. Neita, Mr. Pagon, Mr. Rhodd, Rev. Robinson, Dr. Robatham, Mrs. Thompson, Mr. D. Thompson, Mr. K. Thompson - 23.

Declined to vote - Dr. Minott - 1.

Negatived.

On the substantive motion being put the House divided as follows:-

Ayes - Mr. Allen, Mr. Birch, Mr. M. Brown, Mr. V. Brown, Mr. Cheddisingh, Mr. Dewar, Mr. Gillette, Mr. Jones, Dr. King, Mr. Lawson, Dr. D.R. Manley, Mr. McGann, Mrs. McGregor, Mr. Mullings, Mr. Munn, Mr. Neita, Mr. Pagon,

.....

Mr. Rhodd, Rev. Robinson, Dr. Robotham, Mr. Rochester, Mrs. Thompson, Mr. K. Thompson - 24.

Noes - Mr. Bell, Mr. R. Brown, Mr. Cooke, Dr. Duncan, Mr. Edwards, Dr. Gallimore, Dr. Gilmour, Mr. Kirby, Mr. Leakey, Mr. Lewis, Mr. M.N. Manley, Mr. Patterson, Mr. Powell, Mr. Ramtallie, Mr. Ross, Mr. Small, Mr. Spaulding, Mr. Stephenson, Mr. Vaz - 19.

Declined to vote - Dr. Minott - 1.

Passed in the Affirmative.

The Minister of Youth and Sports having obtained suspension of the Standing Orders moved:

WHEREAS for some considerable time national consideration has been given to whether capital punishment should continue:

AND WHEREAS during that period of time many persons have been awaiting execution following the completion of all steps for legal review of sentence of death:

BE IT RESOLVED that this Honourable House recommends to the Governor-General and Privy Council that the cases of all persons now awaiting execution be reviewed.

Seconded by Dr. Gallimore.

Agreed to.

#### ADJOURNMENT

At 8.34 p.m., the Leader of the House moved that the House do now adjourn to Tuesday, 6th February, 1979, at 2.00 p.m. o'clock.

Seconded by the Minister of Finance and Planning.

Agreed to.

The House adjourned accordingly.

RIPTON S. MCPHERSON  
Speaker.

M I N U T E S  
OF THE  
SENATE OF JAMAICA

At a meeting of the Senate of Jamaica held pursuant to adjournment at Gordon House in the City and Parish Of Kingston on Friday, the

9TH DAY OF FEBRUARY, 1979

PRESENT

Senator, the Honourable Charles Emerson Sinclair, President  
 Senator, the Honourable Raphael Carl Rattray, Q.C., Minister of Justice and Attorney General  
 Senator, The Honourable Dr. Phyllis MacPherson-Russell, Minister of Education  
 Senator, the Honourable Richard Fletcher, Minister of State in the Ministry of Finance and Planning  
 Senator, Paul Miller, Parliamentary Secretary  
 S Senator, Gladys Ellington, Parliamentary Secretary  
 Senator Sefton Johnson, Parliamentary Secretary  
 Senator Hopeton St. Joseph L'Overture Caven  
 Senator John Plasnie Atkins  
 Senator Dr. Ronald Irvine, O.B.E.  
 Senator Basil Lewis Buck  
 Senator Pezrnel Patroe Charles  
 Senator Oswald Gaskell Harding  
 Senator Princess Lawes

The Senate met at 11.37 a.m. o'clock.

Prayers.

The President informed the Senate that he had received a telegram from Mrs. Byfield advising that Mr. A.G.R. Byfield a former President of the Senate, had left the hospital, was now at home and his condition satisfactory.

The President states that he would communicate with Mrs. Byfield the Senate's continuing concern.

ANNOUNCEMENTS

The Clerk laid on the Table of the Senate a copy of the following  
 MINISTRY PAPER No. 7

Auditor General's Report on the Investigation of Jamaica Development Bank

Appendix No. CXV



The Eight Annual Report of the Bureau of Standards for the year ending 31st March, 1977

Appendix No. CXVI

(The Minister of Industry and Commerce entered and took his seat)

BILLS BROUGHT TO THE HONOURABLE SENATE FROM THE  
HONOURABLE HOUSE OF REPRESENTATIVES

The Clerk presented the following message from the Honourable Speaker of the House:

Honourable Senate:

I have the honour to forward the undermentioned Bills passed by the Honourable House of Representatives and to request the concurrence of the Senate:

R.S. McPherson  
Speaker

BILLS:

1. "An Act to Amend the Racing Commission Act"
2. "An Act to Amend the Telephone Service Tax Act"
3. "An Act to Amend the Industrial Development Corporation Act"

Houses of Parliament,  
9th February, 1979.

The Minister of Justice signified his willingness to take charge of Bills Nos. 1, 2 and 3.

Bills read a first time.

NOTICES OF MOTIONS GIVEN ORALLY

Mr. Charles gave notice that at the next meeting of the Senate he would move:

WHEREAS there is sufficient reason to believe that the two Ministers who have spoken on the S.T.C. issue have made conflicting reports to Parliament;

AND WHEREAS the evidence indicates that Dexter Rose and S.K. Pyne were aided in their escape from the Island while investigations were pending in their activities as Group Chairmen and employee of S.T.C. to the extent that there is a report that Rose left the island with a trailer of household goods;

/that

AND WHEREAS there is reason to believe that both men were immediately informed of the "Stop Order" against them had been lifted and replaced by a lax police surveillance;

AND WHEREAS there now exist a general lack of public confidence in the activities and utterances of the two Ministers:

BE IT RESOLVED that this Honourable Senate recommends to the Prime Minister that both Ministers, namely, Honourable Danny Williams and Honourable Dudley Thompson, be forthwith removed from their offices and further that an investigation be carried out into all their connection in this issue with a view of taking whatever further steps that are deemed necessary:

AND BE IT FURTHER RESOLVED that this Honourable Senate recommends that a special Commission be set up to investigate the purchasing of

goods which was done by the S.T.C. as to the price paid and commissions paid and to whom these commissions were paid to.

Mr. Charles gave notice that at the next meeting of the Senate he would move:

WHEREAS THE freezing of wages to a mere 15% of Companies payrolls of wages and salaries is causing severe hardship on workers,

AND WHEREAS the cost of living continues to increase and workers of Jamaica continue to feel the burden of taxation and lower standard of living:

BE IT RESOLVED that this Honourable Senate calls on the Government to remove the 15% wage freeze to enable free bargaining between Union and Management.

#### GOVERNMENT BUSINESS

Whereas the House Committee on National Security has made the following recommendation in relation to Capital Punishment in the following terms "That the Special Select Committee of the House of Representatives on National Security having considered and examined Ministry Paper No. 19 "Capital Punishment", recommends to the Honourable House of Representatives and the Senate that there be no change in the existing Laws relating to Capital Punishment at this time";

AND WHEREAS the Minister of Justice has made a minority Report to the Committee;

AND WHEREAS the decision in respect of Capital Punishment should be determined on the Free Vote of Parliamentarians as a matter of conscience:

BE IT RESOLVED that Capital Punishment be suspended pending a detailed study, assessment and report of sociological and psychological effect of Capital Punishment in today's Jamaican society.

(Mr. Anderson and took his seat.)

The Minister of Justice having spoken for 45 minutes, Mr. Caven moved suspension of the Standing Orders to enable the Minister of Justice to continue his speech to its conclusion notwithstanding the time limit on speeches.

Seconded by Mr. Spaulding.

Agreed to.

(Mr. Golding entered and took his seat.)

Further debate on the Substantive motion was by leave deferred.

#### STATEMENTS BY MINISTERS

The Hon. R.D. Williams by leave made the following statement:

A Columnist in the Opinions page of today's Daily Gleaner, Friday, February 9, 1979, under the section "Somebody is Lying" drew attention to certain discrepancies in the Statement that I made in the Senate last week with the Statement made by the Honourable Dudley Thompson, Minister of National Security in the House of Representatives. I have checked the dates and exact sequence of events; and must state that the way in which my statement was presented in relation to the decision leading up to the imposition of the "stop order" and its removal was inaccurate and the facts as given by Mr. Thompson are correct. In particular, I regret that I did not mention the Tuesday evening meeting at which the decision to impose the "stop order" was taken and that my statement gave the impression that this decision was taken on Wednesday evening. I wish similarly my statement gave the impression that the Stop Order was withdrawn on Thursday when in fact the decision was taken on Wednesday night.

I wish to inform the Senate that the Statement was prepared in great haste as I felt that a statement was necessary without further delay. I have no interest in misleading the Senate. I tender my sincere apology.

Mr. Charles continued debate on the motion:

WHEREAS the House Committee on National Security has made the following recommendation in relation to Capital Punishment in the following terms "That the Special Select Committee of the House of Representatives on National Security having considered and examined Ministry Paper 19 'Capital Punishment' recommends to the Honourable House of Representatives and the Senate that there be no change in the existing Laws relating to capital punishment at this time":

AND WHEREAS the Minister of Justice has made a Minority Report to the Committee:

AND WHEREAS the decision in respect of Capital Punishment should be determined on the Free Vote of Parliamentarians as a matter of Conscience:

BE IT RESOLVED that Capital Punishment be suspended pending a detailed study, assessment and report of the sociological and psychological effect of Capital Punishment in today's Jamaican Society.

Mr. Harding moved to amend the motion by inserting in the fourth paragraph between the words "suspended" and "pending" the words "for a period of eighteen months".

Seconded by Mr. Charles.

Mr. Caven moved to amend the substantive motion as follows:

1. "AND WHEREAS there are over seventy persons at present awaiting the execution of the death penalty, many for a period of five years".
2. To delete from the fourth paragraph the words -

"Capital Punishment be suspending pending" and substituting therefor the words "a committee be appointed to carry out....."

3. To add the following two paragraphs after the paragraph ending with the word "Society" -

"AND BE IT FURTHER RESOLVED that the Honourable House recommends to His Excellency the Governor-General and the Privy Council a review of all outstanding cases with a view to the exercise of the prerogative of mercy:

"AND BE IT FURTHER RESOLVED that the death penalty remains during the period in which the study is being carried out and the Report to Parliament.

Seconded by the Minister of Industry and Commerce.

At 4.20 p.m. the President interrupted.

The Leader of Government business in the Senate moved suspension of the Standing Orders to enable the Senate to continue its sitting until the debate on the substantive motion was completed.

Seconded by Dr. Irvine.

Agreed to.

On Mr Harding's amendment being put the Senate voted as follows:  
*Ayes* - Mr Atkins, Mr Buck, Mr Caven, Mr Charles, Miss Ellington, Mr Fletcher, Mr Golding, Mr Harding, Dr Irvine, Mr Johnson, Miss Lawes, Mr Miller, Mr Rattray, Mr Spaulding, Mr Williams - 15.

*Noes* - 0

Passed in affirmative.

The President stated that there were three (3) other Amendments moved by Mr Caven and that he would put them in a similar fashion. Dr Irvine rising on a point of Order, stated that Mr Harding's amendment had been carried unanimously and therefore that brought the matter to an end. The President stated that there were three amendments proposed by Mr Caven, the first of which dealt with the paragraphs of the substantive motion, the second amendment with the fourth paragraph and the third amendment an addition to the substantive motion, and ruled that in accordance with Standing Orders 31(3) the Amendments be put.

Dr Irvine again rising on a point of order stated that if Mr Caven's amendments should be put and were carried it would be in conflict with Mr Harding's amendment which was already carried unanimously. After discussion and with the leave of the Senate it was agreed to disregard the previous vote on Mr Harding's amendment and to take Mr Caven's three amendments first.

On Mr Caven's first amendment being put the Senate divided as follows:

*Ayes* - Mr Atkins, Mr Caven, Miss Ellington, Mrs Macpherson-Russell, Mr President - 5.

*Noes* - Mr Buck, Mr Charles, Mr Golding, Dr Irvine, Mr Johnson, Miss Lawes, Mr Miller, Mr Rattray, Mr Spaulding, Mr Williams, - 11.

Negatived.

On Mr Caven's second amendment being put the Senate divided as follows:

*Ayes* - Mr Atkins, Mr Caven, Miss Ellington, Mrs Macpherson-Russell, Mr Williams, - 5

*Noes* - Mr Buck, Mr Charles, Mr Golding, Mr Harding, Dr Irvine, Mr Johnson, Miss Lawes, Mr Miller, Mr Rattray, Mr Spaulding - 10

Negatived.

On Mr Caven's third amendment being put Mr Spaulding took objection on the grounds that it would give the impression that any member who may vote against the amendment would be voting against the Governor-General exercising his discretion in respect of the prerogative of mercy. After discussion, Mr Caven moved to amend his third amendment by deleting all the words after "conscience" and substituting therefore the following:

"BE IT RESOLVED that a Committee be appointed to carry out an assessment and report of the sociological and psychological effect of capital punishment in today's Jamaican society;

AND BE IT FURTHER RESOLVED that this Honourable Senate request the Governor-General and Privy Council to review all the outstanding cases with a view to the exercise of the prerogative of mercy;

AND BE IT FURTHER RESOLVED that the assessment and report be made to Parliament".

Senator Spaulding again took objection to this amendment on the grounds that it was not proper in its present form.

On this Amendment being put the Senate divided as follows:  
*Ayes* - Mr Atkins, Mr Caven, Miss Ellington, Mrs Macpherson-  
 Russel, Mr Williams - 5

*Noes* - Mr Buck, Mr Charles, Mr Golding, Mr Harding, Dr Irvine,  
 Mr Johnson, Miss Lawes, Mr Miller, Mr Rattray, Mr Spaulding - 10.

Negatived.

On Mr Harding's amendment being put the Senate divided as follows:  
*Ayes* - Mr Buck, Mr Caven, Mr Charles, Mr Harding, Mr Golding,  
 Dr Irvine, Mr Johnson, Miss Lawes, Mrs Macpherson-Russell, Mr  
 Miller, Mr Rattray, Mr Spaulding, Mr Williams - 13.

*Noes* - Mr Atkins - 1

*Declined to Vote* - Miss Ellington - 1

Passed in the Affirmative.

On the substantive motion as amended being put the Senate divided  
 as follows:

*Ayes* - Mr Buck, Mr Charles, Mr Golding, Mr Harding, Dr Irvine,  
 Mr Johnson, Miss Lawes, Mr Miller, Mr Rattray, Mr Spaulding - 10.

-

*Noes* - Mr Atkins, Mr Caven, Miss Ellington, Mrs Macpherson-  
 Russell, Mr Williams - 5.

Passed in the affirmative.

#### ADJOURNMENT

At 5.23 p.m. the Leader of Government Business in the Senate moved  
 that the Senate do now adjourn to Friday, February 16, 1979, at 11:00  
 a.m. o'clock.

Seconded by Mr Golding.

Agreed to.

The Senate adjourned accordingly.

CHARLES E. SINCLAIR,  
*President*

MINISTRY PAPER NO.19CAPITAL PUNISHMENT

The matter for consideration is a procedure to ascertain the generally prevailing attitude of the nation to Capital Punishment as a deterrent to the crimes to which this form of punishment relates in Jamaica.

In this connection, I have been presented, for transmission to the Prime Minister, a petition signed by approximately 2,000 persons calling "on the Government to set up a Committee to examine the present use of Capital Punishment in Jamaica". In particular these signatories "urge that the Committee investigate and report on whether Capital Punishment is in fact a deterrent to the crimes of murder and treason and whether there is any justification for retaining it at all".

The legal principles governing the conviction of accused persons for criminal offences are very well known. A man is innocent until proven guilty. Such guilt must be proved beyond reasonable doubt. The route to the establishment of final guilt is well delineated, and indeed well trodden. There arrives a time when one comes to the <sup>/end</sup> of that road. All judicial processes have been exhausted. The relevant courts of justice have all taken a clear look at the facts and examined minutely the law. The guilty person then faces the penalty established by law. He can only be saved from its inexorable provisions by the intervention of the exercise of the prerogative of mercy by that august and revered body, the Privy Council. Another institution applying different criteria steps into the picture. The accused is guilty. Are there extenuating circumstances which would cause the Privy Council to feel that mercy should be interposed and the final verdict not carried to execution?

The question of guilt or innocence of the accused is not a matter for the Privy council. The Question of the existence of reasonable doubt has already been finally determined. That body cannot interpose its own determination whether reasonable doubt existed or not. To do so would be to make it the final judicial tribunal of which clearly it is not.

The criteria which a body exercising the prerogative of mercy should apply are not stated criteria. Indeed, each case must be viewed on its own merits. Clearly, any meaningful criteria must be both objective and subjective. If exercised by virtue of its opinion that real doubt exists concerning the guilt of the accused it can lead to <sup>/an</sup> undermining of the authority of the judiciary.

In recent times the general public has displayed much agitation concerning the cases of Tyrell and Baker and also Michael Bernard who had been sentenced to death by the Court and on whom the carrying out of the sentence appeared imminent. In the cases of Tyrell and Baker the matter concerned the question of person who were

under the age of eighteen years at the time they committed the capital offence but were over eighteen years at the time they were sentenced. The Judicial Committee of the Privy Council held that under the law they could be sentenced to death. Subsequent legislation has changed the position in Jamaica and the age at the time of commission of the capital offence is now established as the relevant age for the purpose of determining whether the offender can suffer the death penalty.

In the case of Bernard the Governor-General in Privy Council had decided against the exercise of the prerogative of mercy, despite the claim that a witness against Bernard at the trial had since changed her evidence.

The Michael Bernard case launched two types of attack. Firstly, it attacked the probity of the judicial procedures and secondly, it attacked the sensitivity of the Privy Council. In fact, the massive public support for Michael Bernard was clearly rooted in the revulsion of the general public in having the execution in their name of a man in respect of whom there might exist even the scintilla of a doubt. The finality of the sentence caused the public suddenly to apply mental and emotional brakes. It galvanized in my view the unconscious revulsion of the public against the death penalty. It was a subconscious reaction.

If one asked the very people most vocal in Bernard's support (and I exclude the lawyers) whether they are in favour of retaining the death penalty, many would have answered in the affirmative. However, an analysis of their reaction does not accord that verbal answer the support of their emotional reflexes. This in truth lays bare our national schizophrenia.

If we do not resolve this, then our institutions, the Judiciary and the Privy Council, are in grave danger of destruction by virtue of public distrust. This we cannot afford.

Further support of the petition has come from the twenty-one (21) organizations listed in the Appendix.

This matter is being introduced into the House of Representatives, and so it may be referred to the House Committee on National Security for examination in the light of the petition submitted to the Prime Minister on the subject and the support for such measures coming from twenty-one Organizations in Jamaica.

R. Carl Rattray  
Minister of Justice  
4th May, 1977.

APPENDIX

LIST OF ORGANIZATIONS SUPPORTING  
THE ESTABLISHMENT OF A COMMITTEE  
TO INVESTIGATE AND REPORT ON  
CAPITAL PUNISHMENT

1. BLACK UNITED
2. DECANTICS CENTRE YOUTH
3. TEXTON SOCIALIST
4. LONG MOUNTAIN YOUTHS
5. WAREIKA ASSOCIATION YOUTHS
6. JOHNSON TOWN YOUTHS
7. ST PATRICK YOUTH ORGANIZATION
8. SOCIALIST YOUTH VANGUARD
9. SAUNDERS UNITED CLUB
10. SUNSET SOCIALIST YOUTH CAMP
11. P.N.P. YOUTH ORGANIZATION
12. JAMAICA UNION OF DEMOCRATIC YOUTH
13. NATIONAL YOUTH SERVICE WORKERS LEAGUE
14. WORKERS LIBERATION LEAGUE
15. LIGUANEA SOCIALIST MOVEMENT
16. CEDAR VALLEY YOUTH CLUB
17. DELANO UNITED YOUTH CLUB
18. YOUNG JAMAICA
19. LAW JUSTICE ACTION COMMITTEE c/o NORMAN MANLEY LAW SCHOOL
20. THEATRE GROUP FOR NATIONAL LIBERATION
21. CHURCHES ADVISORY BUREAU

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REPORT OF THE SPECIAL SELECT COMMITTEE OF THE  
HOUSE OF REPRESENTATIVES ON NATIONAL SECURITY

The House of Representatives at its meeting on the 19th day of May, 1977, referred to Your Committee for consideration and report Ministry Paper No.19 of 1977 relating to Capital Punishment, dated 4th May, 1977, and laid on the Table of the House on the 12th May, 1977.

Your Committee at its meeting on Thursday 3rd November, 1977, by a large majority passed the following resolution:

"BE IT RESOLVED that the Special Select Committee of the House of Representatives on National Security having considered and examined Ministry Paper No.19 "Capital Punishment", recommends to the Honourable House of Representatives and the Senate that there be no change in the existing Laws relating to capital punishment at this time".

Dr Mavis Gilmour and Senator Winston Spaulding (who was present by invitation) both asked leave to attach to this Report a Statement or Minority Report indicating that they had voted against Resolution because in their judgement the continuance or not of capital punishment should have been carefully reviewed either by this or some other appropriate Committee and facts accumulated as to its deterrent effect (if any) in Jamaica.

The great majority of members of Your Committee do not share this view. They are of the opinion that at this time no such review of this matter should be canvassed, and that there should be no change in the existing Laws relating to capital punishment at this time.

They have therefore passed the Resolution set out in paragraph 2 and recorded the minority view put forward, and have subscribed their names to this Report as a further indication of their support for the majority view.

Though, regrettably, no verbatim note was made of our meeting, a fairly full account of our discussion appears in the Minutes of that day ( Thursday 3rd November, 1977) and copies of the same are laid on the Table of this House and available for inspection of Members.

/refers

Your Committee humbly its Resolution and Report to this  
Honourable House (and to the Senate) and recommends its adoption.

.....  
Hon Dr K. McNeill - Chairman

.....  
Hon Keble Munn

.....  
Hon Winston Jones

.....  
Hon Ernest Peart

.....  
Hon Francis Tulloch

.....  
Dr D.K. Duncan

.....  
Mr Roy McGann

.....  
Mr Carl Thompson

.....  
Mr Ferdinand Neita

.....  
Mr Jim Thompson

.....  
Mrs Violet Thompson

.....  
Dr Aston King

.....  
Mr Mel Brown

.....  
Hon Sydney Pagon

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REPORT OF THE SPECIAL SELECT COMMITTEE OF THE HOUSE  
OF REPRESENTATIVES ON NATIONAL SECURITY

CAPITAL PUNISHMENT

Preliminary

The House of Representatives at its meeting on the 19th day of May, 1977, referred to Your Committee for consideration and report Ministry Paper No.19 of 1977 (dated 4th May, 1977) relating to Capital Punishment. Your Committee considered the Ministry Paper at its meeting on Thursday 3rd November, 1977, and laid its Report to the House on 15th November, 1977. That Report stated that Your Committee:

"by a large majority passed the following resolution:

BE IT RESOLVED that the Special Select Committee of the House of Representatives on National Security having considered and examined Ministry Paper No.19 "Capital Punishment", recommends to the Honourable House of Representatives and the Senate that there be no change in the existing Laws relating to capital punishment at this time".

The Opposition had asked leave to attach a Statement or Minority Report to that Report but this was not forthcoming.

Your Committee was again requested to reconsider Ministry Paper 19 - Capital Punishment at its meeting on Wednesday 18th October, 1978, and has the honour to report that:

- a) Your Committee after considerable discussion has decided by a large majority to recommend that the Resolution as worded in the Report of Your Committee laid in the House of Representatives on 15th November, 1977, be re-affirmed; and
- b) that a Committee be appointed to study and report on the question of Capital Punishment.

Senator the Honourable R.C. Rattray asked leave to submit the Minority Report attached.

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MINORITY REPORT  
OF THE  
JOINT SELECT COMMITTEE ON  
NATIONAL SECURITY  
ON  
CAPITAL PUNISHMENT

It is with regret that I find it necessary to write this Minority bit dissenting with the majority of the Special Joint Select Committee on National Security on its conclusions on the matter of Capital Punishment.

Ministry Paper No.19 dated 4th May, 1977, and laid on the Table in the House of Representatives on the 12th May, 1977, brought to the attention of the House of Representatives for consideration "a procedure to ascertain the generally prevailing attitude of the nation to Capital Punishment as a deterrent to the crimes to which this form of punishment relates in Jamaica". The purpose of the introduction of the Paper in the House of Representatives was so that "it may be referred to the House Committee on national Security for examination in the light of the petition submitted to the Prime Minister on the subject and the support of such measures coming from 21 Organizations in Jamaica".

The Committee discussed the subject on one occasion on the 3rd November, 1977, and by a large majority passed the following Resolution:-

"BE IT RESOLVED that the Special Select Committee Of the House of Representatives on National Security having considered and examined Ministry Paper NO.19 on Capital Punishment recommends to the Honourable House of Representatives and Senate that there be no change in the existing laws relating to Capital Punishment at this time".

I was not at that time a member of the Committee nor was I present at this meeting.

Dr Mavis Gilmour, a member of the Committee, voted against the Resolution and the Report indicates that Senator Winston Spaulding also did, though not a member of the Committee and present only by invitation. The stated reason for this adverse vote was "because in their judgement the continuance or not of Capital Punishment should have been carefully reviewed either by this or some other

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appropriate Committee and facts accumulated as to its deterrent effect (if any) in Jamaica".

The Matter was remitted for re-consideration to the House Committee, of which I now have the honour to be a member. The Committee on the 18th October, 1978, by a large majority endorsed the Resolution of the 3rd November, 1977.

I beg, respectfully, to disagree with the Committee's decision. As far as I am aware, no study has ever been made in Jamaica of the death penalty, its usefulness or appropriateness in our penal system, its effect on crime and criminals, its acceptance or otherwise by the society in general, the manner of its execution, its effect on the general population or its place, if any in the jurisprudence of the nation. it seems to me necessary that such a study should be embarked upon, regardless of the conclusions which may be arrived at when the study has been completed. This is what Ministry Paper No. 19 sought to achieve and this is what in my own view the Committee was mandated to accomplish. The conclusion, therefore, arrived at by the Committee, without benefit of the authorised study and investigation though perhaps reflective of a significant area of public opinion, adds nothing to our knowledge of the subject, is arrived at per incuriam, and more importantly, fails to fulfill the mandate given to the Committee by the House of Representatives. I am not, nor is the public assisted, in the formulation of a view by any deliberation of the Committee or by any material which may have been advanced for its scrutiny since indeed, in my opinion, the reference was never embarked upon.

I understand the Committee's concern that while we deliberate the law is not taking its course and many persons who have exhausted the judicial process remain awaiting the final execution of their sentence. The fact is that I hold the view that during the serious deliberations of a Parliamentary Committee on the subject of Capital Punishment all persons awaiting their execution should have their sentences commuted to life imprisonment so that they can proceed to productive activity within the penal system. This, of course, is the prerogative of the Governor-General in Privy Council, It is the fact that these sentences remain in effect which causes the problem, not the pursuance of a study and investigation by the House Committee on the penalty of death as part of the penal system.

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As a matter of conscience, I unreservedly oppose the death penalty. The taking of human life by the state as a punishment for the taking of human life by the individual is in my view no more justifiable than the use of official brutality as an answer to private brutality. Furthermore, the finality of the judgement and execution implies a human infallibility in the determination of guilt which does not exist. The acceptance and exercise of such responsibility by the state usurps the prerogative of the Deity. The awesome implications of a mistake have been lightly considered, the regard for the human personality and the opportunities for its useful rehabilitation and creative possibilities too brusquely dismissed.

If my view had prevailed, the Committee would have:-

- a) proceeded upon the investigation and study as invited by the Ministry Paper and reported its conclusions thereon;
- b) recommended to the Governor-General and Privy Council that, in the meantime, the prerogative of mercy be exercised with respect to those persons on whom the sentence of death has been passed and their sentences commuted to life imprisonment.

Dated this 19th day of October, 1978.

R. Carl Rattray, Q.C.  
Minister of Justice and  
Attorney-General

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NOTICE OF APPEAL

IN THE COURT OF APPEAL OF JAMAICA  
CIVIL APPEAL NO.28 of 1980

BETWEEN	NOEL RILEY ANTHONY FORBES CLIFTON IRVING ELIJAH BECKFORD, ERROL MILLER	APPLICANTS/APPELLANTS
AND	THE ATTORNEY GENERAL THE SUPERINTENDENT OF PRISON - SAINT CATHERINE DISTRICT PRISON	RESPONDENTS

TAKE NOTICE that the Court of Appeal will be moved so soon as Counsel can be heard on behalf of the abovenamed Applicants/Appellants on Appeal from the whole of the Order herein of the Full Court of the Supreme Court comprising The Honourable Mr Justice Parnell, The Honourable Mr Justice Ross and The Honourable Mr Justice Carey, made at the hearing of the Motion on the 17th day of March, 1980.

WHEREBY it was ordered that Motion of the Applicants/Appellants herein for:-

A declaration that the execution of the said Applicants at this time and in the circumstances leading up to and surrounding the issue of the death warrants would be unconstitutional and illegal contrary to Section 17 of the Constitution of Jamaica.

Be dismissed.

FOR AN ORDER:

- a) A declaration that the execution of the said Applicants/Appellants at this time and in the circumstances leading up to and surrounding the issue of the death warrants would be unconstitutional and illegal, being, contrary to Section 17 (1) of the Constitution of Jamaica.

AND FURTHER TAKE NOTICE that the grounds of Appeal are:-

- 1) That the Constitutional Full Court erred as a matter of law when it held that the treatment sustained by the applicants was not an infringement of the constitutional rights under Section 17 (1) of the Jamaican Constitution.
- 2) That the decision of the Court that the evidence adduced by the Appellants did not establish an infringement of constitutional

rights is unreasonable and cannot be supported having regard to the evidence.

- 3) That the Court erred as a matter of law when it held that each applicant had failed to discharge the burden of proof on him to establish that his constitutional rights had been infringed having regard to the evidence put forward by the applicant without any satisfactory or credible evidence being adduced to the contrary.
- 4) The Court erred as a matter of law when it came to the conclusion that each applicant was seeking a judicial review of the prerogative of mercy and as a result thereof failed to adjudicate on the issue which was before the Court which was whether or not the applicant's fundamental right under Section 17 (1) of the Constitution had been infringed having regard to the evidence before the Court.
- 5) The Court erred as a matter of law when it came to the conclusion that it had no jurisdiction to determine whether or not the applicant's constitutional rights under Section 17 (1) of the Constitution had been infringed, as the Court erroneously took into consideration matters which were irrelevant to the determination of the issue and also further to hold that such irrelevant matters were not subject to judicial review namely Acts of parliament and the prerogative of mercy.
- 6) The Court erred as a matter of law when it held that each applicant had not established that the treatment to which he was subjected was one which had not been ordained since 6th August 1962 and further erroneously came to the conclusion that the treatment meted out to the applicant was not a violation of his constitutional rights.
- 7) That the Court erred in refusing the application that one of the judge's should have disqualified himself from hearing the Motion having regard to the views expressed by the said Judge in the same and another related matter on a previous occasion.



The Applicants will crave leave upon receipt of the reasons for Judgement of the Court to file additional grounds of Appeal out of time.

Dated the 27th day of March, 1980.

sgd. JACK HINES  
Applicants/Appellants

TO: The Respondents Attorney-at-Law,  
The Director of State Proceedings  
79-83 Barry Street  
KINGSTON.

FILED BY JACK HINES of No.31½ Olivier Place, Kingston, Attorney-at-Law for and on behalf of the Applicants.

COURT OF APPEAL

BETWEEN	NOEL RILEY ANTHONY FORBES CLIFTON IRVING ELIJAH BECKFORD ERROL MILLER	PLAINTIFFS/APPELLANTS
AND	THE ATTORNEY GENERAL THE SUPERINTENDENT OF PRISONS - ST CATHERINE DISTRICT PRISON	RESPONDENTS

T A K E N O T I C E that the Court of Appeal will be moved on Thursday the 25th day of September, 1980 or so soon thereafter as Counsel can be heard on behalf of the abovenamed Plaintiffs/Appellants on an application for leave to appeal to Her Majesty-In-Council from the decision of the Court of Appeal given on the 28th day of July, 1980 pursuant to Section 110 (1) of the Jamaica (Constitution) Order-In-Council 1962 for the determination of the following questions:

- .1) Whether or not the Appellants have been subjected to inhuman or degrading treatment in breach of Section 17 (1) of the Jamaica (Constitution) Order-In-Council 1962.
- 2) Whether or not the delay in carrying out the execution of the Appellants and/or the defacto suspension of the death penalty and the debates and resolutions on Capital Punishment in Parliament constitutes an infringement of the constitutional rights of the Appellants under Section 17 (1) of the Jamaica (Constitution) Order-In-Council 1962.
- 3) Whether or not the taking of the Appellants' life and/or the threat of the taking of the Appellants' life at this time and in the circumstances amounts to a denial of their constitutional rights under Section 17 (1) of the Jamaica (Constitution) Order-In-Council 1962.

DATED the 29th day of July, 1980.

FILED BY JACK HINES of No. 31½ Olivier Place, Kingston, Attorney-at-Law for and on behalf of the Plaintiffs/Appellants.

AFFIDAVIT IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL  
TO HER MAJESTY-IN-COUNCIL

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BETWEEN	NOEL RILEY ANTHONY FORBES CLIFTON IRVING ELIJAH BECKFORD ERROL MILLER	PLAINTIFF/APPELLANTS
AND	THE ATTORNEY GENERAL THE SUPERINTENDENT OF PRISONS - ST CATHERINE DISTRICT PRISON	RESPONDENTS

I, JACK ALEXANDER HINES being duly sworn hereby make oath and say as follows: -

1. I live and reside at Townhouse 4, 22A Shortwood Drive, Kingston 8, in the Parish of Saint Andrew, and my postal address is 31½ Olivier Place, Kingston.
2. I am an Attorney-at-Law duly qualified to practice in the several Courts of the Island of Jamaica.
3. I represent the appellants, Noel Riley, Anthony Forbes, Clifton Irving, Elijah Beckford and Errol Miller and instructed Messrs Roald Henriques, Dennis Daly and Earle Witter of Counsel to appear on their behalf in their appeal against the decision of the Full Court of the Supreme Court refusing their application for a declaration that the execution of the applicants at this time and in the circumstances leading up to and surrounding the issue of death warrants for their execution would be unconstitutional and illegal being contrary to Section 17 (1) of the Constitution of Jamaica.
4. The appeal was heard before their Lordships Zacca, Melville and Carberry, J.J.A. on the 16th to the 24th of July, and on the 28th of July the Court refused the said appeal on the following grounds, namely:-
  - a) that the circumstances alleged in relation to each of the applicants did not fall within the ambit of Section 17 (1) of the Constitution of Jamaica.

- b) that their rights under the said section had not been infringed, and
  - c) that they had not been subjected to inhuman or degrading treatment in contravention of the said section.
5. Section 110 of the said Constitution provides that an appeal shall lie as of right from a decision of the Court of Appeal to Her Majesty in Council on questions as to the interpretation of the said Constitution.
6. I make this affidavit in support of the Applicants application for leave to appeal to Her Majesty in Council.

SWORN TO AT 31½ Olivier Place  
in the parish of Kingston  
this 30th day of July, 1980  
before me:

sgd JACK ALEXANDER HINES

Sgn RONALD THWAITES  
JUSTICE OF THE PEACE FOR THE PARISH OF: KINGSTON

FILED BY JACK HINES of No.31½ Oliver Place, Kingston, Attorney-at-Law for and on behalf of the Plaintiffs/Appellants.

FORMAL ORDER

IN THE COURT OF APPEAL OF JAMAICA

CIVIL APPEAL NO.28 OF 1980

BETWEEN	NOEL RILEY ANTHONY FORBES CLIFTON IRVING ELIJAH BECKFORD ERROL MILLER	PLAINTIFFS/APPELLANTS
AND	THE ATTORNEY GENERAL THE SUPERINTENDENT OF PRISONS - SAINT CATHERINE DISTRICT PRISON	RESPONDENTS

CORAM; The Honourable Mr Justice Carberry JA; the Honourable  
Mr Justice White JA(Ag) the Honourable Mr Justice Marsh  
JA(Ag) .

HEARING; 25th September, 1980

Upon the Application for leave to Appeal to Her Majesty  
coming on for hearing Mr D.V. Daly Attorney-at-Law appearing  
for the appellants herein and Mr Neville Fraser for the first  
and second named respondents IT IS HEREBY ORDERED

1. That leave be granted to the Appellants to Appeal to  
Her Majesty in the Privy Council in England
2. That the settling of questions be reserved for a later  
date after the Judgment is delivered and
3. That the Applicants deliver records to the registrar of  
the Court of Appeal for dispatch within 90 days of the  
delivery of the written Judgment.

sg. S. Alcott (Mrs)  
REGISTRAR (AG)

FILED BY MICHAEL B.P. ERSKINE of 31½ Oliver Place, Kingston, Attorney-  
at-Law for and on behalf of the Applicants.

I, Sonia D. Alcott, Acting Registrar of the Court of Appeal,  
do hereby certify that this is a true copy of the Formal Order in the  
matter of Noel Riley et al Vs. The Attorney General and the  
Superintendent of St Catherine District Prison.

DATED THIS 19th DAY OF MAY, 1981.

sgd. S. Alcott (Mrs)  
Ag. Registrar  
Court of Appeal.

JAMAICAIN THE COURT OF APPEALSUPREME COURT CIVIL APPEAL No.28/80

BEFORE: The Hon. Mr Justice Zacca, P. (Ag.)  
 The Hon. Mr Justice Melville, J.A.  
 The Hon. Mr Justice Carberry, J.A.

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BETWEEN	-	NOEL RILEY, ANTHONY FORBES, CLIFTON IRVING, ELIJAH BECKFORD AND ERROL MILLER	- PLAINTIFFS/ APPELLANTS
AND	-	THE ATTORNEY GENERAL, THE SUPERINTENDENT OF PRISONS ST CATHERINE DISTRICT PRISON	- RESPONDENTS

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Mr R. Henriques, Mr D. Daley and Mr E. Witter for appellants.

Mr R. Langrin and Mr N. Fraser for respondents

July 16, 17, 18, 21, 23, 1980  
and February 25, 1981

ZACCA, P. ( AG. ) :

On July 28, 1980, we dismissed these appeals and promised to put our reasons into writing. We now give our reasons for doing so.

This is an appeal from an Order of the Full Court of the Supreme Court dismissing a Motion with costs on March 19, 1980. The appellants had filed a Motion under section 25(1) of the Constitution claiming that the execution of the sentence of death would contravene s.17(1) of the Constitution because of the delay in issuing the warrants for execution. It was alleged that the applicants by reason of this

delay had been subjected to inhuman and/or degrading treatment within the meaning of and contrary to s.17(1) of the Constitution. It was also alleged that the delay was so prolonged as to arouse in the applicants a reasonable belief that the death sentence had been /be commuted and would no longer be carried out. All the Judges of the Full Court held that there had been no evidence of inhuman or degrading treatment.

The argument for the appellants was that there was inordinate delay in the execution of the death sentence and that this amounted to inhuman and/or degrading treatment. It was further argued that the inordinate delay was so prolonged so as to arouse in the appellants the belief that their death sentences had been commuted. The carrying out of the death sentence at this time would, therefore, be inhuman treatment. The appellants relied on the obiter dicta of Lord Diplock in Abbott v A.G. of Trinidad and Tobago (1979) 1 W.L.R. 1342 at 1348 in support of their argument.

It is not being contended that the sentence of death per se is unlawful or amounts to inhuman or degrading treatment. Section 2 of the Offences Against the Person Act says: "Whosoever shall be convicted of murder shall suffer death as a felon". This is a law which was in force at the commencement of the Constitution and the carrying out of a sentence of death pronounced by a Court of Law is authorised by laws that were in force at the commencement of the Constitution. See s.17(2) of the Constitution. It is therefore necessary to consider the arguments based on delay.

There is no law which provides a time limit within which the death sentence should be carried out. Under section 90(1) of the Constitution the Governor-General may exercise the Prerogative of Mercy. S.90(2) provides that the Governor-General shall in the exercise of his powers under s.90(1) act on the recommendation of the Privy Council.

Section 91(1) of the Constitution states:



"Where any person has been sentenced to death for an offence against the law of Jamaica, the Governor-General shall cause a written report of the case from the trial judge, together with such other 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 in accordance with the provision of section 90 of this Constitution".

It follows that in every case where the death sentence has been imposed, the Governor-General is required to submit the trial judge's report and any other information he may think desirable to the Privy Council for their consideration and advice. This would be required whether or not there has been a petition for mercy on behalf of the condemned man. It is after this advice has been tendered that the Governor-General would decide whether to exercise the Prerogative of Mercy in favour of the condemned man.

While it is expected that the Privy Council will consider the relevant material without unreasonable delay, this is a matter which requires careful consideration and thought and cannot be hastily done. However, once the Privy Council had tendered its advice to the Governor-General, it remains with the Governor-General for the exercise of his discretion as he sees fit.

If the condemned man is of the view that there has been undue delay between the passing of the death sentence and its being carried out, and that his delay infringes s.17(1) of the Constitution, then no doubt it lies within his power to seek redress in a court of law. Can this however affect the carrying out of the sentence of death? But as Lord Diplock stated in Abbott v A.G. of Trinidad and Tobago (1979) 1 W.L.R. 1342 at 1345:

"That so long a total period should have been allowed to elapse between the passing of a death sentence and its being carried out is, in their Lordships' view, greatly to be deplored. It brings the administration of criminal justice into disrepute among law-abiding citizens. Nevertheless their Lordships doubt whether it is realistic to suggest that from the point of

"view of the condemned man himself he would wish to expedite the final decision as to whether he was to die or not if he thought that there was a serious risk that the decision would be unfavourable. While there's life, there's hope".

It will be necessary to look at the history of the instant cases to see whether there has been delay. If there has been delay, does it amount to unreasonable delay? Can such delay, if unreasonable amount to an infringement of the rights of the appellant as given to him in section 17(1) of the Constitution? Even assuming that it could be argued that the appellants by reason of delay have been subjected to inhuman treatment, does this give the Court the authority to declare that a sentence of death pronounced by a competent Court of Law should no longer be carried out? The appellant would certainly be entitled for a declaration that such inhuman treatment be immediately curtailed and perhaps he might be entitled to damages.

The arguments of the appellants would seem to be these:

- 1) There has been undue delay.
- 2) This delay has caused the appellants anguish.
- 3) The appellants reasonably believed that the death sentence had been commuted.

The appellants contend that if these three allegations have been established, then the appellants have been subjected to inhuman treatment contrary to section 17(1) of the Constitution.

Section 17(1) of the Constitution states:

"No person shall be subjected to torture or to inhuman or degrading punishment or other treatment".

It has been conceded by the Attorneys for the appellants that there has been no allegation of torture. As stated earlier the appellants rely heavily on a dicta of Lord Diplock in Abbott V. A.G. Trinidad & Tobago (supra). At page 1348 Lord Diplock stated:

"In their Lordships' view the proposition that, in the circumstances of the instant case, the fact that seven or eight months elapsed before the applicant's petition for reprieve was finally disposed of by the President made his execution at any time thereafter unlawful, is quite untenable. Their Lordships accept that it is possible to imagine cases in which the time allowed by the authorities to elapse between the pronouncement of a death sentence and notification to the condemned man that it was to be carried out was so prolonged as to arouse in him a reasonable belief that his death sentence must have been commuted to a sentence of life imprisonment. In such a case, which is without precedent and, in their Lordships' view, would involve delay measured in years, rather than in months, it might be argued that the taking of the condemned man's life was not "by due process of law"; but since nothing like this arises in the instant case, this question is one which their Lordships prefer to leave open".

In Abbot's case it was submitted that a delay of between seven and eight months from the lodging of a petition for reprieve to the issuing of the President's warrant for execution amounted to a contravention of his rights, the right to life, as declared by s.4(a) of the Trinidad Constitution. S.4(a) of the Trinidad Constitution reads:

"The right of the individual to life, liberty security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law".

In considering this submission, Lord Diplock at page 1347 states:

"The Criminal Procedure Ordinance under which the death sentence of the applicant was respited and he was detained in prison from July 26, 1976 to March 12, 1977, pending the President's decision whether to exercise any of his powers of pardon in favour of the appellant, and under which the President on March 12, 1977, issued his warrant directing the marshall to carry out the death sentence, was a law that was in existence on August 1, 1976. The law relating to the exercise of the power of pardon under the republican Constitution is in substance the same as it

was under the former Constitution save for the transfer of the power from the Governor-General to the President and changes in the composition and method of appointment of the appointed members of the advisory committee. So unless the applicant can establish that his execution after a lapse of time of between seven and eight months from the lodging of his petition for reprieve would be unlawful under the Criminal Procedure Ordinance read with sections 87 to 89 of the Constitution, he cannot point to any contravention of his rights and freedoms under section 4(a) of the Constitution for which he is entitled to apply for redress under section 14".

In the instant cases the appellants are unable to establish that their execution would be unlawful having regard to s.2 of the Offences Against the Person Act, the issuing of the Warrant of Execution by the Governor-General when read with ss. 90 and 91 of the Jamaica Constitution which deals with the Prerogative of Mercy.

We will now examine each of the cases to ascertain whether there was undue or unreasonable delay in the issuing of the Warrant for Execution.

#### NOEL RILEY & ANTHONY FORBES

It is convenient to take these two cases together as both appellants were tried jointly and convicted for the same murder. The history of the matter is that both appellants were convicted on March 7, 1975, and sentenced to suffer death. They both appealed to the Court of Appeal. This had the effect of staying execution of the death sentence until their appeals were disposed of. Both appeals were dismissed on February 23, 1976.

Thereafter appellant Noel Riley petitioned Her Majesty for special leave to appeal to the Privy Council - a right given him under section 110 of the Constitution. This application was refused on July 18, 1978.

The appellant Anthony Forbes did not apply for leave to appeal to Her Majesty in council. On November 17, 1978, the Kingston Legal Aid Clinic Ltd. wrote to the Secretary of the Governor-General informing

him that appellant Forbes did not intend to pursue an appeal to Her Majesty in Council. Also by this letter, it was stated that a Petition for Mercy on behalf of both appellants would be forwarded to the Governor-General.

Subsequent to November 17, 1978, the Governor-General considered the Petition for Mercy and decided not to exercise the Prerogative of Mercy in their favour and fixed the date of their execution for May 29, 1979. The Governor-General would not be expected to consider the exercise of the Prerogative of Mercy until all appeals had been exhausted, or he had been informed that the appellants did not intend to pursue any further appeal. Even if appellant Forbes had earlier informed the Governor-General that he did not intend to pursue an appeal to Her Majesty in Council, we think it proper that any consideration of the Prerogative of Mercy on his behalf should have awaited the outcome of appellant Riley's appeal to Her Majesty in Council. Both appellants were as previously stated convicted for the same murder. In any event it was not until November 1978, that the Governor-General was informed that appellant Forbes did not intend to pursue an appeal to Her Majesty in Council.

The appellant Riley cannot, therefore, complain about the delay totalling three years and eight months preceding his petition for pardon caused by his own action in appealing against his conviction.

The appellants are therefore left with a period of six months between the period of Petition for Mercy and its rejection with the issuing of the warrant for execution. In Abbot's case the period of delay between the consideration of the Petition for Mercy and the rejection was somewhat less than eight months. The Judges of the Court of Appeal in Trinidad held that this was not an unreasonable length of time. In considering whether such a period was unreasonable, Lord Diplock at page 1348 said:

"Their Lordships would in any event hesitate long before substituting their own opinion for that of judges in Trinidad and Tobago, as to what constitutes a reasonable time for dealing with petitions for reprieve in that country. Judges who sit in the courts in Trinidad and Tobago know the practice in these matters and the local circumstances much better than their Lordships can hope to do".

In the instant cases (Riley and Forbes) I am of the opinion that the period between consideration of the Petition for Mercy and its rejection was not unreasonably long. This view is fortified by taking into account the following facts:

- 1) In May 1977, a Ministry Paper was tabled in the House of Representatives with respect to whether or not Capital Punishment should be retained. the matter was referred to the National Security Committee of the House.
- 2) In October 1978, the House Committee recommended that there be no change in the existing law.
- 3) On January 30, 1979, there was a debate in the House of Representatives as to whether the death penalty should be suspended. On a conscience vote the matter was defeated by 23 votes to 20.

On that same date there was adopted a resolution of the House requesting a review of all cases of condemned prisoners.

- 4) On February 9, 1979, the Senate debated a resolution that Capital Punishment should be suspended for eighteen months pending a detailed study and assessment and a report on the sociological and psychological effect of capital punishment in the Jamaica of today. This resolution was carried by 10 to 5.

The Governor-General must have been aware of the Ministry Paper tabled in the House of Representatives and also the debates which were taking place in Parliament. It is not unreasonable to infer that he must have considered it human and prudent to await the outcome of these debates before issuing his warrant for execution. One of the learned trial Judges found that between the period 1976 and 1979, the Governor-General had exercised the Prerogative of Mercy favourably in respect of twenty-one condemned men and their sentences

were commuted.

It is not that the Governor-General and the Privy Council were asleep during the period 1976-1979. Cases were reviewed and those that were considered fit for reprieve, had their sentences commuted.

What the Governor-General did not do was to order the execution of those whose cases were not considered fit for reprieve during the period of debate in Parliament. I consider the action of the Governor-General in the circumstances to be reasonable.

It is to be noted that it was after the last debate in Parliament (the Senate) on February 9, 1979, that the warrants for execution were issued with respect to Riley and Forbes.

As far as the medical evidence is concerned, it is not conclusive that any delay was the prime cause for the condemned men suffering anguish and depression. This they suffered from the date of their convictions and refusal of their appeals as stated in their affidavits. I can find no evidence to support that what was done or not done could in any way have led the appellants to believe or to hope that their death sentences had been commuted or would be commuted.

In my opinion there has been no unreasonable delay in the carrying out of the death sentence of Riley and Forbes. There is no evidence on which the Court could hold that appellants Riley and Forbes were subjected to inhuman and or degrading treatment.

#### CLIFTON IRVING

Appellant Clifton Irving was convicted of murder and sentenced to death on March 22, 1976. He appealed to the Court of Appeal and his appeal was dismissed on January 10, 1977. Efforts were made to pursue an appeal to Her Majesty in Council but this was abandoned in October, 1978. This information was forwarded to the Governor-General by his attorney in a letter dated November 15, 1978.

Subsequent to this letter being received a Petition for Mercy was considered and rejected with the issuing of the warrant for execution, which was for May 29, 1979.

What is the delay being complained of in this case? It could only be the period between the consideration of the Petition for Mercy and its rejection, a total period of about six months. The comments and findings made with respect to appellants Riley and Forbes would equally apply to appellant Irving.

I am of the view that there has been no unreasonable delay in the carrying out of the death sentence of appellant Irving. I am also unable to discern any evidence on which the Court could hold that the appellant had been subjected to any inhuman or degrading treatment. Nor is there any evidence to suggest that the appellant was led to believe that his death sentence would have been commuted.

ELIJAH BECKFORD

This appellant was convicted of murder and sentenced to death on May 9, 1975. Mr. appealed to the Court of Appeal and his appeal was dismissed on November 6, 1975. He sought assistance from the Legal Aid Clinic but on their advice did not apply for leave to appeal to Her Majesty in Council. However, on March 4, 1977, a Petition for Mercy was submitted to the Governor-General. This was considered and rejected on November 15, 1977. Subsequent to November 15, 1977, a further Petition was submitted by the appellant and this was considered but rejected on April 24, 1979. The Governor-General issued his warrant for execution fixed for June 12, 1979.

Although the first Petition for Mercy was rejected in November, 1977, no execution date was set at that time. By this time, as far back as May 1977, a move had been made in Parliament to consider the retention of the death penalty. The whole process from tabling of the Ministry Papers in the House to the conclusion of the debates



in Parliament lasted until February 9, 1979, as outlined above. It is uncertain as to what date the second petition for mercy was received subsequent to November 1977. However, it was not until after the final debate in Parliament (the Senate) had been considered on February 9, 1979, that this second petition for mercy was considered and rejected in April 1979, and execution date set for June 12, 1979.

It is reasonable to infer that the Governor-General, although rejecting the first petition for mercy <sup>/in</sup> November, 1977, did not issue his warrant for execution having decided to await the outcome of the debates in Parliament. It may be that as a result of the debates and resolutions in Parliament that the second petition for mercy was submitted. I consider the action of the Governor-General in the circumstances to be prudent and in the best interest of justice. Any delay in the given circumstances could only have been favourable to the appellant. As Lord Diplock pointed out in the Abbot's case, p.1345: "While there's life, there's hope".

In the circumstances of this case I am of the opinion that there was no unreasonable or undue delay in the carrying out of the death sentence. I am also of the view that such delay as there was does not amount to inhuman or degradng treatment. Once again I maintain that there was no evidence on which this Court could find that the delay and debates in Parliament were such as to make the appellant believe that his death sentence had been commuted to one of life imprisonment. It is to be observed that no execution took place in Jamaica during the period May 1977 and February 1979, the period of debate in Parliament.

ERROL MILLER

This appellant was convicted of murder and sentenced to death on October 23, 1975. He appealed to the Court of Appeal, and his appeal was dismissed on February 5, 1976. An appeal to Her Majesty for Special Leave to Appeal in Council was refused on December 8, 1976. Two petitions for mercy were submitted to the Governor-General, the first in February 1977. These petitions were considered and rejected in November 1977. Although his petitions were rejected in November 1977, the Governor-General did not fix a date for his execution at that time but it was subsequently fixed for June 12, 1979.

The pattern in this case follows the same pattern as in the case of appellant Elijah Beckford. It was not until after the final debate in Parliament that the execution date was fixed. Once again, although this case not considered a fit case for reprieve the Governor-General held his hand and awaited the outcome of the debates in Parliament. I consider this a reasonable and justifiable act on his part. It is no coincidence that no execution took place between May 1977 and February 1979. It is, in my view, abundantly clear that the reason for this, was that the Governor-General wished to await the outcome of the debates in Parliament. If they were favourable /is to the appellant, then it almost certain to say that the Prerogative of Mercy would have been exercised in favour of the appellant. It cannot be said that such delay was unreasonable and in any way prejudicial to the appellant. Any delay that there was could only have been favourable to him. Again in the circumstances of this case I find that there was no unreasonable and undue delay in the carrying out of the death sentence. Such delay as there was and the debates in Parliament could in no way amount to inhuman and/or degrading treatment. I am unable to say that on the evidence before the Court,

any such delay or debate in Parliament could have led the appellant to the view that his death sentence had been commuted to one of life imprisonment.

In summary, I find no unreasonable or undue delay in any of the five cases. There has been no infringement of s.17(1) of the Constitution. It cannot be said on the evidence that such delay as there was, when considered along with the debates in Parliament could have led the appellants to think that their death sentences had been commuted.

Whatever cases Lord Diplock had in mind in delivering his dicta in the Abbot's case, we cannot possibly think that he had in mind any of the instant cases.

For these reasons I would dismiss all five appeals with no order as to costs.

#### MELVILLE, J.L.:

These appellants were convicted of murder and in due course warrants for their execution were issued in accordance with the laws of this country. They sought from the Constitutional Court a declaration "that their execution at this time and in the circumstances leading up to and surrounding the issue of the death warrants would be unconstitutional and illegal being contrary to

Section 17(1) of the Constitution". That Court rejected their motions and they now appeal to this Court setting out various grounds of complaint. The facts have been fully ventilated in the Court below and again before us so I need not refer to them in great detail.

Riley and Forbes were convicted on the same indictment on 7.3.75. Their appeals to this Court were dismissed on 23.2.76. Riley's appeal to the Judicial Committee of the Privy Council was dismissed on 18.7.78, whilst Forbes did not seek to appeal further. Irving was convicted on 22.3.76; his appeal was dismissed on 10.1.77 and he abandoned his further appeal in October, 1978. These men were scheduled to be executed on 29.5.79. Beckford was convicted on 9.5.75; his appeal was dismissed on 6.11.75; he did not seek to appeal further. Miller <sup>/was</sup> convicted on 23.10.75; his appeal was dismissed on 5.2.76 and his further appeal was disposed of on 8.12.75. Both were to be executed on 12.6.79.

In May 1977, a Ministry paper was tabled in the House of Representatives on the question of whether Capital Punishment should be retained in this country. The matter was referred to a Committee of the House who in October, 1978, recommended that there should be no change in the existing law. On 30.1.79, the House debated whether the death penalty should be suspended and on a free vote the motion was defeated by a mere three votes. The House then recommended that the cases of all persons who were then awaiting execution should be reviewed. On the 9th February, 1979, the Senate adopted a resolution that Capital Punishment be suspended for eighteen months pending a study and report on the sociological and psychological effect of capital punishment in today's Jamaica. It seems that since 1976 no execution has been carried out in this country.

No sooner had the warrants authorising the execution of the appellants been issued, than these motions were launched claiming that their constitutional rights had been infringed.

Section 17 of the Constitution reads:

- "(1) " 1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.
- 2) 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 infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day".

They say that they have been subjected to inhuman and/or degrading treatment in that:-

- a) Their execution was delayed for a considerable period of time, which delay was significantly caused and/or contributed to by the 'de facto' suspension of the death penalty.
- b) They were led reasonably, to believe and/or strongly hope that their executions would not be carried out by virtue of:-
  - (i) The aforesaid suspension of the death penalty.
  - (ii) The fact that studies were undertaken into the question of suspending the death penalty by the National Security Committee of the House; and
  - (iii) the debates and resolutions passed in the House and the Senate on the 30th January, 1979 and the 9th February, 1979.

Sometime was spent in this Court considering the correctness or otherwise of portions of the judgments delivered in the Court below, but I do not think it necessary to come to a decision one way or the other as they appear not to affect the issues to be decided by this Court. What was argued, if I may be permitted to say so, with great tenacity, was that by reason of the inordinate

delay from the final judicial act to the time of issuing the death warrants; together with the debates in both Houses of Parliament which raised the hopes of the condemned men only to have them dashed again in the final analysis; the appellants were subjected to extreme psychological torture and physical and mental deterioration which amounted to inhuman and/or degrading treatment within the meaning of Section 17(1) of the Constitution. It was argued that the appellants fell within the words of Lord Diplock in Abbott v. Attorney General of Trinidad and Tobago (1979) 1 W.L.R. 1342, 1348 where His Lordship said:

"Their Lordships accept that it is possible to imagine cases in which the time allowed by the authorities to elapse between the pronouncement of a death sentence and notification to the condemned man that it was to be carried out was so prolonged as to arouse in him a reasonable belief that his death sentence must have been commuted to a sentence of life imprisonment. In such a case, which is without precedent and, in their Lordships' view, would involve delay measured in years, rather than in months, it might be argued that the taking of the condemned man's life was not by due process of law".

Dealing firstly with the deterioration in the physical and mental condition of the appellants, this condition seems to have manifested itself from the very pronouncement of the sentence of death; and in some instances, seems to have intensified as each stage of appeal was lost. But nowhere has it been suggested - except in the argument that the debates in Parliament in any way substantially contributed to the deterioration of the health and well-being of the appellants.

I turn next to the question of inordinate delay. In the case of Riley, his final appeal was dismissed in July 1978, but as late as November 17, 1978, the Legal Aid Clinic is just then informing the Secretary to the Governor-General that a petition for clemency was about to be prepared on Riley's behalf. It is that letter also that contained the information that Forbes did not intend

to pursue his appeal to the privy Council in England. Although Forbes seems to have done nothing after his appeal was dismissed in February 1976, Riley with whom he was jointly charged was still pursuing his appeal to the Judicial Committee of the Privy Council. Despite the argument to the contrary, it appears to be wholly unreal to say the Local Privy Council should have considered the case of Forbes before the appeal of Riley was finally disposed of. What would be the position if the appeal of Riley had been allowed with an intimation that that of Forbes also would have been allowed, but in the interim Forbes' case had been considered and he had been executed? Common sense indicates that the cases of both men should be considered together, so I cannot see how one can complain of inordinate delay whilst the other is still pursuing his legal rights of appeal: particularly in circumstances such as these where the execution of the sentence of death is so grave and final. So even without taking into consideration the fact that Parliament was then examining the question of Capital Punishment; or the period required for the preparation and forwarding of any petition for mercy; I cannot see how it can be said that from the final appeal to the date of the issue of the death warrants (a period of less than a year) that there has been inordinate delay in the case of these two men. The same reasoning that applies to Riley is applicable to the appellant Irving who abandoned his appeal as late as October, 1978.

In the cases of Beckford and Miller petitions for mercy were filed in March 1977 and a further petition was filed at a later date for Beckford. At the time that these petitions were filed the start of Parliamentary debates was just some two months away. It was strongly urged on us that there was no evidence that the Governor-General was aware that any debate was going to be held; and in any event the period of the debates in Parliament could not

amount to reasonable cause why the execution of these men should be delayed.

Section 76 of the Constitution is in these terms:

"The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of Jamaica and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the Government of Jamaica".

I would be amazed to be told that the Governor-General was not aware of the impending debate on a matter of such great public importance as the question of whether or not the death penalty should be suspended in view of the provisions of Section 76 of the Constitution. True it is that the Parliament of this country, short of passing an Act, cannot interfere with the exercise of the Royal Perogative, yet it would be incredible to think that those charged with the responsibility for its exercise would willingly ignore the work of Parliament, which is the voice of the people, in a matter of such grave public importance. To say, therefore, that the Governor-General in exercise of the Royal Perogative should have ordered the execution of these men whilst the debate was still proceeding in Parliament is to strike at the very roots of those democratic principles which we still hold dear. Had the vote in the House gone the other way, one can well imagine the howl of protest that would have been raised, if there had been any executions in that period.

There is an aspect of the matter that I find unsatisfactory. After a person has lost his appeal in this Court, there is a time limit of twenty-one days in which to apply to the Courts for leave to appeal to Her Majesty in Council; yet if he proceeds by way of petition there seems to be no limit to the length of time within which he may apply. That applies also to petitions for mercy addressed to the Local Privy Council. The cases of Beckford and Miller also, seem to be typical of this sort of delay which inevitably



leads to further delay. I need only refer to the statistics mentioned in the judgment of Parnell J. to show the magnitude of the task facing our Local Privy Council. As of March 12, 1980, there were some 82 persons in the condemned cells awaiting the decision of their fate. Between 1976 and 1979 some 21 persons have had their sentences commuted. Add to that the number that has since been convicted, no doubt arising from the daily massacres taking place in this country. Looking therefore at all the circumstances adduced in these matters, like the Court below, I am unable to say that there has been any inhuman and/or degrading treatment of these appellants. Accordingly the appeals are dismissed.

CARBERRY, J.A.:

This is an appeal from the decision of the Constitutional Court, comprised of Parnell, Ross and Carey J J. on the application of the five applicants herein. Each of them had been tried for and convicted of murder and sentenced to death. Each had, over a period of some four to five years, exhausted the available legal process for appeal, and had had their several petitions (some had applied more than once) for mercy rejected by the Governor-General acting on the recommendation of the Jamaica Privy Council. Dates for their execution had been set for the 29th May, 1979 (for the first three named) and 12th June 1979 (in respect of the last two named). The judgment of Parnell J. sets out in convenient form the relevant dates applicable to each of these applicants, but unfortunately does not list the dates of their respective applications for mercy, or the dates of their rejection, but these can be found set out in the affidavits and judgments delivered herein.

At this stage the applicants launched their present application to the Constitutional Court. They sought:-

"A declaration that the execution of the said applicants at this time and in the circumstances leading up to and surrounding the issue of the death warrants, would be unconstitutional and illegal being contrary to section 17(1) of the said Constitution of Jamaica".

Briefly put, they claimed that to execute them now, after the length of time that had elapsed since their original conviction and sentence would be cruel and inhuman treatment, and that during this period they had been "led reasonably, to believe and/or strongly to hope that their executions would be carried out.....".

After an earlier application had been summarily rejected by the Constitutional Court and this Court, on appeal, had ordered that the applications should be heard on their merits, the present applications were heard before the Constitutional Court on the 17th, 18th and 19th March, 1980. The applications were rejected on the 19th, and the written judgments herein delivered on or about the 25th March.

I have had the opportunity of reading the judgments of Zacca, Acting President, and Melville J.A. in this case, and I agree with the conclusions reached by them which affirm the conclusion reached by the Judges of the Constitutional Court. All are unanimous in rejecting the applications and ruling that the Law must take its course. But for the fact that this is the first occasion on which this Court has had to consider such applications on their merit, (the earlier decision was concerned with whether the applications should be entertained at all), I would have been content to add nothing of my own. In what follows I do not propose to discuss the merits of the individual applications, but to say something about the general picture as I see it.

Sections 2 and 3 of the OFFENCE AGAINST THE PERSON ACT read thus:

Homicide

"Murder.	2. Whosoever shall be convicted of murder shall suffer death as a felon.
Sentence of death.	3. - (1) Upon every conviction for murder the Court shall pronounce sentence of death, and the same may be carried into execution as heretofore has been the practice; and every person so convicted, shall, after sentence, be confined in some safe place within the prison, apart from all other prisoners.
43/1958 S. 2.	Where by virtue of this subsection of a person convicted of murder is sentenced to death, the form of the sentence shall be to the effect only that he is to "suffer death in the manner authorized by law".

Those two sections have been repeated, practically unchanged, (save that the form of sentence was altered in 1958) through the several codes of Jamaica Laws: Cap. 268 of the 1953 Code; Cap. 416 of the 1938 Code, and have their genesis in Jamaica 27 Vict. Cap. 32:

"An Act to consolidate and Amend the law relating to offences against the person" (1864). This original Act however continued in the equivalent of Section 3(1) to provide not only for the isolation of person convicted, but that he should "be fed with bread and water only, and with no other food or liquor, except in case of receiving the sacrament, or in case of any sickness or wound,.....".

The 1864 Jamaica Act was founded on and closely followed the United Kingdom Act, 24 and 25 Vict. c. 100: "An Act to consolidate and amend the Statute Law of England and Ireland relating to Offences against the Person" (1861).

Neither Act seems to expressly declare the manner of execution but the common law prescribed death by hanging, and later Acts in both jurisdictions have added details, viz. that the execution should be carried out in the prison, that there should be an inquest on the body, certification of the death et cetera: As to the United Kingdom: See Halsbury, 3rd. Edn. Vol. 10 Criminal Law, page 709 para. 1360: Execution of criminal: and note (o).

As to Jamaica: See the Prisons Act Sections 42 to 47 which provides for the treatment to be accorded to the prisoner under sentence of death, and <sup>/that</sup> the death sentence is to be executed within the limits of the prison and in the presence of the Superintendent of the prison and the medical officer who is to examine the body and certify death. Section 47 adds:-

"47. The omission to comply with any of the provisions of this Act or of Prison Rules shall not invalidate or make illegal the execution of any sentence of death where such execution would otherwise be legal".

Section 41 of the Interpretation Act (Jamaica) provides for English Laws to be considered in force in Jamaica, i.e. those prior to the commencement of 1 George II Cap. 1 (1848).

Curiously enough I have so far been unable to find in the Jamaican Statutes the equivalent of Section 59 of the Criminal Procedure Ordinance, Chapter 4 No.3, of the Trinidad Laws of 1950, which expressly provides for and sets out the form of the warrant of execution issued under the hand of the Governor to the Marshall to carry out the execution, but the practice and form of warrant in use in Jamaica is substantially the same and issues to the Commissioner of Corrections. (See deFreitas v. Benny) (1974) 26 W.I.R. 523 at 582/9).

The form of sentence of the Jamaican Court before it was amended in 1958 was substantially that set out in the older editions of Archbold, see 28th Edn. (1931) page 245: Punishments: Death: (a form that apparently dated back to 1903).

The provisions with respect to the grant of a pardon or reprieve before their insertion into the Constitution of Jamaica were contained in the Instructions issued to the Governor in Chief of Jamaica under the Royal Sign Manual, see for example the instructions dated 27th October, 1944, para. 23: Regulation of power of pardon in capital cases. These provisions entered into the Jamaica Constitution of 1959 - see Section 12: (The Jamaica (Constitution) Order in Council, 1959). They were re-enacted, with modifications in the present Constitution of Jamaica (1962): See Section 90(1), but whereas before the Governor had acted "in his discretion", the new provisions required him to act on the recommendation of the Privy Council (Section 90(2)) and Section 91 went on to prescribe for the mechanics of such consultation, though most of the material so prescribed had appeared in the earlier Instructions.

Capital punishment, execution by hanging, had thus been prescribed for the offence of murder (and a few other offences) before the coming into force of the Jamaica (Constitution) Order in Council, 1962 and is continued in force by virtue of Section 4 of the Order in Council, and Section 26(8) of the Constitution itself, a Section that specifically refers to and forms part of the provisions of Chapter III: Fundamental Rights and Freedoms; thus the very Chapter of the Constitution on which the applicants rely itself contains an "existing laws" Section which preserves capital punishment for murder. That this is so is further exemplified by the provisions of Section 14(1) of the Constitution, which reads:-

"Protection of right to life.	14. - (1) No person shall intentionally be deprived of his life <u>save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted</u> ".
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(Emphasis supplied).

Further, the very Section of the Constitution on which the applicants rely, makes the relation of capital punishment clear in sub-section (2). Section 17 reads:-

" 17. - (1) No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.

Protection  
from in-  
human  
treatment

(2) 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 infliction of any description of punishment which was lawful in Jamaica immediately before the appointed day".

The Fundamental Rights and Freedoms Section of the Jamaica Constitution were described by the framers thereof as being adapted from the European Convention on Human Rights which was proposed by the foremost experts in the world in this field": (See para. 19 of the Report of the Constitution Committee to the Parliament of Jamaica 11th January, 1962).

The European Convention on Human Rights, itself reads thus:-

#### Section 1

##### "Article 2:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(Emphasis supplied).

##### Article 3:

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

##### Article 4: ....."

Both the European Convention of 1950, and the Constitution of Jamaica see no contradiction between the imposition of capital punishment by a law and the provision that no person shall be subject to torture or to inhuman or degrading treatment or punishment. In this respect they differ from two American cases cited to us in argument: In The People v. Robert Page Anderson (1972) 6 Cal. 3d 628,

the Supreme Court of California, with one dissentient, held that capital punishment was in breach of their constitutional prohibition against the infliction of cruel or unusual punishments; while the United States Supreme Court in Furman v. Georgia (1972) 408 U.S. 238: 33 L. Ed. 2 D 346 held in a five to four decision that capital punishment, when ordered by a trial jury offended the similar provision of the 8th Amendment to the U.S. Constitution: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted".

Further, Section 17(2) of the Jamaican Constitution appears to provide that the Legislature in its wisdom may introduce new laws providing for capital punishment, whether for new offences or for existing offences currently providing lesser penalties, in as much as capital punishment was a punishment which was lawful in Jamaica immediately before the appointed day. This is unlike the position in Trinidad where a new law of this sort may not be introduced save under special provisions similar to those required for alterations to the Constitution: See Sections 4, 5 and 54 of the Constitution of the Republic of Trinidad and Tobago. (Act 4 of 1976: See also Section 6, Savings for existing Laws).

Consequently the issue that arose in deFreitas v. Benny (1976) A.C. 239 (pr. C) as to the legitimacy of the death sentence for murder and its relation to the proscription of "cruel and unusual treatment or punishment" (Trinidad prefers the American wording), could not and did not arise in this case, and though citing the American cases counsel were insistent that they did not seek to challenge the constitutionality of the death sentence that had been imposed on the appellant.

There is further more Privy Council authority in the case of Runyowa v. The Queen (1967) A.C. 26; (1966) 2 W.L.R. 877 (1966) 1 All E.R. 633 for the observations that have been made as to the limited effect of Section 17 of the Jamaica Constitution. In that case the Constitution of Rhodesia and Nyasaland contained in Section 60(1) and (3) provisions that were substantially the same as those of Section 17

of the Jamaica Constitution. The Legislature of Rhodesia and Nyasaland had amended the law as to arson to provide the death penalty for arson in respect of residential premises, and aiders and abettors or inciters were liable as principals. The argument that the amendment was ultra vires as offending against the constitutional provisions failed. That Constitution recognized (as does our own) the death sentence as a possible punishment: their Lordships were unable to regard the death sentence per se as an "inhuman or degrading punishment", and in any event it was saved by the "proviso" as an existing possible punishment. They concluded:-

"The provision contained in section 60 of the Constitution enables the court to adjudicate as to whether some form or type or description of punishment newly devised after the appointed day or not previously recognized is inhuman or degrading but it does not enable the court to declare an enactment imposing a punishment to be ultra vires on the ground that the court considers that the punishment laid down by the enactment is inappropriate or excessive for the particular offence". Per Lord Morris of Borth-y-Gest at page 891 E (1966) 2 W.L.R.

It should be added that early precursors of the two American authorities cited to us were considered and distinguished by their Lordships in Runyowa's case. Though the severity of the punishment and its disproportion to a particular offence would normally be an ingredient in considering whether it is "cruel and/or unusual" or "torture or inhuman or degrading punishment or other treatment", the presence of a clause similar to Section 17(2) of our Constitution limits the enquiry by the Court and excludes it altogether if the particular punishment was one the infliction of which was lawful in Jamaica immediately before the appointed day. Runyowa's case was decided some five years or more before a decision of this Court in R. v. Purvis and Hughes (1968) 13 W.I.R. 507 re flogging.

Unable therefore to attack the constitutionality of their death sentences, the applicants argued that to carry them out now would be nevertheless unconstitutional. They argue that by reason of the delay in executing them have have suffered (additional) "Torture and/or



inhuman or degrading treatment within the meaning of and contrary to Section 17(1) of the Constitution".

By way of "particulars" of the torture and/or inhuman and/or degrading treatment they specify (a) the delay in hanging them, and (b) that they were led to reasonably believe and/or strongly hope that their executions would not be carried out, this in itself being due to a "de facto" suspension of the death penalty for a time, and the debate taking place on capital punishment in the Parliament of Jamaica during most of the period of delay.

I turn now to consider the public argument that occurred in the Parliament of Jamaica with regard to capital punishment. If I may say so with respect, it was an argument of somewhat limited extent, so much so that I regret that I am unable to see how it could have led the applicants "reasonably to believe and or strongly hope that their execution would not be carried out.....".

It began with Ministry Paper No.19 of 1977: "Capital Punishment" prepared by the Minister of Justice on 4th May, 1977, laid on the Table of the House of Representatives on 12th May, 1977, and referred by that House to its "Special Select Committee on National Security", on the 19th May, 1977. The objective of the Ministry Paper was to discuss a procedure for ascertaining "the generally prevailing attitude of the nation to Capital Punishment as a deterrent to the crimes to which this form of punishment relates in Jamaica". The proposal at this stage was then merely to discuss some mode of ascertaining what people in Jamaica thought of capital punishment, though it seemed that the Minister himself thought that there was a "national schizophrenia" on this topic.

If the intent was to move towards the abolition of capital punishment the timing was unpropitious. On the 27th December, 1974, certain condemned men in a section of the St Catherine District Prison had captured and held hostage a prison warder. The incident had been the subject of a Commission of Enquiry into the general prison conditions and those of the condemned men. Their report was published

in June of 1975. It dealt incidentally with "Delays in Legal Process" and noted that the long intervals which separate the imposition of sentence from execution imposed a severe and cruel strain on the condemned men. It reviewed the time taken between conviction and the hearing of appeals, both locally and to the Judicial Committee of the Privy Council, and subsequently with regard to the presentation of petitions for mercy to the Governor-General. A stay was granted to condemned men in this period while the Commission of Enquiry sat. That period of constraint ended after the Report was published in June of 1975.

Subsequently what can only be described as a steady escalation of violence took place in the community at large, some of which was due to the prevailing political tension between the supporters of the two major political parties. Further Commissions of Enquiry were set up to probe various incidents: as for example that of the Orange Street fire of 19th May, 1976 (The Small Commission). Eventually Government found it necessary to declare on 19th June, 1976 a State of Emergency (which lasted until 6th June, 1977) in its efforts to contain crime. This action, at the start anyway, commanded the support of both the major political parties. This reflected the public's anxiety over the growth of violent crime and its determination to eradicate it if possible.

The Special Select Committee on national security reported to the House of Representatives on the 15th November, 1977. It recommended "to the Honourable House of Representatives and the Senate that there be no change in the existing laws relating to capital punishment at this time". Some few of its members indicated that they would have preferred to have a careful review of the question as to whether capital punishment should or should not be continued and as to its deterrent effect (if any) in Jamaica.

The Committee was again invited to review the Ministry Paper and by a large majority re-affirmed its previous recommendation that there be no change in the existing laws relating to capital punishment at this time. Their Second Report to this effect was laid

in the House of Representatives on or about the 18th October, 1978. It was accompanied on this occasion by a minority report from the Minister of Justice, complaining that the Ministry Paper had asked for a study to be made of the usefulness or appropriateness of the death penalty and that this had not been done. He added that in his view during the serious deliberations of a Parliamentary Committee on the subject of capital punishment all persons awaiting their execution should have their sentences commuted to life imprisonment. He also indicated his own opposition to capital punishment, and added that if his view had prevailed the Committee would have proceeded upon the study he advocated, and also have recommended to the Governor-General the exercise of the prerogative of mercy towards those presently under sentence of death. The Minister's view was not that of the Minister of National Security. It is also clear that in this period the Governor-General was pressing for a clear decision on this issue, see paragraph 7 of the Minutes of the National Security Committee of the 18th October, 1978 laid on the Table of the House along with their second report.

On the 30th January, 1979, the Minutes of the Jamaica House of Representatives show that its members debated the issue of capital punishment on a "free vote" of its members. An amendment to suspend capital punishment pending a detailed study of its effect was defeated (by 23 votes to 20) and a motion for its retention carried (by 24 votes to 19). The House however passed without division the following resolution:-

" WHEREAS for some considerable time national consideration has been given to whether capital punishment should continue:

AND WHEREAS during that period of time many persons have been awaiting execution following the completion of all steps for legal review of sentence to death:

BE IT RESOLVED that this Honourable House recommends to the Governor-General and Privy Council that the cases of all persons now awaiting execution be reviewed".

It would have been possible for the House to act on the suggestion of general amnesty contained in the minority report of the Minister of Justice. It did not. All that was asked for was a review of the cases of all persons now awaiting execution.

Examination of the Minutes shows that very distinguished figures in public life had divided opinions on the matter: the Prime Minister voted for abolition of capital punishment, while his brother voted for its retention.

The Minutes of the Senate of Jamaica of the 9th February, 1979, when a similar debate took place in the Senate show that a rather different result was reached: though there was a series of amendments and amendments to amendments, the Senate ultimately voted for suspension of the death penalty for a period of eighteen months, and for the carrying out of detailed study, assessment and report on the sociological and psychological effect of capital punishment in today's Jamaican Society. The Minister of Justice, a Senator, had been able to carry the Senate, but had lost in the House of Representatives.

I should add that the actual Reports and Minutes of the House and Senate were put in by Mr Langrin, appearing for the Attorney General, by consent, during the course of the argument before us, and that the material tendered in the Constitutional Court consisted largely of Newspaper accounts of some of these debates, together with the Hansard Report of some of the speeches, including that of the Prime Minister, on the 30th January, 1979.

The affidavits of the applicants refer to the history of this debate on capital punishment: it is not clear how much they knew of what was actually taking place in the debates, but while appreciating the anxiety with which they followed it and the hope which it may have inspired in them to know that such a debate was taking place, I have seen no material to support the contention that any person led them reasonably to believe or hope that their executions would not take place. All that was being debated in the early stages was a proposal for "sounding" the attitude of the public towards the abolition or retention of capital punishment. It was not until the 30th January, 1979

that the straight issue of abolition or retention was debated, and the earlier Reports from the House Committee on National Security were all clearly supporting the retention of capital punishment, though that was not the issue that had been referred to it in the Ministry Paper No.19/1977. All that the applicants can rely on is that during this period of time their appeals through the judicial process had been exhausted, and so too their applications or petitions for mercy; and that while the debate was pursuing its leisurely way through Parliament they were not informed of the date set for their execution. There was no element of being lulled into a false sense of security, such as may have obtained in a case such as Kakis v. Government of the Republic of Cyprus (1978) 2 All E.R. 634; (1978) 1 W.L.R. 779 (H.L.). The applicants were "at risk" and knew it; though they may have hoped desperately that the debate might be resolved in their favour they may equally have been aware of the vast escalation of crime outside, and the hardening of public opinion against anything like abolition of capital punishment at this time. On the merits of their own individual cases to any favourable consideration they have wisely chosen to be silent.

It appears that the Governor-General decided to proceed to fix the dates of the executions of the applicants on the basis of the free vote in the House of Representatives on the 30th January, 1979, rather than on the decision in the Senate on the 9th February, 1979.

It also appears that pending the Parliamentary debate which began in May, 1977 and ended in January or February, 1979, though the Privy Council considered the fate of those who had been condemned and in fact reprieved some of them, no warrants for the execution of those who were not reprieved were issued. Your Lordships have found that this restraint was exercised by the Governor-General in view of the Parliamentary debate then taking place and that it was both reasonable and prudent: I agree, and I do not accept the argument that there is nothing to connect the one with the other. Further, the fact that some of their number had in fact been reprieved in this period,

while they had not, must have clearly brought home to the applicants their true position, and in fact it appears that they were told that the Privy Council had rejected their petitions for mercy.

Did this delay constitute "torture, or inhuman or degrading punishment or other treatment?" within the meaning of Section 17 of the Constitution?

/which

The physical conditions under the applicants were held are prescribed by The Offences Against the Person Act and The Prison Act and the regulations made thereunder, all of which fall within the existing laws preservation of Section 26(8) and also within Section 17(2) of the Constitution. There is no complaint made in respect to any of these physical conditions.

Section 90 of the Constitution provides in sub-section (1) (b) that "The Governor-General may, in her Majesty's name and on her Majesty's behalf -

- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for such an offence".

Though it is argued that such a respite must be communicated, there is nothing in the Constitution that so requires, and it appears to me that the applicants have in fact enjoyed a respite within the meaning of that section.

Can they complain that it was too extended? Counsel for one of the applicants has in fact argued that no such respite ought to have been given, and that the Governor-General should have issued his warrant for their execution long before, regardless of the Parliamentary debate. I agree with your Lordships in the views expressed rejecting this argument.

In deFreitas v. Benny (1976) A.C. 239, where a somewhat similar application was made under the provisions of the Constitution of Trinidad and Tobago, Lord Diplock delivering the judgment of the Judicial Committee of the Privy Council, commented at pages 247 to 248 on the nature of the royal prerogative of mercy in Trinidad and

Tobago as compared with what it was in England at common law. He observed:

"Mercy is not the subject of legal rights. It begins where legal rights end. A convicted person has no legal right even to have his case considered by the Home Secretary in connection with the exercise of the prerogative of mercy. In tendering his advice to the sovereign the Home Secretary is doing something that is often cited as the exemplar of a purely discretionary act as contrasted with the exercise of a quasi-judicial function".

As I understand it the exercise of the prerogative of mercy in Jamaica is similar; it is discretionary in every respect, is not the subject of legal rights, and even if it were possible to canvass the question as to whether the respite, or the delay in issuing the warrant for execution, (whichever way one cares to look at it) was too long, I am in agreement with the views expressed by Zacca, Acting President and Melville J.A. that the facts in these cases do not fall within the dictum of Lord Diplock in the case of Abbott v. Attorney General of Trinidad and Tobago (1979) 1 W.L.R. 1342 at 1348 B-D, which has already been set out in full in your Lordship's judgments.

Even if one accepted the dictum in the American case of The People v. Anderson, supra at page 649:-

"The cruelty of capital punishment lies not only in the execution itself and the pain incident thereto, but also in the dehumanizing effects of the lengthy imprisonment prior to execution during which the judicial and administrative procedures essential to due process of law are carried out".

and at page 650:-

"An appellant's insistence on receiving the benefits of appellate review of the judgment condemning him to death does not render the lengthy period of impending execution any less torturous.....".

we could not, as the Constitution of Jamaica now stands proceed to the further conclusion that the execution of the applicants now would be within the provisions of Section 17(1) "torture, or inhuman or degrading punishment or other treatment".

The real complaint, if any, of the applicants is that (a) Parliament did not abolish the death penalty, or even suspend it, and (b) that the Governor-General, acting on the recommendation of the Privy Council did not grant them a reprieve when the Parliamentary debate concluded. Neither body is answerable in this case to the applicants or to the Constitutional Court, and the applicants are not entitled to the relief that they seek.



ORDER OF APPEAL

IN THE COURT OF APPEAL OF JAMAICA  
CIVIL APPEAL NO.28 OF 1980

BETWEEN	NOEL RILEY	}	
	ANTHONY FORBES	}	
	CLIFTON IRVING	}	APPLICANTS/APELLANTS
	ELIJAH BECKFORD	}	
	ERROL MILLER	}	
AND	THE ATTORNEY GENERAL	}	
	THE SUPERINTENDENT OF	}	RESPONDENTS
	PRISONS - SAINT CATHERINE	}	
	DISTRICT PRISON	)	

CORAM: THE HONOURABLE MR JUSTICE ZACCA; THE HONOURABLE JUSTICE MELVILLE;  
THE HONOURABLE CARBERRY (J.A.A.)

HEARING 16TH to 24TH JULY, 1980

UPON Hearing Mr Roald Henriques and Mr Dennis Daly of Counsel for the Applicants/Appellants and Mr Rance Langrin of Counsel for the first Respondent and H. Fraser of Counsel for the second named Respondent

IT IS ORDERED ~~that the~~ said Application be dismissed

No Order as to Costs.

BY THE COURT

sgd. S. Alcott  
Act. REGISTRAR

FILED BY L. JACK HINES of 31½ Olivier Place, Kingston, Attorney-at-Law  
for and on behalf of the Applicants.

# CAPITAL PUNISHMENT

Continued from Page 1

Minister of National Security the Hon. Thompson citing the state of crime and examples of gun violence.

As we face up to our responsibilities stop this indecision now and make up our mind in accordance with the will of the people," Mr. Thompson said, hitting out at the "bleeding hearts."

Prime Minister Manley followed in the footsteps of the Hon. Eric Bell, and the Hon. Percival Minott in support of the amendment suspending of the death sentence.

Mr. Manley said it was the Government's view that revenge could not be the motive in determining the system of punishment but it had been decided to put the matter to a conscience vote for the reasons there had been no scientific study in Jamaica on the deterrent effect of capital punishment and "less than conclusive evidence" from the outside world on the issue.

Mr. Small cited the possibility of error in the judicial system, citing the case of a man named White who had been executed for the murder of a child in Harbour View but later another person confessed to have committed the murder. He also cited the controversial Michael Bernard case.

From the Opposition benches Dr. Herbert Eldemire spoke against the amendment and said that there was no question in his mind that while the death penalty was not the total answer it was a deterrent in many ways. Dr. Eldemire was not present however when the final vote was taken.

Government back-bencher Dr. Percival Minott abstained in both votes. The second debate was on the following motion put by Mr. Small:

"Whereas for some considerable time national consideration has been given to whether capital punishment should continue;

"And whereas during that period of time many persons have been awaiting execution following the completion of all steps for legal review of sentence of death;


"BE it resolved that this Honourable House recommends to the Governor General and Privy Council that the cases of all persons now awaiting execution be reviewed."

Mr. Small said there were now 79 persons on death row, some for as long as four years. In all the circumstances since the Parliament had given them some sense of hope it would be callous to proceed with a mass execution with recommending a review of their cases.

Mr. Thompson spoke in support of this motion which was passed unanimously.

(112)

EXHIBITION



and Age

re BECKFORD ESTABLISH

KINGSTON, JAMAICA WEDNESDAY

## Retain capital punishment

But review of all cases to be recommended

A FREE "CONSCIENCE" vote of 24 to 19 the House of Representatives voted last night for the retention of capital punishment but resolved later by a narrow vote to recommend a review of all cases now awaiting execution on death row.

Discipline was relaxed for the historic vote on a motion deriving from a committee report recommending that the death sentence be retained and a report from the Minister of Justice expressing a contrary view.

Their view was adopted by Oppositionists Gilmour, whose amendment suspending of the death sentence if a scientific study is done, was defeated by a vote of 25 to 20.

Minister Michael Manley was supported by 15 Government members who rejected Dr. Gilmour's amendment, along with other Opposition members present at the time.

A motion put to the House by Minister of Home Affairs the Hon. Kebley was followed:

AS the House Committee on Home Affairs has made the following recommendation in relation to Capital Punishment: "That the Special Committee of the House of Representatives on National Security having examined Ministry Paper 19 on Capital Punishment, recommends to the House of Representatives and the Government that there be no change in the existing law on capital punishment and that the Minister of Justice be asked to report on the committee's recommendation to the House of Representatives in respect of

capital punishment should be determined on the free vote of Parliamentarians as a matter of conscience;

"Be it resolved that capital punishment be retained."

Mr. Munn made clear that no hangings had taken place while Parliament looked at the whole question of capital punishment in committee study since 1977.

Dr. Gilmour quoted from the minority report put in by Minister of Justice the Hon. Carl Rattray to the effect that no study had ever been made in Jamaica of the usefulness or appropriateness of the death penalty in the penal system and that it was necessary for such study to be done.

Since the basic study had not been done, Dr. Gilmour said, the resolution had been brought for a decision on a basis of emotion. She thus moved the amendment calling for a suspension of the death penalty "pending a detailed study, assessment, and a report on the sociological and psychological effect of capital punishment in Jamaica."

The contrary view was put more forcefully.

(Cont'd. on Page 16 Col. 7)

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JANUARY 1979

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EXHIBIT B

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TWENTY-TWO PAGES

## Group named to look into hanging

JUSTICE MINISTER Carl Rattray, yesterday announced the setting up of a committee to look into the issue of capital punishment.

The committee will "consider and report within a period of 18 months whether liability under the Criminal Law in Jamaica to suffer death as a penalty for murder should be abolished, limited or modified, and if so, to what extent, by what means and for how long, and under what conditions persons who would otherwise have been made to suffer capital punishment should be detained and what changes in the existing Law and the penal system would be required."

### Those appointed

Appointed chairman of the seven-member Committee is Mr. H. Aubrey Fraser, director of Legal Education, Council of Legal Education, Norman Manley Law School, University of the West Indies.

The other appointees to the committee are Mr. Frank Phipps, Q.C., Attorney-at-Law; Dr. Ruth Doorbar, Psychologist; Rev. C. Evans Bailey, Chairman of the Jamaica District of the Methodist Church; Dr. Vincent Williams, Psychiatrist; Mr. John Maxwell, Social Worker, Department of Sociology, University of the West Indies; and Mrs. Shirley Mayner-Burke, Editor of the Jamaica Journal, Institute of Jamaica.

The committee will be assisted in its work by a research team to be headed by Mr. Delroy Chuck, lecturer in Law and course director in Criminology, Faculty of Law, University of the West Indies.

In announcing the setting up of the committee, the Minister said the members have been appointed in their personal capacities and not as representatives of any organization.

The committee will embark upon its work at an early date, an API release said.

There was no official intimation yesterday that the naming of the committee by the Minister of Justice was related to the current controversy over capital punishment.

The controversy has flared since the Privy Council last month directed that four condemned murderers should be hanged between May 29 and May 30.

Before the men were executed, however, on May 28, a motion claiming that the execution of the men would be illegal and unconstitutional was filed in the Supreme Court and the Privy Council granted a stay of execution for the motion to be heard.

The motion was struck out by the Supreme Court on June 1 as the Court found it had been improperly filed and was without merit. Another motion was filed on Monday and this is expected to be heard some time next week.

The question of capital punishment has been raised in Parliament, where on January 30 the House of Representatives decided 24 to 19 to retain capital punishment but recommended unanimously a review of all cases on death row.

In the same week, on February 2, the Minister of Justice, Mr. Rattray, introduced in the Senate a motion seeking the suspension of the death penalty pending a study of its effect.

The Speaker - Mr Manley

Mr Manley: Mr Speaker, this debate has produced referred to people like ~~as~~, Oscar Wilde, and that of course, is sufficient cause for me to comment, perhaps, but it is in a much more profound way, unique in the sense that I think it is only the second time in memory when a matter is going to <sup>/be</sup> addressed in terms of a conscience vote. I think the first time was when there was a discussion of ganja. On that occasion the debate didn't end. This will be unique in the sense that it is a conscience vote and the debate is going to end and have a result.

I would like if I may, to give what is a personal comment, and that is I think that all of us in this House are very conscious in discussing this matter, trying to ~~make~~ up our minds what is the right thing to do. People will look at this matter in a very personal and profound way; they are all very conscious of the problems of our Security Forces, deeply conscious of the fact that they are at risk in their professional duties, and we are very conscious of the debt that we owe to them for the work that they do to make the rest of us safe.

I think that every member of this House will be very profound in that. I know that all of us are equally conscious of the personal tragedies that have come as a consequence of the crimes, of violence, conscious of the sort of people to whom the Member for West Hanover referred to in his moving comments about those who weep, and we are all very conscious of that.

In addressing this subject I find myself in a somewhat unusual situation in the sense that the kind of Government processes that would need a conscience vote on a matter of this kind rather than a Government taking a firm and leading position, in my own personal experience is very unusual, not my own style, and it may well be this could be the first and last time I am personally involved in such a performance. It is just not my style, and I hope to trespass upon the patience of this House and spend a little time in explaining how the government has perceived the difficulty of this case, and why from using that perception it was decided that this matter be treated as a matter of <sup>/a</sup> conscience vote. I think that explanation is due to the House and the country.

Before addressing the main issue I would like, if I may, to distinguish two categories of things that I think are clear to everybody and I only address them because I thought I had detected one or two speeches in which there may have

been less than absolute clarity in distinction between the issues that are involved, and I refer to the distinction between capital punishment as a punishment provided by law, a thing in the abstract, and the question of the seventy-nine people who are currently on Death Row.

I feel personally that these people need to be distinguished very sharply and very clearly, because whatever the view that this House is agreed on in respect of capital punishment in the abstract, a critical element in the system, there is an unusual problem to deal with respect to the seventy-nine people. I have absolutely no doubt in my mind that for people to be operating in a situation where having been found guilty, having exhausted the processes for appeal that are available in the system, having come to the end of that process, not to find capital punishment awaiting them but rather to find capital punishment suspended, thereby to light up a whole new set of psychological and moral circumstances for them, they are now suddenly to reverse them because there might be a decision in favour of capital punishment would be I think, a callous act, an arbitrary act. It appears to me, in my conscience, an act that might well be adjudged to amount to unusually cruel and brutal punishment even if one took a different view of capital punishment.

That is why, for example, in any case, if it comes to the point that I will be relevant, I personally will vote in favour of asking the committee to look at it again.

Now let us come to the central issue, which is capital punishment itself. I believe sir, and I would just like to make a comment on the context within which all this arises. All societies have crime, all societies have violent crimes, all societies face the tragedy and the problem of crime that results in the taking of life, so all societies have to deal with this.

I suggest Mr Speaker, among other things that a society defines itself and the perception of itself by a system of punishment, that the <sup>system</sup> of punishment in a society is both a very profound gauge of the society, Sir,

and the state of humanness and perhaps a particular indication of development. It is also a means of perception of a society of itself, how it can operate what it thinks it needs to protect itself and therefore feels secure with itself.

So that I know that in my own case, Sir, in approaching the question of capital punishment I have to keep very alive in my own mind this question of the totality of the techniques of punishment, and it must be highly relevant, for example, that even those who take a very strong view of capital punishment, those who take the danger of exposure of loved ones to danger, there must be some significance in the fact that there is no Member of this House who would even resort to some of the things that one has seen in recent history, like for example, clubbing people to death because they felt to be guilty of crime. I think one must be very conscious in weighing all these issues of this question, that the more humane is the system of punishment that you think you can afford, the more humane is the society itself, and the more humane the society's perception of itself.

This is the point that will move everybody, but there is a lot of personal testament involved in this debate.

Now, where capital punishment itself is concerned, certainly when the Government looked at this, we were clear of the view that in this day and age revenge cannot be the emotive force in determining a system of punishment, and therefore, revenge with all due respects, cannot be the reason for either having capital punishment or not having capital punishment, and I want to say very clearly, everybody knows the state of their own emotions, but this Government does not accept the proposition that revenge has any place in the system of this country.

What therefore is it, why are we in this difficulty about what to do about it? It is, for one, very clear, but very difficult reason and it is this, is capital punishment a deterrent or not? That is the heart and crux of the matter.

Now, I want to just spend a moment, if you will bear with me, Mr Speaker, in analysing exactly what it is that we think creates the problem.

Mr Michael Manely (contd): If you take the question of Jamaica today and the state of anxiety in Jamaica today and the world, today, as has been rightly said, there has been no serious study from a scientific point of view of what would be the role of capital punishment judged from the point of view of what is it or is it not a 'day-to-day' occurrence. There is no

exhaustive analysis. It is an extraordinarily difficult thing to do and in a moment I will say what I personally feel about the amendment, so just bear with me.

Now, when we look at the outside world our impression is that there is no clear body of evidence that has emerged with decisive view one way or the other about this matter, not that one has not tried to find out. Of course, there are people who feel very strongly and argue persuasively that capital punishment is not a deterrent and they argue from that point of view but there are experts who feel this is the simplest thing to do and it is not as simple as all that, so our impression<sup>/is</sup> that if you look at the outside world, so far as the evidences, and the evidence tends to be - let me put it as modestly as this - less than conclusive, that is the impression we have.

Now, what turns, therefore, on it, say, in my mind, there is a serious problem of crime about which we are all desperately worried. There are very deep feelings about it and you have a situation where when you try to examine the evidence that is available now as effectively as you can, the Government finds it cannot put its hands on a body of evidence that seems to give it a clear view, aye or nay, which itself is a deterrent or not and one is in this dilemma that some people have very strongly, but of necessity feel that it is a deterrent and feel very strongly, therefore, that if you were to abolish the death penalty, it in fact, would cost lives that otherwise would not be taken. Others look at it equally subjectively, unfortunately, and take the opposite view and that would not lead to an increase in crime. Therefore, to abolish would not cost more lives but would, in fact cost the lives of those you would have cost live. Theoretically this is the problem and this is how it is perceived and it is for those reasons that even the amendment of the Opposition which has been treated with respect and thought in the short time out there as an important contribution to their portion of the debate has been put on the conscience vote.

Let me finish with what is my personal view. As I said already, whatever is the view of capital punishment as a permanent fixture of our system of punishment and whatever might be the view of the amendment, I intended if it is necessary, and I imagine it will have to be necessary, to vote for the amendment that asks the Privy Council to look again. I am impelled by conscience and a sense of duty to vote that way.

Secondly, when we look at the question of capital punishment itself, I

deterrent and if it is the view of a person that it is not one effective deterrent, then one has in my humble view, to look at the consequential question of judicial error, and if it is not the belief that that deterrent is so effective as to override the consideration of error, then you must give the benefit of the doubt. Also if one is not convinced that capital punishment is not a deterrent, I have to cast my vote for the humanity of the society and I must give the benefit of the doubt in my mind to that. So that if that is the vote, that is how I am going to vote.

Finally, insofar as the amendment is concerned, again let me say how I am going to vote. I intend to vote for the amendment for the reason that if I feel, to begin with, that there is sufficient doubt about capital punishment as a deterrent to warrant in my mind the protection of other principles, the primacy of other principles, that that is conclusive of the matter and since the study might show that it is not a deterrent, then I find it logically necessary and compelling that I must vote for suspending capital punishment during the period of study.

Let me say, with the deepest sense of concern for those who suffer, for those who have suffered, for the Police Force, I have the deepest gratitude to those people like the Home Guard and the profoundest respect and I mean this with all the sincerity at my command, for those on either side of the House who feel that this judgment is wrong and feel that it is in the interest of crime that they should vote another way. I totally respect and understand but I shall be voting in the manner that I have indicated on all three matters.

The Speaker: It seems to me that you can wind up now.

Mr Munn: Mr Speaker in closing, Sir, I just want to re-emphasise that this is a free vote of the conscience of all Members and it has been well debated. People have made their points for and against and I would now respectfully ask you to put the Motion.

The Speaker: The first question that we have to deal with is the amendment. The amendment proposed is that the word "retained" in Resolution be deleted and the following words added "suspending a detailed study, assessment and report of the sociological and psychological effect of Capital Punishment in today's Jamaican society. The Resolution then is:-

BE IT RESOLVED that Capital Punishment be suspended  
pending a detailed study, assessment and report of the



The Speaker: May I make it abundantly clear that it is the amendment to the Resolution that you are voting on.  
follows:

Ayes - Messrs. Bell, Ralph Brown, Cooke, Dunkley, Duncan, Gallimore, Gallimore, Gilmour, Kirby, Leaky, Lewis, Michael Manley, Patterson, Powell, Ramtallie, Rochester, Ross, Small, Spaulding, Stephenson, Vaz ----- 20

Noes - Messrs. Allan, Birch, M. Brown, V. Brown, Dewar, Gillette, Jones, King, Douglas Manley, McGann, Lawson, Mrs McGregor, Messrs. Munn, Neita, Pagon, Rhodd, Robinson, Robotham, Mrs Thompson, Messrs. D. Thompson, J. Thompson, Cheddesingh--- 23

Declined to vote - Dr Minott ----- 1

ends. Be it resolved that capital punishment be retained in other words, that capital punishment be continued.

On the motion being put, the House divided as follows:

Ayes: Mr Allen, Mr Birch, Mr Mel Brown, Mr Vinroy Brown, Mr Dewar, Mr Cheddesingh, Mr Gillette, Mr Jones, Dr King, Mr Lawson, Dr Manley, Mr Rhodd, Revd. Robinson, Dr Robotham, Mrs Thompson, Mr D. Thompson, Mr K. Thompson, Mr Rochester

Noes: Mr Bell, Mr Ralph Brown, Mr Cooke, Mr Duncan, Mr Eldemire, Dr. Gallimore, Dr Gilmour, Mr Kirby, Mr Leaky, Mr Lewis, Mr Manley, Mr Patterson, Mr Powell, Mr Ramtallie, Mr Ross, Mr Small, Mr Spauldings, Mr Stephenson, Mr Vaz

Decline to vote: Dr Minott

The Speaker: The results of the division is as follows: Ayes: 24,

Noes: 19, Decline to vote: 1

Resolution agreed.

Mr Munn: May I vote to move suspension of the Standing Orders to allow motion, which was moved by the Minister of Youth and Sports to be put.

AGREED:

Mr Small: The Resolution reads:

that period of time many persons have been awaiting execution following the completion of all steps for legal review of the sentence of death:

BE IT RESOLVED that this Honourable House recommends to the Governor-General and Privy Council that the cases of all persons now awaiting execution reviewed.

Mr Speaker, this resolution is consequential upon what has just taken place and one which deserves very, very careful attention by all members of the House with regard to the particular way in which they voted on the previous resolution. I do not intend to speak for any length of time on this resolution because I believe that the issue to be dealt with are very clear issues and those properly adverted to by the Hon. Prime Minister in his contribution earlier.

The House has just voted for the retention of capital punishment and against a resolution which called for a study to be undertaken during which time capital punishment would be suspended. But during the last three years when no execution has taken place and there were no capital punishment in this country, a number of people who have been through all the due processes of the law have been awaiting a decision as to what would happen to them. As the Prime Minister pointed out, the people have exhausted their right to appeal and they have built up a new perceptive of hope and a new vision of what would be possible for them because of the policy decision that had been taken to suspend capital punishment while the House deliberated on what should be done. We are told that there is a total of 79 people now waiting the execution of a sentence that had been passed on them, a sentence that has not been committed by the Privy Council.

The information that I have indicated that there are people who have been on Death Row for as long as four years. That information came as a result of a check that was made only this morning. Mr Speaker, in all the circumstances, having regard to the fact that by our act in studying the matter, it is by official a sense of hope, a sense of expectancy that they would be able to carry on living. I believe that we owe them an obligation; we owe the society an obligation that a new look be taken at these cases. As the Prime Minister said, it would be callous in the circumstances to have a mass execution of 79 people without regard to the circumstances in which this expectancy for life had been given. It would be an arbitrary act, the Prime Minister said, a wilful act and having regard to the principles enshrined in our Constitution that we do not inflict any cruel, inhumane punishment on any individual, in

the cases of all persons who are now awaiting the death sentence to be reviewed.

Mr Speaker, if we fail to take this action I believe that it could be said that we have allowed the law to carry out its course in a vindictive way. These 79 people are to be executed at this time, but let us pause and consider the social effect that that is going to have, the psychological effect on the society; the psychological effect it is going to have on those inside the prison whom we cause to expect that something would have been done. Let us free pause and think of the effect it will have on the young people in the society, bearing in mind that most of these people who are awaiting there with a sense of expectancy are young people.

I would therefore, Mr Speaker, without further ado, urge all Members of the House to support this resolution unanimously because whatever we may feel about the previous resolution, whatever we feel about the necessity for there to be certainty in the law, we should also remember the biblical injunction to temper with mercy.

Dr Gallimore: I merely rise to second the resolution, sir, in keeping with the way I have spoken in the other debate. I will not be making any comment on this particular resolution but I would just like you to grant me a little bit of latitude to say that today I am getting the feeling that Parliament is coming of age. I am thankful that we had this exercise today.

The Prime Minister indicated that this was maybe the first we are really coming to vote on a matter of this nature on a purely conscience basis and I say to him that although we have lost (laughter) although he and I have lost, I appeal to him that in future some matters of national importance where collective decision of both Government and Opposition can come from conscience that this should be done.

I think today, sir, is a very important day in Jamaica. Our representative on the committee will speak on the matter but I want to say in seconding this motion that I could not with conscience not vote for this motion when it is put.

Mr Speaker: Mr Bell, I believe you are administering this closer?

Mr Small: Mr Speaker, I wish to commend the Members of the House who have spoken against the previous resolution or voted in favour of the previous resolution but who appreciate that humanity and justice require that we should pass this resolution unanimously. I sincerely hope that this will be an occasion which all

thought will be given by this House to carrying forward the spirit of the current resolution to ensure that a careful review process involving scientific understanding of what we are dealing with is instituted without delay.

The Speaker: The question before the House is, "BE IT RESOLVED that this Honourable House recommend to the Governor-General and Privy Council that the case of all persons now awaiting execution be reviewed.

(Put to the House and agreed to).

#### THE ADJOURNMENT

Mr Munn: Mr Speaker, the anticipated work next week, Sir, Question 30, standing in the name of the Minister of Housing; Question.21, Motion No.2 the two other motions introduced by the Minister of Finance, the Bauxite Levy: Motions standing in.

This is the exhibit marked "A" referred to in the Affidavit of  
Neville Haig Smith.

SWORN to at Supreme Court  
in the parish of Kingston  
this 13th day of June, 1979  
before me:

sgd. Joseph D. Carey  
JUSTICE OF THE PEACE  
FOR THE PARISH OF KINGSTON

sgd. Neville Haig Smith

KINGSTON LEGAL AID CLINIC LTD

131 Tower Street  
KINGSTON.

OUR REF: R/JF/ab/APL  
TELEPHONE: 92-25012

17th November, 1978

Mr Neville Smith  
Secretary of the Governor-General,  
King's House  
Hope Road  
Kingston 10

Dear Mr Smith

Re: R.V. Noel Riley and Anthony Forbes - Murder

Further to our telephone conversation of this week, I wish to formally inform you that the Petition for Special Leave to appeal to the Judicial Committee of the Privy Council was refused in July, 1978. The Solicitors in England who handled this matter for us wrote to say that "Their Lordships were particularly concerned about the common-law principle that Counsel at appeal should have had sufficient time to prepare this case but after considering the various Authorities they refused Leave of Appeal".

In October, 1978, the Kingston Legal Aid Clinic contacted the eminent lawyer who had represented Noel Riley at his trial, Mr Berthan Macaulay, Q.C., to prepare a petition of Mercy to His Excellency the Governor-General and his Privy Councillors. Mr Macaulay agreed to do so on receipt of the documents relevant to the case, including the Transcript of the trial, Written Judgement of the Court of Appeal, Petition which was lodged at the Privy Council and transcript of the proceedings in the Privy Council.

On the eighteenth of October, a letter was written by the Legal Aid Clinic to the Registrar of the Privy Council in England requesting a transcript of the proceedings before that body and Mr Macaulay supplied a covering letter which was posted along with our letter.

On November 1, the Legal Aid Clinic wrote to Mr Macaulay in confirmation of his undertaking to prepare the Petition and enclosing all of the documents requested except the Transcript of the proceedings in the Privy Council which had not been received.

Mr Macaulay has now written to us to state that he has received word that the request for the transcript has been passed on to

/the

## KINGSTON LEAGAL AID LIMITED

the firm Messrs Marton, Meredith & Company of London who made notes of the proceedings. Mr Macaulay states that as soon as this transcript is received, he will settle the Petition of Mercy on behalf of Noel Riley.

In the interim we have written to our Solicitors asking them to assist in the obtaining of this transcript from the London firm.

We intend then, to forward the Petition for Mercy on behalf of Noel Riley as soon as this can be done.

In the case of the co-defendant Anthony Forbes, we do not intend to pursue an appeal to the Privy Council in England.

I hope this serves to clarify the Legal position with regards to these two cases.

Copies of key items of correspondence in the Riley case, related to the sequence of events outlined above, are enclosed.

Your kind attention is appreciated.

Yours faithfully,

sgd. Jane E Ford.

Encl.

UNIVERSITY OF THE WEST INDIES  
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Mona, Kingston 7  
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17th January, 1980

MEDICAL REPORT ON  
Mr Noel Riley, age 23

Noel Riley was seen at the St Catherine District Prison jointly by Drs. F.W. Hickling and F. Knight on 14th August, 1979 for psychiatric evaluation, and specifically in order that some assessment might be made as to the extent to which his mental health has been affected by the de facto suspension of the death penalty, by postponements in carrying out the death penalty on him, by public debate on the matter of capital punishment, by recommendations in the Senate and House of Representatives and the setting up of a Committee to make recommendations about capital punishment. Mr Riley was seen alone. He said he understood that our interview with him was in connection with the state of his mental health.

Mr Riley said he was arrested in March 1974 and charged with murder. He was tried, convicted and sentenced to death in March, 1975, and had lost his appeal to the Jamaican Appeal Court and the English Privy Council. He had been in the death cell from 24th April, 1979.

He claimed that he was not told that the Privy Council had rejected his appeal and said that he learned of it only through his death warrant being read to him on 24th April, 1979 when his execution date was set for 29th April. He described how he was left overnight in the death cell. The following morning he was weighed and measured. Later that day he was told that a stay of execution had been granted as his lawyers had filed a constitutional motion. He felt relief, but this relief was limited since:

<sup>1</sup>"everything wasn't true" (meaning that the outcome was still uncertain).

He expressed the opinion that when there is a delay in carrying out the death sentence:

<sup>2</sup>"the length of time (the prisoner) is inside the place put him under more and more consideration".



(2) Noel Riley

Questioned as to whether he had heard of the debate in Parliament on the death penalty, he said he had. He knew that (the Lower House of) Parliament had voted for suspension of the death penalty, and said he had newspaper clippings on the subject. He said that when:

<sup>3</sup>"One House said to retain capital punishment and the other said to abolish it, this really put me in a quandary because I see I can't trust anybody, .... I don't know who to rely on, I don't know who to trust.... Nobody in the Senate saying anything - make me feel depressed, as if I am spiritless - sometimes I'm really under a strain. Feel like giving up everything - I'm no longer concerned about myself - I usually take pride in myself".

He commented that:

<sup>4</sup>"It really give me a hope and then take it back from me" and

<sup>5</sup>".... just come like a punishment to keep me there so long and yet have intention all the time to execute me".

He felt this was being done:

<sup>6</sup>"because of the kind of person I'm charged for: his financial position, his political affiliation...".

Clinically Mr Riley was normal in his appearance. He is an intelligent person with a manner that was at times legalistic.

We found that he showed features of depression and anxiety (quote 1). This was manifest in his thought content (quotes 2, 3) rather than in his manner. He is obviously aware of the Parliamentary debates and he feels that these and other discussions, and the opposing recommendations have an effect on him (quote 3). He felt he was being deliberately punished (quote 5, 6) and there is evidence that he has been feeling hope and despair (quote 4).

Opinion: It is our opinion that Noel Riley shows features of anxiety and of a depressive reaction, and that these have arisen in relation to the debates on capital punishment in the Senate and House of Representatives and the experience of being prepared for execution and having a stay of execution announced to him.

sgd. F.W. Hickling, MRCPsy.

sgd. F. Knight, MRCPsyc.

UNIVERSITY OF THE WEST INDIES  
Department of Psychiatry

17th January, 1980

MEDICAL REPORT ON  
Mr Anthony Forbes age 23

Mr Anthony Forbes was seen at the St Catherine District Prison jointly by Drs F.W. Hickling and F. Knight on 14th August, 1979, for psychiatric evaluation, and specifically in order that an assessment might be made as to the extent to which his mental health had been affected by delay in having the death penalty carried out on him by feelings of uncertainty as to when he might be executed, by public debate and recommendations in the House of Representatives on the matter of capital punishment; and the extent to which he was affected by hope engendered by the de facto suspension of the death penalty and the setting up of a committee to make recommendations on the matter of capital punishment. Mr Forbes was seen alone. He understood that the purpose of the interview was to evaluate the state of his mental health.

Mr Forbes said that he was arrested and charged with murder in March, 1974. He was convicted and sentenced to death in March, 1975. He said he was told that his barrister had said he could not argue his case in the Appeal Court and he was told in 1977 that there were no grounds for taking it to the English Privy Council. He said he was put into the death cell on 24th

(2) Mr Anthony Forbes

May 1979, that his death warrant was read to him and the date of execution set for 29th May. He remained in the death cell until 5th June, 1979, when the date for his execution was postponed.

Asked whether he was aware of public discussions about the death penalty, Mr Forbes said:

<sup>1</sup>"I may get a paper and read a paper and some people say they can't rehabilitate a dead man. People have all different kind of view".

His first awareness of a committee studying the question of capital punishment was in relation to the Barnett Commission, concerning which he said:

<sup>2</sup>"I see execution still exercise and I see they kill four man" and that "those people still execute"

despite what he considered to be contrary recommendations of that committee.

He said he believed that:

<sup>3</sup>"it is several study go on"

but he was unable to say what effect this had on him.

With regard to more recent events:

<sup>4</sup>"I get to understand that a committee is considering the matter of a deterrent to capital punishment"

and he was aware that the committee had started

<sup>5</sup>"I believe.... around April to June of this year".

(3) Mr Anthony Forbes

Asked whether he knew about resolutions passed in the House of Representatives, Mr Forbes said he had read about:

<sup>6</sup>".... the Senate voting" and that it was decided

<sup>7</sup>"executions must go on until come time".

Here he expressed his regret at not being able

<sup>8</sup>"... to explain more clearly to you".

Concerning his own feelings in the period since 1977 (when the Minister of Justice had recommended an enquiry into whether or not capital punishment should be retained) he said he felt:

<sup>9</sup>"that they could carry out the snntence... any time".

He also referred to

<sup>10</sup>".... the long sufferation - the day you wake up one same environment .... Nothing really to keep me - keep up my feelings....".

He considered that:

<sup>11</sup>"...the mental strain have a lot to do with it, but I can't really explain it....".

Among Mr Forbes' preoccupation were that

<sup>12</sup>"....I never get any justice... in my youthful days no opportunity to express myself"

and that

<sup>13</sup>".... I get no justice in Court... I have no knowledge of what they convict me of".

(4) Mr Anthony Forbes

Clinically, Mr Forbes' appearance was normal.

There was no evidence of depression in his appearance or his manner, but he did manifest a rather paranoid and aggrieved attitude (quotes 12 & 13).

We found him to be a man of below average intelligence and not very articulate (of which he himself was aware ref: quotes 8, 11).

In our examination of Mr Forbes we did find evidence of depressive reaction (quotes 10, 11) and of a feeling of anxiety and uncertainty (quote 9) which it is reasonable to relate to the delay in carrying out the death penalty on him. He did show an interest in and an awareness of public discussion (quote 1), Parliamentary debate (quote 6) and of recommendations and decisions (quotes 6, 7) and events related to discussions on the death penalty (quotes, 2, 3, 4, 5)  
Opinion: It is <sup>our</sup> ~~the~~ opinion, based on the foregoing, that

Anthony Forbes shows little evidence of having been adversely affected mentally by public discussion concerning the death penalty, but that the long delay in having the death sentence carried out on him has resulted in a moderate degree of depression, and his knowledge of the setting up of an enquiry to make recommendations about the death penalty has caused him to feel anxiety resulting from his uncertainty as to what will happen to him.

sgd. F.W. Hickling, MRCPsych.

sgd. Frank Knight, MRCPsych.

UNIVERSITY OF THE WEST INDIES  
Department of Psychiatry

17th January, 1980

MEDICAL REPORT ON  
Mr Clifton Irvine, age 24

Mr Clifton Irvine was seen at the St Catherine District Prison on 14th August, 1979, jointly by Drs F.W. Hickling and F. Knight for psychiatric evaluation, and specifically in order that an assessment might be made of the effect on his mental health of the de facto suspension of the death penalty and the stay of execution granted him, by public debate and resolutions in the House of Representatives and the Senate and the deliberations of the House Committee on capital punishment, Mr Irvine was seen alone.

He informed us that he had been arrested in February 1975 and charged with murder, and that he was convicted and sentenced to death on 22nd March, 1976. He said that an appeal against his conviction had been heard in the Jamaica Court of Appeal only. He had not had the experience of being in the death cell, but he had had his death warrant read to him. An execution date had been set for May 1978 but he had been granted a stay of execution.

Asked what his feelings were about being in the condemned block since his sentencing, Mr Irvine said he felt:

<sup>1</sup>"... at times way out of your mind like if you're in a lost world. I feel some amount of depression .....the surroundings kind of break down the mentality... get a complete upset of your nerves".

(2) Mr Clifton Irvine

With regard to his circumstances he felt as if:

<sup>2</sup>"...don't really in a safe condition - the mind cannot rest at peace... foot can move any time... death can come any time".

Concerning the debate in the House the discussion and resolutions on capital punishment he said:

<sup>3</sup>"I look on it optimistic...The present wave of crime make it bad for condemned people (but) you have to stay optimistic".

He further commenced:

<sup>4</sup>"What I observe any time capital punishment go into the House, a lot of senseless crime a go on in the street and make people against abolition".

Mr Irvine was aware of the vote in the House that the death penalty should not be suspended and described his reaction to that as that he:

<sup>5</sup>"feel a bit shocking".

Mr Irvine said he depended on newspapers to keep informed on the subject of debate and decisions on capital punishment, but admitted that he was:

<sup>6</sup>"backward....not in a position to keep (abreast of events)".

Asked how it affected him when he heard of opposing views he said:

<sup>7</sup>"When time you hear anything good, you feel a way nice, but when you get bad news, you feel a way sad - shock...".

His feelings when he had his death warrant read to him were:

<sup>8</sup>"...shock - state of panic".

(3) Mr Clifton Irvine

He described himself as sleeping at night for some-times just one hour, and during his sleep he is liable to:

<sup>9</sup>"vision all kind of thing - that they come for me...".

He volunteered that during a particular period

<sup>10</sup>"...every day my head start to hurt me".

We found Mr Irvine clinically to be normal in appearance. He produced a lot of spontaneous talk and spoke in a relaxed manner. He expressed a rather optimistic attitude towards the whole question of decisions on the death penalty and his own fate (quote 3), but it was obvious that he also felt disappointed at hearing "bad news", even though he attempted to play down the fact (quotes 5, 7).

Although his appearance did not suggest depression, the thought content we elicited provided evidence that Mr Irvine had been experiencing:

feelings of depression (quotes 1 & 9)  
anxiety (quotes 2 & 8)  
somatic symptoms (quote 10)

The above are recognized as features of depressive illness.

In addition we found evidence that Mr Irvine had been experiencing feelings of hope and disappointment (quotes 5 & 7) related to his learning of different stages in the public debate on capital punishment. It was obvious that he was aware of the debate and did what he could to keep himself informed of it (quotes 2,4,6).

Opinion: It is our opinion, based on the foregoing, that Clifton Irvine had been experiencing symptoms of anxiety and



(4) Clifton Irvine

depression related to public debate and resolutions in the House of Assembly and the deliberations of the House Committee on capital punishment. His optimistic expressions we see as a psychological defence in his attempt to deal with his feelings.

sgd. F.W. Hickling, MRCPsych.

sgd. Frank Knight, MRCPsych.

UNIVERSITY OF THE WEST INDIES  
Department of Psychiatry

17th January, 1980

MEDICAL REPORT ON  
Mr Elijah Beckford, age 28

Mr Elijah Beckford was seen at the St Catherine District Prison by Drs F.W. Hickling and F. Knight jointly on 14th August, 1979, for psychiatric evaluation, and specifically in order that an assessment might be made of the extent to which his mental health was being affected by the de facto suspension of the death penalty, by discussion and recommendations in the House of Representatives by public debate on the matter of capital punishment and by the stay of execution granted to him (in June of 1979). Mr Beckford was seen alone.

Mr Beckford informed us that he was arrested on 28th December, 1974, and that he was convicted of murder and sentenced to death on 9th May, 1975. He said he had had appeals against his conviction heard in Jamaica only, but could not say exactly when, as he said he had only heard of the appeals after they had been refused. He said there had been no appeal to the English Privy Council. Mr Beckford said he had spent eleven days in the death cell in June of 1979.

Concerning the debate in the House of Representatives on capital punishment and what he considered to be decisions made on it, Mr Beckford said:

(2) Elijah Beckkford

<sup>1</sup>"It take great effect on me and it keep me fretting ... because I cannot sleep and eat good towards the injustice of capital punishment... keep me depressed".

He said he had followed discussions in the newspapers, which he sometimes gets to read. He was not clear as to the sequence of the debates, recommendations and resolutions in the House of Representatives and the Senate or as to the details of these, but his overall perception of the events was that there had been a decision to suspend capital punishment and that this decision had been reversed. His reaction to the recommendation that capital punishment should be suspended was that he felt:

<sup>2</sup>"....glad....I feel freed. I came out of the depressive consideration and thinking".

When he heard that executions were to be resumed,

<sup>3</sup>"I could not rest, and my body was in pain... ....I feel very much oppressive and cannot feel ease. I was in very much tormentation. But I still in depression, in the same feeling... I say anything can happen but I still trusting in God".

Mr Beckford described his feelings after having spent eleven days in the death cell:

<sup>4</sup>"After I come out I was feeling a little better, but still feeling sorrowful and pain the head".

Asked about his feelings at the time of our examination, he said:

<sup>5</sup>"I don't feel deeply sorrowful, but I know I still feel sorrowful".

(3) Mr Elijah Beckford

Mr Beckford said in answer to specific questions that he often wakes at night, and concerning his appetite he said:

<sup>6</sup>"Sometimes I see the food and like it but can't eat it".

Clinically, we found Mr Beckford's appearance and behaviour to be within normal limits. His manners was self-justifying and rather paranoid, in that he went into great detail over the sequence of events leading up to the killing for which he was convicted, and he referred more than once to "injustice of capital punishment".

There is evidence, in the thought content elicited by us that he had been experiencing

somatic symptoms (quotes 3 & 4)

feelings of depression (quotes 1,3,5)

disturbance of vegetative functions of appetite

and sleep (quotes 1,6)

anxiety (quotes 1,3)

The above are all features recognized as occurring in depressive reactions.

There was evidence that Mr Beckford's feelings of anxiety and depression were variable rather than constant (quotes 2,3,4,5) and that he was sometimes even optimistic (quote 5). This variability in his mental state was related to his experience of being put into the death cell to await execution and being taken out again (quote 4), and was also related to his awareness of what appeared to him to be

(4) Elijah Beckford

different decisions taken at different times on the subject of capital punishment (quotes 2,3), and to public debate on the matter (quote 1).

Opinion: It is our opinion, based on the foregoing, that

Elijah Beckford has been suffering from depressive reaction and an anxiety state related to recent public debate and recommendations concerning the death penalty and related to his own stay of execution. The optimism which he sometimes expressed is seen by us as a defence mechanism enabling him to cope with his anxiety.

sgd. F.W. Hickling, MRCPsych.

sgd. F. Knight, MRCPsych.

UNIVERSITY OF THE WEST INDIES  
Department of Psychiatry

17th Janaury, 1980

MEDICAL REPORT ON  
Mr Errol Miller, age 28

Mr Errol Miller was seen at the St Catherine District Prison by Drs F.W. Hickling and F. Knight jointly on 14th August 1979, for psychiatric evaluation, and specifically in order that an assessment might be made of the extent to which his mental health was being affected by the de facto suspension of the death penalty, by discussions and recommendations in the House of Representatives and by public debate on the matter of capital punishment. Mr Miller was seen alone.

Mr Miller informed us that he was arrested on the 11th March 1975, and was convicted for murder and sentenced to death on 28th October, 1975. He said that he had appealed against his conviction to the Jamaican Court of Appeal, but that the appeal had been refused. There had been no appeal to the English Privy Council.

Concerning the debate on capital punishment in the House of Representative he said:

"I hear that the House of Parliament vote that it should be retained".

He had heard about a Committee which had been set up to investigate capital punishment but he felt that:

"I think it should abolish".

He showed marked optimistic defenses in relation to the prospect of dying by hanging:

"I always look on the optimistic side"  
"I wasn't looking on the death side".

He noted marked somatic and psychological effects on himself when he heard that the House had voted to retain hanging:

"The pressure from the time I hear anything not in favour; I can't read, I can't eat.... I can't sleep...nothing like that"

and

(2) Mr Errol Miller

"Sometimes I see it look bright and then it get dull  
..... I see an article advocating that they spare we  
life, it work on my brain. When I see a good article  
I feel I could go out there and start my life. Then  
I see another article and I say - well all plans mash  
up".

He sometimes showed features of paranoia:

"After all this suffering, now they turn around  
want to kill me...".

"In the first place they mash up all the movements of  
my life".

He sometimes became angry and resentful at his present  
position:

"I suffered worse.... I lost my freedom; can't move how  
I really want; lost my youth my woman and everything  
I possess, and now it seem that they want to take the  
last little that I possess which is my life".

When he was placed in the death cell he had marked feel-  
ings of anxiety:

"It look like it all over now; everything gone now!  
I was looking for help and did think that some one  
should come and help".

Clinically Mr Miller showed strong psychological defenses  
with minimal feelings of anxiety and depression. He showed some  
features of hostility and anger, and clear paranoid ideation. He  
showed some somatic symptomatology but no psychological evidence  
of depression.

Opinion: It is our opinion that Mr Miller although reporting  
some feelings of anxiety showed no features of anxiety  
or of a depressive reaction at the time of interview, although he  
related such feelings during the periods of the debate over  
capital punishment publicly and in the Houses of Parliament. He  
showed well formulated psychological defenses which he has  
erected to deal with being confronted by execution.

sgd. F.W. Hickling, MRCPsych

sgd. Frank Knight, MRCPsych.

## UNIVERSITY OF THE WEST INDIES, DEPARTMENT OF PSYCHIATRY

7th March, 1980

The following commentary is submitted in connection with the medical reports representing the findings of Drs F.W. Hickling and F. Knight who examined five condemned men, Messrs. Elijah Beckford, Anthony Forbes, Clifton Irvine, Errol Miller and Noel Riley,

The background to the medical examinations and reports is as follows:

Since April of 1976 there have been no judicial executions carried out in Jamaica.

In May, 1977 the Minister of Justice recommended that there should be an inquiry leading towards a decision as to whether or not capital punishment should be retained in Jamaica, and the question was referred to the National Security Committee of the House of Representatives.

In October, 1978, the Committee recommended that there should be no change in the law relating to capital punishment.

In January, 1979, a motion in the House of Representatives that the death penalty should be suspended pending a detailed study of the effect of its use was defeated, but the House adopted a resolution recommending to the Governor General and the Jamaica Privy Council that there should be a review of all cases of men awaiting execution. Statements made by the Prime Minister and by Minister Hugh Small on this resolution were reported in the Jamaica press.

In February of 1979, the Senate adopted a resolution that capital punishment should be suspended for eighteen months pending a study on its effect, and the Minister of Justice subsequently established a committee to proceed with such a study (June 1979).



(2)

The purpose of the medical examinations was that an evaluation should be made on the five condemned men, their respective states of mind and psychological reactions, bearing in mind their experience in relation to public discussion and debates and resolutions in the House of Representatives and the Senate. We were referred to the Section of the Jamaica Constitution which says that "No person shall be subjected to torture or to inhuman or degrading punishment or treatment". (Section 17(1)).

The method of psychiatric examination was that of unstructured interviews with each of the condemned men, carried out at the St Catherine District Prison. Each of the men was interviewed jointly on 14th August 1979, by the two psychiatrists (F.W. Hickling and F. Knight). Messrs Forbes, Irvine, and Riley had previously been seen individually by F.K. and also by F.W.H. Each interview lasted on an average one and a half hours and centred around the subjects giving a narrative account of event leading up to their conviction and sentencing and their subsequent experiences in relation to their confinement, the steps taken on their behalf by their legal representatives, their awareness of public debate and decisions about the death penalty and their own reactions to these events. In addition to the above, the interviews provided a certain amount of personal background history of each subject. They also went into the personal attitudes and mental and emotional reactions of each man as manifested e.g. by their fantasies (as contained for example, in dreams) and the conditional plans that each would have for his future.

The foregoing may be summed up by saying that each man was required to give a personal history and was subjected to a Mental Status Examination.

(3)

The "Mental Status Examination" is one of the basic examination tools of the psychiatrist. On each occasion that he sees a patient, the psychiatrist conducts a Mental Status Examination in much the same way as a physician or surgeon conducts a physical examination, and the psychiatrist makes inferences from his findings which he then views against the background of other factors relating to the case before him in order that he may form clinical impressions or come to more firm clinical conclusions or diagnoses.

The areas that the psychiatrist normally examines include the following:

Appearance and Behaviour of the subject. This enables the psychiatrist to form impressions as to e.g. the presence of depression, elation or anxiety; the degree of cooperation of the subject; his tendency to simulate illness or to be manipulative or defensive. The psychiatrist knows that he takes into account such features as dress, and grooming, aspects of personal hygiene, facial expression, facial gestures, mannerisms, body posture and movement, tone of voice, pace of speech. These are features which most people react to, sometimes unconsciously, in arriving at their opinion or personal response to one another. the psychiatrist makes a conscious study of the same features and knows that he uses them in forming his opinion. (A useful comparison may be made to the experienced interviewer who knows that the general demeanor of the person before him leads him to make conclusions as to the interviewee's character or truthfulness, without the interviewer having to take the trouble consciously to analyse why he has formed this impression).

Thought Content: In this area an examination is made of the subject's thoughts - both those that he volunteers and those that are elicited in response to direct questioning. Elated or depressive moods, paranoid attitudes,

(4)

personal value systems, preoccupations, aspirations, views of oneself and of the world around, and certain aspects of character may be evaluated from spontaneous and elicited thought content when these are obtained under the conditions of a professional interview.

Stream of Talk: by assessing the characteristics of the subject's flow of talk (and, by inference, the flow of his thought processes), the present anxiety, psychotic disturbance or organic impairment may be detected.

Other items of the Mental Status Examination enable the examiner to exclude or to identify and assess actual brain damage and to gain an impression of the subject's intelligence. (There is, for example, a correlation between intelligence and the range of a subject's vocabulary. The ability to handle abstract concepts may also be a guide - while a culturally influenced accent or stilted speech may often be misleading).

It should be pointed out that in cases where decisions affecting a subject's future are to be made (e.g. where compensation is an issue, or in other legal cases), the psychiatrist is on the lookout for the subject making deliberate - and sometimes unconscious - attempts to mislead him. Usually these are clumsy or obvious manoeuvres consisting of histrionic exaggerations of gestures, facial expressions, emotional reactions or physical disability.

It should also be pointed out that not only psychiatric disturbance but normal "dynamic" mental processes are recognized, scrutinised and assessed by the psychiatrist who is then able, taking the subject's background into consideration, to make evaluations of his personality structure.

It should be understood that the psychiatrist's actual report can display only a fraction of the areas that he has examined and the techniques he has used, and normally will reflect only positive findings (i.e. clinical

(5)

features found to be present).

In the case of these men it will be apparent that most of the positive findings were to be found in their Thought Content - hence the liberal use of verbatim quotes as illustrations of the emotions, state of mind and reactions. the likely reason why other areas of Mental Status Examination did not yield more positive evidence is referred to later.

#### Findings

a) Anxiety features: Although none of the men betrayed anxiety in their behaviour, the presence of anxiety feelings was nevertheless discernible in all of them when the actual content of their speech was examined.

b) Depressive features: Although two classical features of depression viz: psychomotor retardation (see Glossary) and a depressed facial expression were invariably lacking, all but one of the the men actually complained of feeling depressed, three displayed depressive thought content and three complained of a variable combination of the depressive features of somatic complaints and impaired sleep and appetite. The two subjects who did not show depressive thought content manifested paranoid feelings instead.

c) Paranoid features: Three of the subjects either showed an aggrieved or paranoid manner, and two of these were among the three who failed to show paranoia in their thought content. Thus, paranoid feelings showed up either in the manner or the thought content of four of the subjects.

d) Psychological defence mechanisms: Three of the men used the unconscious psychological "ego defence" mechanism of denial. This was manifested by their verbalising and even emphasising their

(6)

optimistic view of the outcome of their situation. The one subject in whom denial was particularly strong (Mr Irvine), was the only one who showed no paranoid features either in his general manner or in his thought content. We see this use of the defence mechanism of denial as a method of "chosen" by the men to help them deal with the unpleasant aspect of their situation and their experiences. In a sense, the absence of the commonly displayed features of depression (viz. sad facial expression and psychomotor retardation) could in itself be seen as a method of denying emotions.

The view could be taken that the subject in whom denial was seen most developed was afforded protection from paranoid feelings as well.

e) Mood changes: Four of the men showed evidence of feelings of alternating hope and despair which seem to fluctuate according to the news they received of debates, resolutions and decisions in the Senate and the House of Representatives.

f) Intelligence: No formal testing was done, but our clinical impression was that four of the men were within the range of average intellectual endowment while one, Mr Forbes, was probably below average intelligence.

Opinion as to Causation of clinical features:

It is our opinion that certain of the clinical features we found, viz the psychological defences, the features of depression and to some extent the anxiety manifestations, are directly related to the men's general situation of being under sentence of death. But some of their anxiety and the feelings of alternating hope and despair, of which we found evidence, we attribute to their awareness of public debate referred to above. There was no evidence that these feelings came about as a reaction on the part of the men to the activities

(7)

of their respective Attorneys in dealing with their cases.

The question of simulation:

We do not hold the opinion that the clinical features which we have mentioned in the individual medical reports, and on which we have based our findings, were the result of simulation by the men. This statement is based on our view that the men had nothing to gain from displaying the paranoid attitudes which they showed. We would have expected, in subjects who were attempting, whether consciously or unconsciously, to impress their examiners with the degree of their suffering, that features such as depressed or anxious faces, motor tremor or psychomotor retardation would be prominent. Yet these were precisely the features that we found to be absent. The way in which we consider some of the men did try to influence us was in verbalizing their innocence of the acts for which they were convicted, or, as happened in one case (Mr Beckford) seeking to justify the killing by establishing that there was provocation.

Summary: It is our opinion that the clinical features of psychological disturbance in the five condemned men examined by us are clearly related, in a causative way, to the mental stresses they have undergone during the time they have been under sentence of death. These stresses have in turn been the result of discussion, comment and debate in the public media and in the Senate and House of Representatives. The most prominent clinical features were those of anxiety and depression, present in all the subjects, part of the anxiety being related to their uncertainty through their hopes being alternately raised and lowered.

One of us (F.W.H.) is of the opinion that a psychiatrist is eminently qualified and suited to assess the nature and degree of torture on an indivi-

(8)

dual by other individuals. He is of the opinion that all five men were showing evidence of having been subjected to acts which could be regarded as inhuman and degrading treatment. He is of the opinion however that the treatment could not be regarded as torture.

The other clinician (F.K.) is of the view that an opinion on the question of torture based on an examination of the allegedly tortured parties is outside the scope of a medical report, as is the question of inhuman treatment, since the latter raises moral issues and involves value judgements which are inappropriate in a medical report. On the question of "degrading treatment" F.K. is of the opinion that this may be legitimately examined but only from the point of view of the subjective experience of the men involved. He is of the opinion that persons who have undergone experiences such as those described in the individual medical reports could be expected to feel degraded, although the medical examinations did not specifically demonstrate that the men felt this way. It is likely that projective psychometric tests may reveal more in this area.

F.W. Hickling, M.B. MRCPsych.

sgd. Frank Knight, M.B. MRCPsych.

The above report was prepared jointly by Dr F.W. Hickling and myself but Dr Hickling unfortunately had to leave the country before the report could be typed.

sgd. Frank Knight  
11th March, 1980.

(9)

APPENDIX ITABLE

	Mr Beckford	Mr Forbes	Mr Irvine	Mr Miller	Mr Riley
Intelligence	average	low	average	average	average
Depressive features: Depressive facies	-	-	-	-	-
Psychomotor retardation	-	-	-	-	-
Depressive thought content	+	+	+	-	-
Complaint of depression	+	+	+	-	+
Somatic complaints	+	-	+	-	-
Impaired sleep	+	-	+	+	-
Impaired appetite	+	-	-	+	-
Anxiety features: Thought content	+	+	+	+	+
Anxious manner	-	-	-	-	-



9 (b)

APPENDIX I (CONTD)

	Mr Beckford	Mr Forbes	Mr Irvine	Mr Miller	Mr Riley
Paranoid features:					
Aggrieved/paranoid manner	+	+	-	+	-
Paranoid thought content	-	-	-	+	+
Defence of denial	+	-	+	+	-
Alternating hope & Despair	+	-	+	+	+

(10)

APPENDIX IIGLOSSARY

The following explanation of terms is taken from the Psychiatric Glossary of the American Psychiatric Association 4th Edition published by the American Psychiatric Association 1975.

- Denial: A defense mechanism, operating unconsciously, used to resolve emotional conflict and allay anxiety by disavowing thoughts, feelings, wishes, needs, or external reality factors that are consciously intolerable.
- Dynamic (Psychiatry): As distinguished from descriptive psychiatry refers to the study of emotional processes, their origins, and the mental mechanisms. Implies the study of the active, energy laden, and changing factors in human behaviour and their motivation. Dynamic principles convey the concepts of change, of evolution, and of progression or regression.
- (Ego) defence mechanisms: Unconscious intrapsychic processes serving to provide relief from emotional conflict and anxiety. Conscious efforts are frequently made for the same reasons, but true defense mechanisms are unconscious. Some common defense mechanisms.... are: compensation... ....denial.....projection, rationalisation...sublimation....
- Facies = facial expression
- Organic (brain syndrome): Any mental disorder associated with or caused by disturbance in the physiological functioning of brain tissue at any level of organization - structural, hormonal, bio-chemical, electrical, etc.
- Paranoid: An adjective applied to individuals who are overly suspicious. (We would add to this definition that paranoid people often believe that others wish them harm or are trying deliberately to harm them).
- Psychometric Testing (psychometry): The science of testing and measuring mental and psychologic ability, efficiency, potentials, and including psychopathologic components.

10(b)

APPENDIX II (Contd)

Psychomotor retardation: A generalised slowing of physical and emotional reactions. (As explained in the medical report this is seen in depression).

Psychotic: relating to Psychosis defined as: A major mental disorder of organic or emotional origin in which individual's ability to think, respond emotionally, remember, communicate, interpret reality, and behave appropriately is sufficiently impaired so as to interfere grossly with his capacity to meet the ordinary demands of life.

Somatic complaints (not defined as such in the APA Glossary): Physical or bodily complaints, characteristically pains or feelings of heaviness, which are considered to originate in psychological disturbance.

Projective tests: Psychological tests used as a diagnostic tool in which the test material is so unstructured that any response will reflect a projection of some aspect of the subject's underlying personality and psychopathology.

DEPARTMENT OF CORRECTIONAL SERVICES

PSYCHOLOGICAL REPORT . . . . .

. . . . .

Name of Subject: . . . . . Noel Riley

Place of Examination: . . . . . St Catherine District Prison . . . . .

Date of Examination: . . . . . March 12, 1980 . . . . .

Tests Administered: Wechsler Adult Intelligence  
Scale (WAIS)  
Rorschach  
Project Drawings  
Thematic Apperception Tests (TAT)  
Interview

The Subject is a male age 24 (DOB 14/11/55) who was referred for psychological assessment. He was examined at St Catherine District Prison where he is under Death Sentence for the Murder of one Leo Horatio Henry, a furniture dealer.

Upon examination, subject seemed friendly and relaxed and denied his offense in a smooth, somewhat slick manner. He states that a quarrel with a girlfriend (over money he alleges she stole from him) led to her vindictively identifying him as the offender in a murder which she had witnessed.

Intellectually he is functioning in the Bright Normal Range and scored 10 of 110 on the Wechsler Adult Intelligence Scale. He reached Form V in school and is well.

Projective tests reveal a Psychopathic Personality in a man who is underlying and experiencing much deeper depression. Despite efforts to defend himself with jokes and flirtations with the examiner, underneath this facade is a frightened and worried man.

## DEPARTMENT OF CORRECTIONAL SERVICES

Noel Riley - Sheet 2.... /

No less than six stories on the TAT reveal persons "facing serious problems". Two are "weeping" another "pensive" and the overall picture, which includes two concepts of murder as well, is one of extensive stress and suffering.

There is some mental confusion and a problem with memory recall which are believed to be symptoms of the stress under which he has been placed. Clearly, Noel feels degraded and treated inhumanely. One of his self-concepts is that of "a lizard", obviously a very lowly creature much degraded from that of a man.

In this examiner's opinion there can be no doubt that Noel's prison experiences since March, 1974 - over six years - especially the fluctuations in the possibility of capital punishment - have taken a serious toll on his personality organization.

Respectfully submitted,

sgd. Dr Ruth Rae Doorbar  
CONSULTANT PSYCHOLOGIST  
DEPARTMENT OF CORRECTIONAL SERVICES

## DEPARTMENT OF CORRECTIONAL SERVICES

PSYCHOLOGICAL REPORT

Name of Subject	Anthony Forbes
Place of Examination	St Catherine District Prison
Dates of Examination	June 5, 1979 & March 12, 1980
Tests Administered	Wechsler Adult Intelligence Scale (WAIS) Rorschach Thematic Apperception Test (TAT) Projective Drawings Interview

The subject is a male, age 24, who was referred for psychological assessment. He is sentenced to Death at St Catherine District Prison for the murder of one Leo Horatio Henry, a furniture dealer.

Upon examination he was very talkative and even before the subject came up, he began to proclaim his innocence. He claims that some girls he knew identified him to police out of sheer vindictiveness.

Intellectually he is functioning in the Dull Normal Range. He achieved an IQ of 81 on the Wechsler Adult Intelligence Scale. He seemed unusually slow and sluggish in his responses and considerable mental blocking due to his high level of anxiety was observed. When he misperceived some of the vocabulary words, examiner asked him if he was feeling a bit confused. "Who wouldn't be confused in a situation like this" he replied. It is noted that subject left school at age 14, having achieved only the Fifth Grade. He reads and writes poorly.

Anthony Forbes - Sheet 2 - 2./

Projective tests reveal an Anxiety State, moderately severe, situationally imposed on a basically Psychopathic Personality. At present some of this anxiety is being somatized and he complains of aching joints, a frothy feeling in his chest, and itching in his scalp. He also has scabies on his legs and back.

Subject launched into the TAT stories with great energy -- and on ten of the thirteen stories given he gives evidence of stress and depression. The most outstanding one reads, in part, "Someone in a very depressed situation..... suffering some inhumane situation.... suffering some form of internal or external pain".

This man, who was seen nine months ago, shows marked deterioration in the content of his responses - his drawings are weaker and more vague, he is more tense and anxious, and there is much more confusion in his thought patterns.

He philosophizes about helping his country, and helping the youth of the country, but he cannot present these ideas with much clarity.

It is clear that the events of the recent past have had a most damaging effect on him and he has certainly been subjected to the very inhumane situation which he himself projects on the TAT stories.

Respectfully submitted

sgd. Dr Ruth Rae Doorbar  
CONSULTANT PSYCHOLOGIST  
DEPARTMENT OF CORRECTIONAL SERVICES

## DEPARTMENT OF CORRECTIONAL SERVICES

PSYCHOLOGICAL REPORT

Name of Subject	Clifton Irvine
Place of Examination	St Catherine District Prison
Date of Examination	March 12, 1980
Tests Administered	Wechsler Adult Intelligence Scale (WAIS) Rorschach Thematic Apperception Test (TAT) Projective Drawings Interview.

The subject is a male, age 24 (DOB 12/3/58) who was referred for psychological assessment. He is presently in St Catherine District Prison sentenced to the Death Penalty for the murder of one Vernon James.

Upon examination he was co-operative and cheerful. He denies this offense and claims mistaken identity for his incarceration.

Intellectually he is functioning in the Borderline Defective Range. He achieved a Verbal IQ of 76, and did somewhat more poorly on the Performance Scale. It is the clinical impression that under optimal conditions subject might demonstrate low Dull Normal intellectual capacities but at today's testing, he functioned only at the Borderline Defective level.

Projective tests reveal an Immature Personality with considerable free floating anxiety. He is quite overwhelmed by the circumstances in which he finds himself - and most of the time tries to deflect his feelings into childlike thoughts and activities. Not having examined any of his accomplices as yet, I can only imagine that someone else must have organized whatever events occurred on the



## DEPARTMENT OF CORRECTIONAL SERVICES

Clifton Irving - Sheet 2

night of the crime; for subject has neither sufficient intellectual nor emotional capabilities to do so.

On the TAT stories we see much evidence of this man's depression. People are "sick", feel "sad", and in one picture a mixture of depression and anxiety are expressed - "He looks like his spirit is irritated". Often Clifton mixes up the emotions he perceives and feels - for example, on one picture of obvious violence - he tells that he sees a man praying.

It is meaningful to note that his responses now, as compared to nine months ago, are much more disturbed: He is regressing into childlike and seemingly foolish behaviour in an effort to defend himself.

Clearly the stresses which this man has been undergoing, coupled with his poor capacities to deal with it, constitute an inhumane situation. In terms of his intellectual and emotional capacities we are dealing with a 10-11 year old mentality in a man who lacks adult /defense mechanisms. One would not conceive of treating a child in such an inhumane manner.

Respectfully submitted

sgd. Dr Ruth Rae Doorbar  
CONSULTANT PSYCHOLOGIST  
DEPARTMENT OF CORRECTIONAL SERVICES

## DEPARTMENT OF CORRECTIONAL SERVICES

PSYCHOLOGICAL REPORT

Name of Subject	Elijah Beckford
Place of Examination	St Catherine District Prison
Date of Examination	March 20, 1980
Tests Administered	Wechsler Adult Intelligence Scale (WAIS) Rorschach Thematic Apperception Test (TAT) Projective Drawings Interview

The subject is a male, age 28, (DOB 2/5/51) who was referred for psychological assessment. He was seen at St Catherine District Prison where he is sentenced to death for the Murder of a neighbour, Melvin Beckford (no relation to prisoner).

Upon examination he was warm, responsive, and seemed genuinely penitent about his crime. He states that the deceased had tried to burn down his hut, and threatened to kill him in an effort to cause him to leave his "cultivation" of 1½ acres. Elijah states that he reported this to the police but the man was not arrested. On the day of the offence the deceased came again to Elijah's hut and Elijah claims he was acting in self-defense.

Intellectually, he is functioning in the Dull Normal Range and achieved an IQ of 84 on the Wechsler Adult Intelligence Scale. He reads and writes poorly and has serious difficulty in Arithmetic Reasoning. He is of basically Average level intellectual endowment but due to his limited academic and cultural development, he functions a little lower than Average.

## DEPARTMENT OF CORRECTIONAL SERVICES

Elijah Beckford - Sheet 2/.

Projective tests reveal a basically Normal Personality in a man who is underlyingly very depressed. His TAT stories suggest a person who has been subjected to very severe stress and who is steadily suffering as a result. The most outstanding TAT story to reflect these feelings reads (in part) "This is a little youth in a sorrowful state. Looks like he needs pity". On several other cards figures are described as "considering". His drawing of man gives the impression of a human life fading away - it is vague and ill-defined and he describes the man as "lost". Life itself is losing its form and meaning.

On the psychological tests and in his interview this man thus gives clear evidence of having been subjected to inhumane and degrading treatment and to be understandably depressed as a result.

Respectfully submitted

sgd. Dr Ruth Rae Doorbar  
CONSULTANT PSYCHOLOGIST  
DEPARTMENT OF CORRECTIONAL SERVICES

DEPARTMENT OF CORRECTIONAL SERVICESPSYCHOLOGICAL REPORT

Name of Subject	Errol Miller
Place of Examination	St Catherine District Prison
Date of Examination	March 12, 1980
Tests Administered	Wechsler Adult Intelligence Scale (WAIS) Rorschach Thematic Apperception Test (TAT) Projective Drawings Interview.

The subject is a male, age 29 (DOB 26/1/51) who was referred for psychological assessment. He is confined at St Catherine District Prison under sentence of Death for the murder of one James Bignall, employee of a gas station on Windward Road, Kingston.

Upon examination subject was inappropriately cheerful. He laughed, joked, and responded to testing in an exuberant manner. He denied the offense stating that he was on his way to St Ann at the time. He explained that one month before he had had a quarrel with the sole witness who identified him, this quarrel having to do with her not serving him gas for his motor-cycle as promptly as he would have liked. He admits he "handled her badly". Other witnesses did not identify him.

Errol also seems to have been a disruptive element in the area - selling ganja - refusing to co-operate with police - having quarrels and fights. He says one policeman known as "Scorpion" promised that Errol would not miss prison on several occasions and this policeman led the group of police who arrested Errol for the murder.

DEPARTMENT OF CORRECTIONAL SERVICES

Errol Miller -- Sheet 2.../

Intellectually, he is estimated to be of Dull Normal Intelligence. He demonstrates very variable functioning on the Wechsler Adult Intelligence Scale and any numerical summation of his scores would be invalid. He achieved Grade 9 in school and left at age 15. However he said that if he attended school even four months for any year - it was unusual. Since he has come to prison he has learned to read and write. On a Vocabulary test he achieved an equivalent IQ of 70, but when he is in a more stable condition, it is believed that he could score in the 80's.

Projective tests reveal an Aggressive Personality with poor emotional controls. He is a very unstable man from an equally unstable background.

Briefly, he is the third of eight children for his mother, born for five baby-fathers. Errol himself has ten children by five baby-mothers. His own mother was an impoverished domestic worker, /he and is an equally impoverished labourer. He was an apprenticed plumber at \$10 per week but left to sell fish and earn \$20 per week. As a common labourer he was earning \$50 per week in the Sig-arney Gulley Project when he was arrested. He supplemented his earnings by selling ganja. However he embraced the Rasta philosophy, rode a Honda 175 trail bike, and as cited above, was sometimes in fights in his community.

His relationship to the established community was therefore a belligerent one and he had a large shifting group of friends who were members of the anti-establishment.

DEPARTMENT OF CORRECTIONAL SERVICES

Errol Miller - Sheet 3../

On the TAT cards this man became quite involved in the stories. As early as Card 3 he stated "This is a brother passing through some form of tribulation like I'm passing through right now".

He continued with depictions of other persons who were sick, worrying, and crying. By the time he reached the last card, he himself was crying. He stated how helpless he feels with no hope for justice.

His drawing of a man is classic in this respect. The figure is standing firmly, with well developed body - but no arms.

For a man of such volatile emotionality the off and on nature of the punishment to which he is sentenced is a virtual torture. He is becoming quite emotionally disorganized - laughing loudly and bursting into tears within a few minutes time. To him the world is one huge unpredictable place and he perceives a concept of "explosion" on the Rorschach which represents his only way of dealing with life - being emotionally explosive.

Clearly this man has undergone immense suffering as a result of the extended and unpredictable state of his sentencing, and such a condition must be considered inhumane.

Respectfully submitted

sgd. Dr Ruth Rae Doorbar  
Consultant Psychologist  
DEPARTMENT OF CORRECTIONAL SERVICES

	DATE OF CONVICTION	DATE OF REFUSAL OF FINAL APPEAL	DATE OF EXECUTION	FINAL APPEAL AND EXECUTION (in weeks)
1. Uriel Whyte	6/6/62	6/11/62	20/11/62	2.00
2. Ferdinand Donaldson	4/7/62	16/11/62	26/2/63	14.57
3. Austin McCalla	15/10/63	9/5/63	28/5/63	19.28
4. Lester Williams	18/2/63	20/5/63	7/7/63	7.14
5. George Solan	15/3/63	27/5/63	9/7/63	6.14
6. Gladstone Irwin	18/7/63	26/9/63	26/11/63	8.71
7. Cornelius Sutherland	3/10/63	26/11/63	4/2/64	10.00
8. Clifton Eccleston	5/12/63	5/12/63	11/2/64	9.85
9. Fernando Hamilton	28/11/63	26/2/64	7/4/64	5.85
10. Neville Parkes	21/11/63	10/2/64	7/4/64	8.14
11. Carlton Bowen	26/8/63	9/11/64	1/12/64	3.14
12. Clifton Larman	26/8/63	9/11/64	8/12/64	3.14
13. Vincent Shirley	9/10/64	14/10/64	8/12/64	7.85
14. Hugh Vernon	19/2/64	20/10/64	29/12/64	10.00
15. Owen Sinclair	15/7/64	10/11/64	29/12/64	7.00
16. Hubert Wallen	14/10/64	17/12/64	19/1/65	4.71
17. Felix Reid	17/3/64	30/9/64	2/2/65	17.85
18. G. Blomfield	9/12/64	18/3/65	26/6/65	13.71
19. Kenneth Burkett	20/1/65	2/2/66	22/2/66	2.85
20. Arthur Beckford	2/2/65	2/2/66	24/2/66	3.14

		DATE OF CONVICTION	DATE OF REFUSAL OF FINAL APPEAL	DATE OF EXECUTION	TIME BETWEEN FINAL APPEAL AND EXECUTION (in weeks)
21.	Everald Gentles	1/7/65	8/11/65	12/4/66	22.28
22.	Ronald Hall	4/3/65	21/2/66	12/4/66	7.28
23.	Rainford Anderson	17/5/65	23/3/66	31/5/66	9.85
24.	Edward Woolery	3/12/65	13/4/67	25/5/67	6.00
25.	Lloyd Welcome	12/10/66	12/4/67	26/6/67	10.85
26.	Joslyn Gayle	30/1/67	3/5/67	8/8/67	13.85
27.	Donald Bennett	25/10/66	19/12/67	5/3/68	10.71
28.	Thomas Hamilton	16/2/67	29/7/68	10/6/68	6.14
29.	Linval Jones	23/6/67	29/7/68	11/9/68	6.28
30.	Glasford Phillips	13/6/67	15/10/68	29/1/69	10.57
31.	Jasper Sharpe	2/2/68	20/6/68	13/8/69	7.71
32.	Errol Tapper	27/2/68	9/10/69	2/12/69	7.71
33.	Whitfield Simms	27/6/68	9/10/69	2/12/69	7.71
34.	Samuel Smith	5/7/68	14/1/70	3/3/70	7.00
35.	Segismand Palmer	17/12/68	23/11/70	19/1/71	8.14
36.	Junior Telfer	29/11/69	21/4/71	7/9/71	19.85
37.	Aston White	23/1/69	21/6/71	7/9/71	11.14
38.	Rupert Anderson	30/6/69	13/7/71	19/10/71	14.00
39.	Alexander Francis	18/10/68	27/5/71	10/8/71	11.71
40.	Glenford Pusey	19/6/70	27/10/71	1/2/72	19.85



This is the Chart marked N.B.E. I referred to in the Affidavit of  
MICHAEL BARRINGTON ERSKINE sworn to on the 17th day of March, 1980.

sgd. Ronald Thwaites  
JUSTICE OF THE PEACE

execution following the completion of all steps for legal review of their sentence of death

BE IT RESOLVED THAT THIS Honourable House recommend to the Governor General and Privy Council that the cases of all persons now awaiting execution be reviewed.

13. It was reported in the newspaper and I verily believe that in support of the aforesaid resolution, the Honourable Prime Minister had stated during the debate that in regard to persons awaiting execution, but whose execution had been suspended, it would be callous, cruel, and unusual, "for such persons now to be executed. In support hereof I attach hereto marked A 1 for identity a copy of page twenty-three of the Daily Gleaner dated 4th February, 1979.

14. It was further reported in the newspapers and I verily believe that in moving the aforesaid resolution, the Honourable Minister of Youth and Sports had stated that,

"In all circumstances, since Parliament had given them ( the persons on death row ) some sense of hope it would be callous to proceed with a mass execution without recommending a review of their cases." In support hereof I attach marked A2 for identity a copy of page fifteen of the Daily Gleaner dated 31st January, 1979.

15. By reason of the resolution and statements quoted in paragraphs 12, 13, and 14 above, I and other persons awaiting execution were given further cause to hope and expect that our executions would not be carried out.

16. On the 9th day of February, 1979, the Senate adopted a resolution by 10 votes to 5 votes that Capital Punishment be suspended for 18 months pending a detailed study and assessment and report on the sociological and psychological effect of Capital Punishment in today's Jamaica. As a result of the adoption of this resolution, I formed the belief that a Committee was to be set up at an early time to carry out such <sup>an</sup> assessment and that no executions were to be carried out.

17. I am informed and verily believe that consequent upon the adoption of the aforesaid resolution, the Minister of Justice has established such a Committee and in support hereof I attach <sup>/hereto</sup> marked "B" for identity a page of the Daily Gleaner dated the 8th June, 1979.

AFFIDAVIT OF ROY ANTHONY JONES

SUIT NO. M. 39 of 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

IN THE MATTER OF AN APPLICATION BY  
ELIJAH BECKFORD AND ERROL MILLER  
Under Section 25 (1) of the Jamaica  
(Constitution) Order in Council 1962.

I, ROY ANTHONY JONES, Attorney-at-Law with offices at 31½ Olivier Place, Kingston, do hereby make oath and say as follows:-

1. I live and reside at 5 East Path, Calabar Mews, Kingston in the Parish of Saint Andrew and my postal address is at 31½ Olivier Place, Kingston.
2. On the 30th January, 1979 I was present at the House of Representatives during the debate on the suspension of Capital Punishment.
3. I heard the Speech of the Prime Minister, Honourable Michael Manley in support of the Amendment to the resolution which amendment called for the suspension of Capital Punishment pending a detailed report of its sociological and psychological effect on Jamaican society.
4. I have since received proof of Hansard of the Prime Minister's Speech made in that debate which accurately represents the aforesaid speech and I attach hereto <sup>/as</sup> Exhibit A, a photo-copy of the said proof.
5. I was also present and heard the speech of the Minister of Youth and Sports, the Honourable Hugh Small, in that debate on the aforesaid date and following approval of the resolution that Capital Punishment be retained by a vote of 24 votes to 19 votes. I heard the Honourable Hugh Small move a resolution recommending the review of the cases of all persons awaiting execution following the completion of all steps for the legal review of their sentences.
6. I also heard the speech of the said Minister of Youth and Sports in support of the aforesaid resolution which was unanimously adopted.

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SUPPLEMENTARY AFFIDAVIT OF FRANK  
KNIGHT IN SUPPORT OF NOTICE OF  
MOTION

SUIT NO. 39 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

BETWEEN

ELIJAH BECKFORD  
ERROL MILLER                      - APPLICANTS

A N D

THE ATTORNEY GENERAL  
SUPERINTENDENT OF  
PRISONS, ST. CATHERINE  
DISTRICT PRISON              - RESPONDENTS

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IN THE MATTER OF AN APPLICATION OF  
ELIJAH BECKFORD AND ERROL MILLER  
25 (1) OF THE JAMAICA CONSTITUTION  
ORDER IN COUNCIL 1962.

I, FRANK KNIGHT, being duly sworn make oath and say as follows:

1.                      That I reside and have my true place of abode at 3 Armon Jones Crescent, in the Parish of Saint Andrew, and my postal address is Kingston 6, in the parish of Saint Andrew.
2.                      That I am a member of the Royal College of Psychiatrists and have been practising since 1963. I have been a Consultant Psychiatrist since 1968, and I am currently Senior Lecturer at the University of the West Indies and a Consultant Psychiatrist at the University of the West Indies Hospital.
3.                      That on the 14th day of August, 1979, along with Dr. Frederick Hickling, I examined ELIJAH BECKFORD, and ERROL MILLER at the Saint Catherine District Prison, in Parish of Saint Catherine with a view to assess the extent to which their mental health had been affected by the de facto suspension of the death penalty, by postponement in carrying out the death penalty on them, by public debate on the matter of Capital Punishment and reports of the above mentioned examinations were completed on the 17th day of January, 1980; a copy of these reports along with a

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