

Event: Public Hearing
Review of the Roles of the Crown Officers

Date: 4th May 2010

Review Panel: Lord Carswell, Chairman
Mrs M-L Backhurst
Mr G Crill
Dr S Mountford
Mr I Strang

Witnesses: Mr W J Bailhache, Deputy Bailiff of Jersey

THE CHAIRMAN: Well, may I welcome you, Mr Deputy Bailiff, and thank you for coming to speak to us and assist us with our inquiry. I made an opening statement several times before; I do not think I need to repeat it again except to say that we are concerned with the principles governing the roles of the Crown Officers, not anything else, simply looking at the matter in the abstract as to how the institutions work, whether there are any problems and, if so, what we should recommend.

Our function is one very much of inquiry, seeking to obtain opinions, and we have been getting them from all sides, and, when we have completed that, then we shall attempt to reach our own conclusions, prepare a report, submit it to the States, which will then complete our function.

The proceedings are in public, as the States requested. This is a public hearing. The proceedings are being recorded, will be transcribed. You will, of course, have an opportunity to check the transcript before it is published to make sure that it is an accurate representation of what you said and then it will be posted, in due course, on the inquiry website so it will be in the public domain.

We have had the advantage of your written submission, for which I would thank you, and for the assistance that you have given us with that. But, before we start, is there anything that you would like to add or expand upon or alter in what you have put in that?

MR BAILHACHE: I don't think so, my Lord, thank you.

THE CHAIRMAN: No. We had a substantial submission from the Bailiff and a long discussion with him this morning and so we thought that it might be of most help to us to deal fairly lightly with the issues directly affecting the Bailiff and in some more detail, perhaps, on the issues affecting the Attorney General, with your long experience in that post; we thought you would probably give us most assistance in that.

But I think it would be helpful to have your views from your aspect about the Presidency of the States and whether there are problems there about the Bailiff acting as President of the States as well as Chief Judge of the Royal Court. If you think there are, what possible ways there might be of dealing with that.

We were concerned, naturally, about this question of perceived conflict, the McGonnell case and all that line of authority. Have you any of your own views about it you would like to give us?

MR BAILHACHE: Well, I've only been Deputy Bailiff since last November, so the issue in a practical sense hasn't yet arisen for me. But we see the States agendas in advance when I have been presiding over the States, I have seen the States agendas in advance and, if there was something in the agenda which I thought was likely to cause me difficulty, either immediately because of some past conflict or in the future if it looked like being a problem, then I would not preside over that debate, I'd make arrangements with the Bailiff or certainly for the Greffier of the States to preside over that particular debate. And, obviously, McGonnell is one of the inspirations for that view so that if, for example, we were coming to consider a new draft of the Island Plan, I am quite sure neither the Bailiff nor I would preside over that debate

because it would be asking for administrative difficulty in the management of the courts thereafter if there were to be planning appeals.

So I don't think that there ought to be a practical problem in that sense. I suppose the point which perhaps I have not made - and you asked me whether I wanted to add to what was in the submission - the point I have not made in there is that, if you are considering a question of actual bias, that is quite straightforward and I think one would expect anyone, any judge who is sitting and knows that he has got a problem in terms of actual bias, to recuse himself and pull out. With perceived bias, I think one has to ask the question, "Whose perception is it?" and it seems to me to be a relevant feature that the perception should be that of the people of Jersey. And I am not sure that comes out of the McGonnell discussions or, indeed, any of the other discussions but it's an argument that I would have expected to see properly run and ventilated if Jersey were concerned in it. That, if you are looking at perceptions of bias, the question is, "Would the people of Jersey regard it as being difficult?" as causing a particular problem? I'm not quite sure who else's judgement would be really relevant in that context but that of the people of Jersey.

THE CHAIRMAN: But I wonder is that not inherent in any decision that any court has made about bias; it is the people who are potentially affected whose perception -- it has to be that group whose perception matters.

MR BAILHACHE: Yes, I mean, I suppose you might be potentially affected by a decision of the Royal Court without being resident in Jersey and there may be cases where that arises. But I think you are right that it is implicit in the bias cases, but it seemed to me to be relevant to make the point again. Although the judgment as to whether there is perceived bias is an

objective one, it is to be formed having regard to the perceptions of those who are subject to the tribunal in question – most likely, therefore, in this case, the people of Jersey.

THE CHAIRMAN: But is the political, reasonable man any different in his reasoning whether it is England, Ireland, Jersey or France?

MR BAILHACHE: Well, he may be. Once you get into the European Court of Human Rights, it may be that the judges are bringing their own experience of life in their own countries and that's not necessarily going to be the same thing as the experience of the objectively-established views of the people of Jersey. That is the only point I would make.

THE CHAIRMAN: The thing is we cannot just write it off by saying, "Well, we think it is all right and any reasonable person sitting in our shoes would think it was all right", if the Strasbourg Court is going to knock it down, that causes immediate difficulties because of the Jersey Human Rights Law and the UK government which would find it unwelcome.

MR BAILHACHE: But, equally, one does not change systems just on the off chance that a court at some point might make a particular finding.

THE CHAIRMAN: It depends what the consequences are, does it not? If the consequences are simply minor financial ones, it may be perfectly reasonable to say, "It is only X percent, keep going". The consequences are more constitutional and potentially embarrassing should one look at it differently.

MR BAILHACHE: Well, clearly, if the Strasbourg Court changed its present direction, and I'd say I think we do not have a problem with the authorities as they now stand, but if it changed its direction, we would have to make changes, that's quite clear. I'm not quite sure that it brings chaos in its wake.

THE CHAIRMAN: That is an interpretation of the thinking of the European Court but the Commission came out quite strongly against the present system on the wider ground. The Court did not decide it on the wider ground, it did not disapprove of the Commission's decision; as I read the Court's decision, it simply shifted onto the narrower ground and left the other unresolved, except for Sir John Laws who was not prepared to accept the wider ground.

MR BAILHACHE: Well, I'm not sure how one shades this. It very definitely did not accept the wider ground, did it? It didn't say that it did accept the wider ground and so the European Court has got the position where the Commission say, "The objection succeeds because of this" and the Court says, "The objection does not succeed because of this, it succeeds because of that".

THE CHAIRMAN: If you will forgive me, it said, "It succeeds because of that" but it did not say wider ground was wrong.

MR BAILHACHE: Yes, I'm sorry, that's quite right.

THE CHAIRMAN: This is another look. What would happen if a case came back on the wider ground, how it would look at it now. It is pretty clear from Lord Justice Pill's decision in the Barclay case that at least the English Court of Appeal thought it would go for the wider ground.

MR BAILHACHE: Yes, correct. That was a very disappointing decision, it is very disappointing that although the relevant parties were not convened before the English Court of Appeal, the Court thought it was able to reach that conclusion, to be honest, because the arguments were not properly, fully -- it seems to me, not fully put. Certainly, they're not reflected in the judgment of the English Court of Appeal. With all respect to those judges, there's quite a marked lack of understanding about how small jurisdictions work. And with Sark of course one was dealing with a very small jurisdiction and there's just an assumption -- and this is a sort of point of wider import, we have this same problem when you look at numbers of conventions which we have to decide whether to ask the UK to ratify these conventions on behalf of the Island.

But the conventions are drawn up with big countries in mind and little places actually struggle sometimes with the detail of the conventions, because there are resource requirements or because it's a question of finding an independent -- a suitably independent body which the convention envisages, or be established locally, to take the relevant overseeing decisions, or whatever it happens to be.

So it is important, when the argument comes to be had, that it's had properly and that the small jurisdiction point is carefully explained to the Court. I mean, my own take on it is that, actually, when you look at most of the decisions - and actually McGonnell is one and also Dunn and also Walker Bow - that the European Court of Human Rights is quite sympathetic to the problems which small jurisdictions face and they realise that sometimes you do have to negotiate your way through the different convention rights in relation to the way in which there would be a practical implication in smaller jurisdictions.

DR MOUNTFORD: Can I raise a point there because I do not think the world sees this as this small jurisdiction but quite a powerful, wealthy jurisdiction. So I wonder how that argument would stand now?

MR BAILHACHE: Well, we can all speculate on that but it is a point that needs to be fully ventilated in argument and let a court decide on it.

DR MOUNTFORD: Yes.

MR BAILHACHE: So far, as I say, from my reading of the decisions we've had in the European Court of Justice, there was a similar approach in the deportation case in Rui Roque case where I think there was an understanding that, in small jurisdictions, you have to approach things with some care; you can't necessarily say that big jurisdiction points naturally convert into small jurisdictions. The basic rights of course always are there, of course, but it's just a question of feeling your way forward, in my view.

THE CHAIRMAN: Okay. If it were decided that the Bailiff should not preside, certainly from day to day, in the Royal Court, who else do you think might take his place?

MR BAILHACHE: In the Court or the States?

THE CHAIRMAN: In the States, sorry, not the Royal Court, the States. Yes.

MR BAILHACHE: Well, the options would appear to be somebody who is a Member of the States or somebody who isn't; as a matter of logic that must be right. I think I've mentioned in the submission I put in that, if it's a Member of the States, I think that is bound to cause some difficulty.

THE CHAIRMAN: Yes, we have had pretty well unanimity among respondents on that. Is it likely to be a position to attract somebody, who is not a Member of the States, of sufficient calibre?

MR BAILHACHE: Well, I would think there would be some retired politicians who would be quite pleased to do the job. I think that is quite possibly so because they've enjoyed, many of them have enjoyed being in the cut and thrust of the States and, when that's taken away from them, they quite like to get back in there again, but albeit in a different capacity. So it wouldn't surprise me if there were some retired politicians who would want to do the job.

THE CHAIRMAN: Would a person with the history of a retired politician be acceptable?

MR BAILHACHE: Well, it's probably more a question for States Members than it is for me. Those I have talked to have said they would perceive it to be a problem because there would be a risk of political baggage being brought into what should be a job that is done impartially. But, in answer to your question, "Would anybody else be interested in doing it?" I can well see that there might be some retired politicians who would be quite interested in doing it. As for anybody else, it's hard to say: one or two days every other week for 35, 40 weeks a year, 30 weeks a year, 35 weeks a year, something like that, it doesn't seem like much of a job but maybe there would be, I don't know.

THE CHAIRMAN: What about the Greffier of the States, he has deputised quite a bit, has he not?

MR BAILHACHE: Yes, he has and he is very good in the chair. But it is a different job.

THE CHAIRMAN: As a permanency, as a regular thing, what would be your feeling about that?

MR BAILHACHE: Well, you can't establish your structure by reference to the particular people who hold particular positions at any given time, it seems to me. And so not looking at the qualities of the particular Greffier, which are very admirable, but looking instead at whether or not the qualities that go with a Greffier are going to go with presiding over the States and, I think, as a general rule you wouldn't expect that; the Greffier is going to be administratively good and he's got to know how to run the States Greffe, how to make sure that propositions arrive with Members at the right time. He's got to make sure that questions which, day to day are delegated to him, he answers properly so that he may be approving propositions on behalf of the Bailiff when he's got time to think about it. It's completely different when you are sitting in the hot seat and you've got five seconds to make your mind up, it's a completely different skill. And so the administrative skills that --

THE CHAIRMAN: No, but is it impossible to have both skills in one person?

MR BAILHACHE: It isn't, because the present Greffier has them, but the two jobs are just different.

THE CHAIRMAN: We are accustomed to thinking of them as different because that is the usual pattern in most legislatures, the Clerk of the Parliament and the Speaker are two different people, do two different jobs and do not attempt ever to coalesce but, coming back to your point about a small society and adaptations, is it unthinkable?

MR BAILHACHE: I think it's not unthinkable. I don't think it would be acceptable to the States Members; I may be wrong, you'd have to ask them. There is a relationship between the Greffier and States Members which comes from Members getting a lot of advice from him in how they frame their propositions, how they go about their business. He receives a lot of information confidentially and Members trust him. I'm not sure they would be comfortable with the person who is presiding in the Assembly itself making decisions as things come forward if they know that they've been giving this person their own private views which they wouldn't expect to be reflected at any given time in a decision. It's not really a matter for me, it's a matter for States Members but I would be surprised if they would find it acceptable.

THE CHAIRMAN: You would have done quite a bit of deputising since you became Deputy Bailiff in the States and presumably got something of a feel of it and, of course, you were a Member for years as a Law Officer so you have seen the temperament and the way that the business is done. It is increasing in scale, is it not, according to the figures that the Bailiff gave us?

MR BAILHACHE: I think I haven't seen those figures but it feels as though it's increasing in scale.

THE CHAIRMAN: Yes, yes. But it is certainly said on all sides that the authority of a Bailiff and his quality is of great assistance in his Presidency of the States and he has got clout, if you put it that way. It is sending a Rolls Royce to collect the shopping; is it necessary to have somebody of such standing and ability to preside in the States?

MR BAILHACHE: I think it's quite important that the States is held in high regard in the Island and if the proceedings in the States were to deteriorate, I think that would damage the regard in which Islanders hold the States. So although you can run the argument that it's a Rolls Royce to collect the shopping, at least you know that when you send a Rolls Royce the shopping is going to arrive whereas if you send a different sort of vehicle - which I will not identify in case I am being defamatory - maybe the car won't arrive on time.

MR CRILL: Do you think that it is necessary for the Presiding Officer, if I can call him that, to have legal skills or just a working knowledge of standing orders is sufficient?

MR BAILHACHE: The Presiding Officer, do you mean simply just in the States or the including in the approval of propositions and questions and that sort of exercise, the whole of the functions?

MR CRILL: The current function of the President of the States.

MR BAILHACHE: Well, if that person doesn't have legal qualifications he needs to have access to legal advice so there would be a resource implication for him if he's not a lawyer.

MR CRILL: What is the nature of that legal advice going to be? Would it be constitutional or would it be ...?

MR BAILHACHE: It's an ability to read Standing Orders as a lawyer would read Standing Orders, apply them consistently and fairly using legal skills, really.

DR MOUNTFORD: But legal advice would have to be available in the States Chamber at the time because you could not constantly postpone matters and say, "Oh, I need to go and take advice on this" and come back again, they would have to be actually present there, would they not?

MR BAILHACHE: I think probably that is so and I don't think it would come from the Attorney General in those circumstances, either. It would be -- as I see it, it would be a legal advice attached to the Greffier or that the Greffier would have to be legally qualified, I suppose, is another option.

THE CHAIRMAN: Then, switching to your participation in the States as Attorney, were you in attendance daily in the sessions or did you come and go as you felt you were likely to be needed or if a question arose and somebody sent a message? How did it work in practice?

MR BAILHACHE: I was there whenever I thought I might be needed, I was there whenever I thought I ought to be there.

THE CHAIRMAN: Yes.

MR BAILHACHE: The two are not quite the same, if I saw something that was entirely political - suppose there was a proposition to debate an increase in the minimum wage or something like that - that's entirely a political matter and I couldn't see any basis upon which the Attorney's advice would ever be needed, so I would tend, with the leave of the Presiding Officer, to absent myself for those sorts of debates. If it were a question of debating legislation or regulations, primary or secondary legislation, I would be there. If it was a question of question time, I would probably be there because I thought I ought to know what was troubling Members in case it should arrive on my doorstep as Attorney General, but not always; I was a little bit selective about that.

DR MOUNTFORD: If you were not there, would the SG be there?

MR BAILHACHE: With very few exceptions, it was either one or the other of us.

DR MOUNTFORD: Right.

MR BAILHACHE: And we had a system whereby the proceedings in the States were broadcast automatically to our office so one could have the speaker with the alarm on it and listen to what was going on so, if you heard something, you could beetle over to the States quite quickly and certainly I did that from time to time. What I found was that, with the machine, well, it's like having the radio on: if you're listening to it, it's quite difficult to do any other work anyway so I thought I might just as well be in the States. So generally, for me, that option didn't work very well but I did use it sometimes.

THE CHAIRMAN: Most legislatures do not have the luxury of having a legal advisor on tap, they seem to manage very well. Certainly, having a Law Officer regularly in attendance in either House of Parliament is not the norm at all. How necessary is it or have they just got this extra luxury that they like to keep?

MR BAILHACHE: I think there are a number of differences perhaps between our legislature and others. One of them is that, in the larger jurisdictions, the ministerial departments will almost certainly have lawyers attached to them and so the nature of the briefing to the minister always includes more detailed legal briefing than would be the case with us. One of the problems that the Attorney has faced in Jersey is being clear about the areas of business which departments undertake on which he ought to have a view, because there aren't lawyers in the departments to say, "By the way, you need legal advice on this". Sometimes the professionals get there themselves, saying, "Well, we need legal advice". But often the most dangerous things are where the person does not realise that they need legal advice and have to go and ask for it. So that's the first difference.

I think the second difference might just lie in the disparity of talents and skills in the Assembly and it just does happen that the Attorney is asked for a view quite frequently, it just does happen, and maybe he should not be, but he or she is.

MR CRILL: Is the Attorney always in a position to give unequivocal advice on his feet like that?

MR BAILHACHE: Well, you have to do the best you can.

MR CRILL: Put it another way: would the process be disadvantaged if the advice was sought, shall we say, at a distance in writing and the written advice received subsequently?

MR BAILHACHE: I don't think that States Members give enormous thought to the questions which they're going to ask the Attorney until the course of the debate; they listen to what's going on and then say, "That's an interesting question. What about this?" and then the question comes out. I think most Members would say they had difficulty in keeping up to speed with all they had to read, anyway, without having to read more legal advice which might or might not be of any interest to them. But it is obviously a fair point to make that most legislatures don't have the lawyer on tap in the way that we do but I think Members are used to it and they like it, most of them.

THE CHAIRMAN: If you have got a Minister with a brief, yes, he will have had the legal position dealt with in the brief if it is a decently-run Department. His officials would be in the box but they would not necessarily be legal advisors, there would be more likely to be the administrative advisors, senior officers from the Department.

MR BAILHACHE: Yes, with us, the officers from the Department relevant to that debate will be what you would call, "In the box" that's, I think, outside the States Chamber. And it just may be that they're better briefed and skilled, I don't know.

THE CHAIRMAN: We asked the Attorney General about appointments and about his membership of the States. There are lots of different models around the world for attorneys general: some are political appointees by the prime minister, some are possibly elected by the legislature, some are appointed and are not members of the legislature. There are all sorts of

different models possible but do you see any problems with the present arrangement that we ought to look at other models, or do you feel that it works satisfactorily that the Attorney is *ex-officio*, not elected but an appointed member of the legislature but does not obtrude his views, except in questions of legal import or where he is asked to deal with it? It is a long question but I think you have got my drift.

MR BAILHACHE: Yes, well, I hope I have. It's obviously a question for you to answer as to what approach you want to take. If it were me, I think I'd ask if there was a problem and then look at other models to see whether we ought to change to one of those rather than looking at all the other models first in case one of them looked a bit better.

THE CHAIRMAN: Really, I was deferring that because I would like to put first the question: yourself, from your experience, do you find that it is satisfactory and acceptable?

MR BAILHACHE: To be a Crown appointment, sitting in the States without a vote and with a voice?

THE CHAIRMAN: Crown appointment, with a voice but restricting it carefully to the areas which you feel you should deal with and not obtruding beyond that.

MR BAILHACHE: I don't think I've had any particular difficulty with that and I've no doubt that some of my critics would think that I did sometimes, that I perhaps obtruded where I shouldn't have done, I've no doubt that there are some States members who thought that. But, by and large, I don't think that was the view of States Members and I didn't myself feel I was obtruding. I think it is useful to be in the States because of the joint responsibility that you

have, both to the States and to the Crown, so that if you saw something coming down the track, in legislative terms, which was going to cause a problem, I think you know you would have the obligation to tell the Crown that it caused a problem. It's much better that you're there seeing it develop so you can flag it up straight away and say, "I'd like to tell Members that, if you go down that road, that is going to cause a problem because, if you pass that legislation, I'm going to have to qualify my opinion to the Privy Council. I don't think it's in breach of -- I think it's in breach of such and such international obligation and therefore we shouldn't do it. Whether you wanted to do it or not, is entirely a matter for you, because you're the elected people, but I'll just tell you that I think it's going to cause a problem". So from that perspective, actually, I think it is useful to be there, I think that only happened probably once maybe twice and I can't even recall the specific instances in my nearly ten years I was there. But I was conscious that that was a useful reason for being there.

THE CHAIRMAN: There is no *a priori* reason why an attorney general should not be a member of the legislature; in so many legislatures they are a member and that is not regarded as any breach of constitution or principle so that end of it seems to be all right. One of the advantages which Jersey Law Officers have is that they are not appointed by a political party or a political minister.

MR BAILHACHE: That's a huge advantage.

THE CHAIRMAN: So that they do not have the same concerns about appearing to favour a party that the English Attorney General has had about his or her role with some controversial things.

MR BAILHACHE: Yes.

THE CHAIRMAN: So you have a greater independence, in fact, and in feeling, do you?

MR BAILHACHE: I've got absolutely no doubt about that at all. My experience over the time I was AG was that there were occasions when the advice I gave to the Executive was very unpopular indeed with the Executive, they didn't like it, and it's much easier to give that advice if you know that the Executive can't turn around and say, "Right, you're out. Don't like you", because it's just easier to do it.

MR STRANG: Was there ever a question where you thought there was any doubt over the advice you would be advising?

MR BAILHACHE: I'm sorry?

MR STRANG: Any doubt over the advice, i.e. you are advising the Crown, possibly, and ultimately whenever legislation goes forward, but you are also advising the States and therefore you flag something up. But is it quite clear that your advice is X and therefore it will be the same to both parties?

MR BAILHACHE: Yes.

MR STRANG: You never had any problem with feeling that there might be two views on the legal position?

MR BAILHACHE: Well, I didn't have any -- I never had any thought that the advice would be different to the States than it would be to the Crown because the Crown -- you've got to ask the question, "What does the Crown mean in this context?", it does not mean the government of the United Kingdom. The Crown means the Queen's interests which I think actually are the people's interests of Jersey. So I put that in the same territory, same account.

THE CHAIRMAN: Well, now, that is an interesting constitutional point because the Crown is, in fact, the government because the Queen must act on the advice of the government of the day.

MR BAILHACHE: In England and Wales, and maybe in Northern Ireland, but I'm not sure that it's true in Jersey.

THE CHAIRMAN: Crown and the Queen, in right, of Jersey.

MR BAILHACHE: Indeed. There's a lot about our constitutional relationship which gives rise to assumptions in Westminster as to what the position is which are assumptions which is convenient and not necessarily right to me.

THE CHAIRMAN: We have received some submissions on this point, yes. We must not simply equate it with the Queen in parliament.

MR BAILHACHE: Absolutely not. There is no democratic basis upon which the UK government should exercise the rights. They are not accountable, the UK haven't deemed them accountable and the Secretary of State is not accountable to the people of Jersey.

THE CHAIRMAN: But in practice when things go to London, they go to the Ministry of Justice?

MR BAILHACHE: Yes, they do and there are some very often quite frank exchanges.

MR CRILL: Do you regard the Attorney General's advisory function in the States Assembly as being exactly the same function as the advice to the States' Executive? I am referring also to the Scrutiny Panels and the PAC as well. In other words, you are advising it as a body and we talked about the independence and how that is protected by the fact that we do not have party politics and so on. Would the position in both respects be untenable if there were party politics, for example, or if there was an actual or de facto opposition?

MR BAILHACHE: I'm trying to work out if that's all the same question because it seemed to me to be a very different question.

MR CRILL: It was intended to be the same question.

MR BAILHACHE: The way I saw it when I was the Attorney was that you gave advice to the States on matters that were before the States. Generally speaking, that was legislation where either there was some point arising out of the detailed drafting of the articles which the Committee President and subsequently the Minister couldn't answer, or because there was some other legal difficulty that arose where Members wanted some explanation about the particular provision and since 2005, whether there was some Convention right that maybe ought to be considered before a particular piece of legislation should be adopted.

Apart from acting as a Legislature, the States have, on a number of very limited occasions, also acted as an Executive so that where the States decide that they are going to acquire land compulsorily, that is a States decision, in which case you would give legal advice to the States about that particular matter. The other times that the States acts as an Executive are usually, I think, on appointments processes such as the appointment of the Treasurer, the appointment of the Chief of Police, that sort of thing, but the scope for legal advice in those areas is obviously very limited. So legal advice to the States falls within fairly narrow confines.

You've then got legal advice to Ministers who are acting executively and the legal advice to Ministers is given on the facts which they give to you. You are asked sometimes for legal advice by Scrutiny Panels and, again, you give advice on the facts which they put to you. And that's just this last issue about whether Scrutiny Panels should get legal advice from the Attorney and whether Scrutiny Panels should see the legal advice which the Attorney has given to the Minister has been the subject of some political unhappiness with some of the Scrutiny Members but it was resolved by the States in 2007, I believe. Might have been 2008. No, it was 2008 in January or February that that was the Code of Practice that ought to be adopted. I lodged my own reasons for that at the time and they are available. If you don't have them, I can certainly provide them to you. They're on the States Assembly website and I think there are good reasons for that.

One of the things that certainly troubled me most was that if you shared advice with Scrutiny Panels that you'd given to Ministers, the Law Officers would regularly be used as the first port of call to find out what the facts were. In other words, so they would be drawn immediately into politics, into the political wrangling that takes place -- perhaps it would be kinder to say

“political debate” that takes place -- but the Law Officers would immediately be drawn in because it would be known that the best way of finding out what the facts were were to go and ask the lawyer for the advice and find out on what facts he’d advised. And the way the Scrutiny Panel process ought to operate is that Scrutiny ought to go and find out the facts themselves by asking the Minister, by asking the officials, by asking anybody else they need to ask, but not trespassing on the confidential relationship between the Minister and the lawyer as to the facts upon which the lawyer was giving legal advice. And I feel quite strongly about that.

I think you would make the Attorney’s job very, very difficult indeed if every time he gave advice to a Minister, he had to recognise that that advice was going to be capable of hitting the public domain and would be available to Scrutiny Panels. And I think actually it would also have a really marked impact, detrimental impact, on the willingness of Ministers to go and ask for advice as well.

THE CHAIRMAN: Yes, and legal advice shades into policy advice very frequently indeed.

MR BAILHACHE: Can do.

THE CHAIRMAN: By no means always in fact and not that often, just simply saying, “This is the law,” being asked for advice as well.

MR BAILHACHE: Yes, indeed.

THE CHAIRMAN: And that is the property of the client who is entitled to say, “Don’t you show that to anybody. I won’t agree and you are bound by that as a lawyer.”

MR BAILHACHE: Certainly. I think that the position for the Attorney -- as to whether the Attorney is bound by it, I think he is, whether or not the person would say, "On your analysis, the owner of the advice is able to go and share it with somebody else if he chooses to" is a different issue and certainly, as Attorney, I took the view that it wasn't open to Ministers to go and share my advice without my consent. But that was just -- I think that's quite a grey area but it seemed to me to be undesirable that Ministers should do that.

One of the reasons, and this comes back to Mr Crill's party politics point, is that as soon as the Scrutiny or opposition, I don't want to put this in the sense of being opposed to Scrutiny, as soon as the non-Ministerial politicians realised that the one way of getting the advice was go on to the Minister and say, "Give it to me" they would have an obvious incentive to do so because there are more non-Ministers than there are Ministers and so they would then just be able to gang up on the minority Ministers and force them politically into providing the advice. So it seemed to me the best protection from that was to say that Ministers should not disclose the advice without the Attorney's permission as well as the Attorney wouldn't disclose the advice without the Minister's permission.

THE CHAIRMAN: It may be undesirable to publish advice to other people but I question whether the lawyers -- it belongs to the lawyer to withhold or to give consent because once you have given a client your opinion, he can put it in the newspaper if he wants.

MR BAILHACHE: Well, as a private client, yes, of course he can, but as a public servant to asking the Attorney General I think is different.

THE CHAIRMAN: But if it is a matter of public propriety, it may be a different matter.

MR BAILHACHE: Yes.

THE CHAIRMAN: How often in practice did you find that you were being asked for legal advice by the Scrutiny Panels?

MR BAILHACHE: Probably not that often. I would think about half a dozen times while I was Attorney.

THE CHAIRMAN: Yes.

MR BAILHACHE: Maybe slightly more but ...

THE CHAIRMAN: Would they more frequently have asked the Ministers to see your advice rather than asking for further advice from you? Did that happen much?

MR BAILHACHE: They shouldn't be asking Ministers to see my advice because the Code of Practice which the States adopted would prohibit them doing so.

THE CHAIRMAN: And would it be a large-scale affair if one simply said that any advice the Scrutiny Panels wished to obtain should be obtained from other sources?

MR BAILHACHE: It's always been the right of the Scrutiny Panels to take advice wherever they wish and so from that analysis, no, it does not cause any problem to suggest that that's what Scrutiny Panels should do. Whether it's desirable, I think, is slightly different. The risk in terms of good administration of the States is that the facts which the Scrutiny Panels provide and give to the lawyers advising them may not be as complete as they ought to be.

The States Members will therefore be faced with the position where the Minister says, "I'm doing X because the law is Y" and the Scrutiny Panel are saying, "You should do A because the law is B" and how are the States supposed to know, because they're not lawyers. They won't appreciate the finer points of things. It may be that the Attorney will then stand up and say, "Well, actually, the law is Y, that's what I've always said, and that's the position" and States Members then say, "Well, we think we don't like the Attorney General today, even with this last recall, we don't like the idea that we can't do what we want to do anyway," or they'll take a view about what the law is which bears no relationship to what the law actually may be.

That seems to me to be quite undesirable so for those reasons, I thought it was better for there to be just one source of legal advice to the States but, of course, if Members want to take their own advice, there's nothing stopping them doing so and that goes for Scrutiny Panels as well.

MRS BACKHURST: Just on a practical note. If Scrutiny did go elsewhere for legal advice, presumably they would have to pay for that. Do they have the resources to do that?

MR BAILHACHE: They would have to pay for it and though it's not directly my territory, I think they have got quite a lot of resources to pay for it and certainly from my recollection of figures in 2007 and 2008, Scrutiny Panels underspent their budgets quite considerably. That may no longer be true, I don't know, but ...

MRS BACKHURST: But they are not estopped because they do not have the financial wherewithal for that?

MR BAILHACHE: No, certainly to start with, that was their position. They still have quite large Scrutiny budgets now which should be enough to pay for getting legal advice, I would have thought, but I'm not the right person to ask.

MRS BACKHURST: Thank you.

MR CRILL: Individual States Members can seek advice from the Crown Officers in the course of the debate?

MR BAILHACHE: Yes.

MR CRILL: By asking a question in the House?

MR BAILHACHE: Yes.

MR CRILL: Can they seek direct legal advice on a proposition or other States-related matter from Law Officers?

MR BAILHACHE: In advance, you mean?

MR CRILL: Yes.

MR BAILHACHE: Yes.

MR CRILL: Or unrelated to a debate even?

MR BAILHACHE: Well, when I was Attorney --

MR CRILL: In their capacity as a States Member?

MR BAILHACHE: If a States Member came to me and asked for advice on a matter which -- assuming it's a public law matter and not a matter related to him, I think I would try and give him that advice because I would recognise that if I didn't, it might then lead to a States debate and therefore more work for everybody else. So I would certainly expect to try and accommodate his request in advance if it could be done without difficulty. If I thought that it was a matter with which a Scrutiny Panel was concerned, I probably would say, "Why don't

you go and talk to the Scrutiny Panel Chairman” and, you know, he would be able to orchestrate the advice that is required consistently with the Scrutiny’s feeling. But ultimately if there was something which was coming up before the States Assembly and in the knowledge that a Member might ask a question, then I’d much prefer I was asked in advance because you can try and deal with it in advance.

THE CHAIRMAN: Could I ask you a bit about prosecution? The Law Officers’ Department has been -- the administration has been put on to fairly clear footing now with a criminal side and a civil side and the Criminal Director really is acting very much in the way that a Director of Public Prosecutions would act on the mainland. Is that a reasonable analysis of the present position?

MR BAILHACHE: That’s probably a question better for the Attorney than for me. It wasn’t quite the way it operated when I was Attorney because I liked to be sure that I was concerned with all the matters which I thought the Attorney ought to be concerned with, but certainly the Director of Criminal has got a very important position to manage the administration of the prosecution process. I suspect that different Attorneys will take different views from time to time as to the extent to which they ought personally to be concerned, and I ...

THE CHAIRMAN: A question of superintendence and intensity rather than actual structure?

MR BAILHACHE: Yes, I think that’s probably right, yes.

THE CHAIRMAN: And the Attorney is responsible for both sides and it is a matter of individual preference and needs of the time how much the Attorney goes hands on on either side?

MR BAILHACHE: Yes, I suppose I took the view when I was Attorney that there were some areas where it was right for the Attorney to be a hands-on Director of Public Prosecutions himself but the number of cases where you would take a decision -- I took a decision without having somebody else review the file first I think I -- probably one, maybe two in nine years. The number of cases each year where I would review the file actively, having received a lawyer's view of it, probably 20 a year, I should think, until one came to the Historic Child Abuse where I took a more active Superintendent's role.

THE CHAIRMAN: In the run of the mill cases which are more serious than Parish Hall Inquiries but not of the most serious sort which would require the attention perhaps of the Attorney or somebody senior in his office, what preparation for charging is done? What analysis and decision-making process goes on?

MR BAILHACHE: The States Police have investigated the offence?

THE CHAIRMAN: Yes.

MR BAILHACHE: They will produce a file which they will show to a Centenier with a charging recommendation and they will do that whether there's a Parish Hall Inquiry or not because it's the Centenier who brings the charge in the Magistrate's Court. So it could be a serious

charge. It could be a rape or major fraud case and the Centenier will get the police file with the States Police recommendation as to whether there should be a charge.

THE CHAIRMAN: Will this have been looked at and analysed by one of the Law Officers' Department?

MR BAILHACHE: There are four lawyers -- I think there still are -- four lawyers at Police Headquarters who are officers of the Law Officers' Department but who are on hand for two purposes. One is to present prosecutions in the Magistrate's Court and the other is to be there in police headquarters ready to give charging advice on any file and that might be formal advice which is given in writing or it might be the police officer putting his head round the door and saying, "What do you think about this? Would I be able to call that evidence? Is that admissible? Will that work?" and advice being given in that way. And so when the Centenier gets the recommendation from the States Police, the probability is that at some point between the beginning of their States Police investigation and the handing of the file to the Centenier, in an important case, a serious case, the police will have been in touch with one of the legal advisors down there and would have received some advice either in a formal sense or less formally.

THE CHAIRMAN: So before it goes to the Centenier, if it's a medium case, it will have been looked at by somebody whose job it is to see that the prosecution is heading in the right direction. After it has been to the Centenier, if it is something where the Attorney disagrees, the Attorney can change the decision of the Centenier, is that not right?

MR BAILHACHE: Well, if the Centenier decides not to prosecute then certainly the States Police can then write to the Attorney, or occasionally the victims have written to the Attorney to say that prosecution should have been brought and, in those circumstances, I would review the file and decide whether or not I would overrule the Centenier and direct that a prosecution be brought. If the Centenier has decided to charge the offender as the police have suggested, then the Attorney retains the right at any time to direct that the prosecution be discontinued although that doesn't happen very often.

THE CHAIRMAN: Then the logic of that is to ask oneself what function does a Centenier have in modern times at all? Is it superfluous?

MR BAILHACHE: I don't think it is superfluous. I think the Centenier has -- he has the function of ensuring that he is the first line of saying to the police, "Have you thought about this? I want to see that statement, please. I want to see the other statement". The Centenier will himself go and take advice from one of the Law Officers' lawyers at police headquarters if he needs it and, yes, I think, in serious charges you might well say that he doesn't have a very active role to play but nonetheless one of the functions he has is to look at the treatment of a person in custody so where there's a question of police custody, the fact that somebody who is not a policeman, although he's an Honorary Policeman, but he goes into the police station -- the Centeniers have said this to me -- that the accused feels reassured by seeing somebody who's not in uniform, is not a policeman, is able to check that they've been treated properly and that that's a comfort for some accused, so I suppose that is linked to the charging provisions. And the other thing is the for Parish Hall Inquiry which there is no basis, Parish Hall if the Centenier doesn't have the right to charge because --

THE CHAIRMAN: The Centenier and the Parish Hall Inquiry are quite a separate issue and we understand entirely the value of them, and I may say I understand entirely the importance Jersey people place on the honorary voluntary service that people give. It is very creditable but looking at it as a matter of administrative machinery, I wonder if there is anything in the charging process that could not just as effectively be done in house in the Attorney's Department?

MR BAILHACHE: If the Centenier doesn't have the right to charge, there isn't a basis for holding the Parish Hall Inquiry as far as I can see.

THE CHAIRMAN: No, but a Parish Hall Inquiry can stand on its own feet without charging criminal matters because it does not go that far. It is a different avenue.

MR BAILHACHE: Where it's a decision as to whether or not there should be a charge. That's the only jurisdiction which the Centenier is exercising at Parish Hall Inquiry level. He's absolutely not acting as a judge.

THE CHAIRMAN: No.

MR BAILHACHE: Because there's no way in which one could defend the Parish Hall Inquiry as being Convention-compliant if he is acting judicially, but he's not.

THE CHAIRMAN: Yes.

MR BAILHACHE: And therefore he needs to be acting as a prosecutor, so it seems to me, to ensure that he has the ability to take the steps which are sometimes taken at Parish Hall Inquiries.

MR STRANG: And there are guidelines set down for that, are there not, by your ...

MR BAILHACHE: Yes, I certainly have seen some guidelines about the conduct of Parish Hall Inquiries.

MR STRANG: Yes.

MR BAILHACHE: They're on the Law Officers' website.

MR STRANG: And you would never override a decision made in a Parish Hall Inquiry?

MR BAILHACHE: Well, I have no doubt the Attorney can override it but in practice, I don't think one would.

MR STRANG: Yes.

MR BAILHACHE: Most of the decisions taken at Parish Hall Inquiries will be decisions not to prosecute at that time, to defer the matter for three months in order, typically with a young offender, that the young offender has to go to the victim and apologise personally or has to work voluntarily with the Probation Service for the next three months or has to honour a curfew for that period or whatever it happens to be. The threat, the sword of Damocles hanging overhead, is that in three months' time if he's misbehaved, he might get charged and have to go to court.

MR CRILL: Is there any benefit in the Centenier presenting the charge at the Magistrate's Court and what proportion of charges are still in fact presented, do you know?

MR BAILHACHE: I'm not aware of current figures but you would be aware that this was the subject of a lengthy review by the Home Affairs Scrutiny Panel about two years ago and as a result of that review, the decision was taken that it would be better that legally qualified prosecutors should deal with any case where there was a not guilty plea and that has happened since that time. If they're guilty pleas, Centeniers, as far as I'm aware, still do present them now.

I'm not sure what the current statistics are in the Magistrate's Court. The overwhelming majority of pleas are guilty and therefore would have quite a big impact on the number of lawyers that were needed in the Law Officers' Department working in the Magistrate's Court if the law were to require that those are presented by legally trained people.

THE CHAIRMAN: The Rutherford Report recommended both that the Centeniers should cease to present cases in the Magistrate's Court and should not be concerned with charging but that was not adopted at the time. Can you assist us in saying what was the thinking in rejecting that then?

MR BAILHACHE: Yes, for reasons which I think I've probably given publicly previously. I thought Professor Rutherford's report was underwhelming in some respects and that was certainly one of them. I think it misunderstood what the Parish Hall Inquiry was about. He thought that the Centeniers were very much in favour of them but he thought they were acting as judges and they clearly are not. And so he thought that you could leave the Parish Hall Inquiry and advance the Parish Hall Inquiry as a form of court, which wasn't a court and you would do that by taking away the Centeniers' responsibilities for charging.

I think that runs into difficulties at numbers of levels. The first of them is the lack of Convention compliance in relation to the Parish Hall Inquiry acting as a court and the second is that if the Centenier doesn't have the right to bring the charges, I'm not quite sure where the jurisdiction for the Parish Hall Inquiry comes from, as I mentioned. And the third thing, as I was also saying, that if you say that you're not going to have Centeniers taking those charging decisions, then somebody else has got to do it. If it's the police, you run into the sort of objections which have been considered in the UK as to whether the police as investigators should take the charging decision. And if then it's lawyers, then there's the resource in paying the lawyers to take that decision. For my part, I think it was quite interesting that in the UK, there's been a move back to non-legally qualified persons making charging decisions and presenting cases, which is exactly what we've got, of course.

THE CHAIRMAN: If Rutherford had been adopted and the Centeniers did not take part in the charging, what would be the practical machinery whereby they would be seized of the matter to decide if there should be a Parish Hall Inquiry?

MR BAILHACHE: If they're not taking the charging decision, I don't know whether there would be a Parish Hall Inquiry because that's what it is about. It's a charging decision, it's a charging process.

THE CHAIRMAN: It is a negative charging decision.

MR BAILHACHE: It's a negative charging decision or sometimes a positive one because sometimes the Centenier will hold a Parish Inquiry and decide to prosecute. You know, if young Johnny turns up and "cocks a snook" at the Centenier, he may find he's prosecuted and he's not given the three months' delay, but it's quite possible.

THE CHAIRMAN: Certainly if it is classified as a judicial inquiry, it would not be Convention-compliant. I do not think there is any question about that.

MR BAILHACHE: No.

THE CHAIRMAN: You have so far succeeded in classifying it as an administrative prosecuting decision as far as Strasbourg is concerned?

MR BAILHACHE: Well, it hasn't been taken to Strasbourg as yet but that is the way we would classify it and that's what I think it does represent.

THE CHAIRMAN: I am entirely sympathetic to the idea of having them. I am sure it does a lot of good in an awful lot of cases and so on. It is an excellent institution. I am just trying to see a way whereby --

MR BAILHACHE: I must admit I was not expecting to be asked about the role of Centeniers and Parish Hall Inquiries today.

THE CHAIRMAN: May I leave it there and suggest that, if you like to think about it, and if you have some further thoughts, we would be very happy to receive them. It would be of great assistance to us. We shall be seeing Centeniers, and I hope that they will be able to assist us. Anything that you feel you can add on it would be a great help to us.

MR BAILHACHE: Just so that I am addressing the right questions, am I addressing this in relation to the rights of the Attorney General to take prosecution decisions, or ...? I am not quite sure ...

THE CHAIRMAN: It follows from the role of the Attorney General; if the Attorney General, through his staff, does all the charging, should he do all the charging then to the exclusion of the Centeniers? As that is definitely part of the role of the Attorney General, it comes within the remit of the inquiry. What I really, speaking for myself, would like to know is, if the

Centeniers did not charge, could the Parish Hall Inquiry be preserved, and how would the matter then go to the Centeniers for them to decide if it was a good idea to hold one? Supposing your staff said, "No, we'll not prosecute", but the Centenier might think it a good idea to hold a Parish Hall Inquiry. Would the Centenier still be classifiable as a prosecuting decision?

MR BAILHACHE: But what is he inquiring into?

THE CHAIRMAN: This is where I am glad of your assistance. I am not trying to push you into a corner.

MR BAILHACHE: I do not feel in a corner. I just do not see that he is inquiring into anything. If there is no charge, how do you make somebody attend before a Parish Hall Inquiry? The authority which the police exercise is an authority to arrest somebody and investigate. Somebody else is taking a charging decision. The Honorary Police are not going to go and arrest somebody who has already been investigated, because there is no basis for doing that. So, if they are not exercising a charging discretion, I am not sure what they are doing. There does not seem to be any scope for anything.

THE CHAIRMAN: I am afraid this is one more example of the difficulty of unpicking anything; you start to unravel it.

MR BAILHACHE: Absolutely.

THE CHAIRMAN: I am sorry, I have been monopolising. Have you any questions on this, any

of you?

DR MOUNTFORD: Not on the AG role, but I do want to ask you about something that you stated in your submission, because I did not understand it. It is under, “Should the Bailiff continue to be President of the States?” Section 10. Because I thought it was rather a personal comment about your role. You did make reference to yourself and your brother, and there were issues ... that you felt that that particular situation was, perhaps, part of cause for change. Do you want me to read it, or are you ...?

MR BAILHACHE: No, I have it in front of me. What I do not have in front of me is the Evening Post report of about a week before I wrote this, which was one particular States Member calling for a change, upon the basis that the fact that two brothers had the positions of Bailiff and Attorney General at the same time showed that there was a need for structural change. The only point I am making there is that seems to me to be, with the greatest respect to him, absolutely dotty. If you are going to look at the structure of how things should be organised, you do not look at the people who might be filling the jobs at any given time. That is the limited point that is being made there.

DR MOUNTFORD: So that was the reason for, “The rather dotty hysteria of the conspiracy theorists”?

MR BAILHACHE: Yes.

DR MOUNTFORD: “Had no basis for determining ...”

MR BAILHACHE: Yes. If people want to take the view that it was a dreadful thing to have two brothers as Bailiff and Attorney General at the same time, the right thing was not to have appointed me as Attorney General. It is quite straightforward.

DR MOUNTFORD: I had this in mind to ask you when you were talking about ... earlier on, you were talking about perception, because I see perception in a different way. I think the perceived bias: you were talking about it in legal terms, in relation to human rights, I believe was the conversation. But people do perceive things in different ways. Your statement then was that any perception of bias, the focus should always be on the people of Jersey. Are not the political representatives representing the people of Jersey, so they are going to raise these issues? They are going to say, "Sometimes the bias appears to be there".

MR BAILHACHE: They can certainly raise them, but I can certainly respond to them.

DR MOUNTFORD: Was that your response? I did not read this article, so this is probably why I did not understand it.

MR BAILHACHE: I think, "It is sometimes said" is code for saying, "It has recently been reported that".

DR MOUNTFORD: Right. The thing that I have learned from all the reading we have had to do is, the most contentious issue seems to be the role of the Bailiff in the States. This causes the greatest tension, I do not know why. I am beginning to think it is maybe because elected representatives have this person imposed on them without choice, in almost a monitoring capacity. These are just impressions I have. Do you think these are wrong impressions?

MR BAILHACHE: These are not impressions that I get from talking to States Members. It is very true that there are some States Members who are quite determined in their opposition to the present arrangements, and who have been quite vocal about exercising those reservations. But on the whole, I do not myself think that that is the position that States Members adopt. I may be wrong, but I have not had that impression myself.

DR MOUNTFORD: I think that the idea of the civic head has become so intrinsically linked with the role of the President of the States that there is a fear that if you take the role of the President of the States away you will lose the importance of the Bailiff being the civic head. I see them as two separate things; the Bailiff is there as a civic head, it is a really important part of the tradition of the Island. I cannot see it as a great loss. Am I wrong in this?

MR BAILHACHE: I am sorry. You cannot see what as a great loss?

DR MOUNTFORD: The loss of being President of the States.

MR BAILHACHE: I think it is very connected with civic head today. It is not obvious to me that the Chief Justice would be the civic head if you were starting with a blank sheet of paper. It seems to me to be likely that you take the President out of the States, and there would be an erosion of the esteem in which the office of Bailiff is then held, not as a judge, but in terms of the civic headship. I would have thought that will happen, over a period. I may be wrong, but I would have thought it would.

DR MOUNTFORD: I do not see it as just a judge. I see it as all the other roles, the

ceremonial part, the symbolic head. Not that it is really important. I would not just see the judicial role, although that seems to take up an awful part of your time.

MR BAILHACHE: Yes. It is hard to respond to that. It is a question of impressions, and obviously, you are as entitled to your impressions as I am to mine.

DR MOUNTFORD: Can I ask you about an impression you have had? I know you have not been Deputy Bailiff for very long, but have you actually sat in the Bailiff's role in the States on a number of occasions?

MR BAILHACHE: Yes.

DR MOUNTFORD: And you would have sat in the States as AG?

MR BAILHACHE: Yes.

DR MOUNTFORD: Do you see any differences with ministerial government? Do you see any changes, any shifts, any different expectation from the role of the Bailiff as President of the States?

MR BAILHACHE: Insofar as the role of the Bailiff is concerned, I do not think ministerial government has made a very big difference. With one exception, and that is in relation to official correspondence, because there has definitely been a drying up of the amount of official correspondence that comes through. In 2005 - the figures are not going to be accurate, but they will be within 40 or 50 - there were probably about 450 official letters coming in each year.

Is that about five a week? Probably three or four a week. Now they are probably arriving, three or four a month, maybe less than that.

MR CRILL: Could you just explain what official correspondence is, as opposed to correspondence between departments?

MR BAILHACHE: Yes. It is the way in which the Island, as an entity, communicates with Her Majesty's Government, as an entity. So the Minister of Justice, now - it used to be the Department for Constitutional Affairs and Lord Chancellor's Department, and prior to that, the Home Office - would write to the Governor, who would write to the Bailiff, who would then circulate that letter amongst the President of the Policy and Resources Committee, the Greffier of the States, and the Attorney General. That letter would be on whatever matter affected the government in the United Kingdom and the people of Jersey. So that, if you wished to sign up to a new extradition agreement with the United States of America; or "We are planning to pass the Criminal Justice Act 2003, should we have an extent clause that enables some or all of that to be extended to Jersey?". There are a range of things where these matters would be the subject of letters, "The European Union is considering amendments to its taxation of savings directive. These are things which we want to tell you about". Not everything required an answer, some of them were just sent down for information, and some of them were sent for answers to be given. The official correspondence worked, therefore, as a way of ensuring that a group of people were aware of the issue which had to be considered: the Greffier of the States, because he was ensuring that, representing the States as a whole, all the relevant committees became aware of the correspondence; the Chief Minister's Department was then the Policy and Resources Department and correspondence was copied to the Chief Executive to the States; and the Attorney General. Those letters have become much fewer, and few and

far between.

MR STRANG: So are there a whole lot of unofficial correspondence now then?

MR BAILHACHE: Now it is more likely that there should be communications from Departments in the UK directly with departments in Jersey, which bypass the system, which is why I made the comment I did in relation to one of the matters, which I thought could have been better dealt with.

MR CRILL: Does that departmental correspondence then find its way back to the Crown Officers for constitutional advice?

MR BAILHACHE: No, not unless asked for. That is a drawback of the changes which have been made. That was one of the reasons why the protocol which was developed by the Bailiff, and which is currently being reconsidered at the moment, is intended to set out guidelines as to when there should be communications by official correspondence, and when it would happen directly. It would not be important, but for the fact that we are not independent.

MRS BACKHURST: Is this the health insurance problem that has arisen?

MR BAILHACHE: That was one of the examples I gave.

MRS BACKHURST: That was one of them. Because then that parliamentary committee was set up, and they expressed their concern that the communication seemed to have failed in some way. So that is what this is about?

MR BAILHACHE: Yes, yes.

MRS BACKHURST: It just happened, nobody asked for it to happen. It is simply a new way the UK government have been dealing with matters, is it?

MR BAILHACHE: I think the UK probably quite likes the direct approach.

MRS BACKHURST: They like ... sorry?

MR BAILHACHE: I think the changes have gone down well in the Department of Justice. They prefer a Minister directly accountable.

THE CHAIRMAN: Could I take you back to an issue Dr Mountford was raising with you about whether the Bailiff would be diminished if he ceased to act as President of the States. We were discussing this with the Bailiff this morning, and going over suggestions that had been put to us by different people. Just to set it in context, the Bailiff originally was in charge of all the civic affairs of the Island himself. In time, he broadened that out to include the Jurats, and then the Royal Court and the States divided out and divided into two separate bodies, but the Bailiff was still there at the apex of the pyramid for both, and has been, historically, all the time.

His functions have slowly been limited by convention, by statute, just the way that the monarch's functions have been limited and diminished from the time when the monarch was absolute in everything, but the monarch is still regarded as the apex of the pyramid. If, to take the suggestion that has been mooted by some people before us, the Bailiff were to remain

nominally President of the States, and perform only ceremonial duties in respect of the States, but devolve those duties to delegates in some fashion, would that diminish his role as civic head, do you think?

MR BAILHACHE: If I pull a face, it is because it sounds a bit like being titular head of the Honorary Police, which is something that people used to put to me as Attorney General. I never knew what it meant. So, if he was titular head of the States ... it does not address the practical problem, does it, about who presides over the Assembly? That is the first thing. The second thing is, I think, it does not address the question of official correspondence, which remains. For all that there is the possibility of constitutional concession by department, nonetheless, if the protocols are worked properly and are respected, the official correspondence is a way in which you protect the constitutional position, and is, I think, important. So, the idea of having the Bailiff as nominal head of the States does not cope with those problems.

THE CHAIRMAN: Would it make any difference to the official correspondence? It would still be done by the Bailiff, would it not?

MR BAILHACHE: Well, he is not nominal then, is he? He is still fulfilling that useful administrative function. I understood, from what you were saying, that he was going to be rolled out on Liberation Day and Remembrance Day ...

THE CHAIRMAN: No, no. What I am suggesting is that he would be nominal President of the States of Jersey. Everything else, he would continue to do: judicial duties, for which he would have more time available, and all of the ceremonial and public matters, which descend from

his historic position as the lord high everything. He has retained a considerable amount of the public work, which people value. Do you think that would be workable, and would he still retain the standing and esteem that he has?

MR BAILHACHE: I just do not know the answer to that. Maybe, I do not know. For my part, I think the natural Jerseyman's reaction is going to be, "You are taking away a part of the role, and you are bound, therefore, to diminish the office".

THE CHAIRMAN: That is really the question, is it not?

MR BAILHACHE: I think you are bound to.

THE CHAIRMAN: It would certainly avoid any problem about Article 6, and the judicial sittings.

MR BAILHACHE: If there is a problem.

THE CHAIRMAN: If there is a problem. That is a question.

MR CRILL: Can I come back to this matter of the official correspondence? The Bailiff this morning suggested that there was greater awareness than before, really, about the constitutional threats that we face from international treaties and involvements generally, whereas previously we were very much left to look after ourselves. So there is much more invasiveness, if you like, into our affairs, which requires supervision to protect our constitutional position. On the one hand, we are under greater threat, but on the other hand, the mesh of the

net has got wider, because the official correspondence has dropped off enormously, and so things are getting through the net, or risk getting through the net.

I am also not quite clear who is the principal caretaker of the constitution, or our constitutional rights. On the one hand, the Attorney General advises the States in respect of constitutional matters, but the Bailiff appears to exercise another role, partly through the official correspondence, and partly by some sort of further protective or supporting function, and I am not quite sure how those sit.

MR BAILHACHE: On your first point, and I think you are right in your analysis, that the mesh has got wider, and the answer to that, in my view, is that we must do better with the protocols, because there is not very much wrong with the protocols, it is just the way in which they have been operated has not been consistent with the protocol itself. So I think we must do better, as far as that is concerned, and if that happens, then there should not be such a mismatch between the obligation to guard the constitutional relationship, and the greater invasiveness, as you put it, with international business.

It is just a fact of life today that, whereas 100 years ago, 150 years ago, international business was whether you had a war or whether you made peace, and maybe you had a trade agreement, today it is opening a bank account, and whether or not your pigeons have been properly ringed, and where they go to, and the huge raft of environmental conventions and things, which do have an impact on our constitutional relationships, because once the international obligation is created, it is the UK's obligation and not just ours. Therefore you create the potential for tension between the United Kingdom and Jersey, Jersey asserting its right to domestic autonomy, the UK asserting its international obligation. So the more you

expand the scope of international obligations, the more scope there is for tension between the UK and Jersey, which is something which obviously needs to be managed.

In terms of official correspondence, there was quite an interesting example. Very shortly after I became Attorney General, it was within a month or so, and is, if you like, a good example of the Bailiff acting as a constitutional long stop, despite the fact that he is my brother. The issue was whether or not the Island should sign up to an environmental convention, I think it was about lead emissions into the atmosphere. In the usual way, it came into the Bailiff's Chambers, the official letter was sent to the Greffier of the States, was sent to the Chief Executive, was sent to me as Attorney General. The Chief Executive received it, he sent it out to the person then responsible for giving him advice about whether it should be ratified. The answer came back, "Yes, the States always like to ratify environmental conventions, so we should ratify it". A draft letter was prepared to send back, to say, "Yes, please, we would like to be included in the UK's ratification of this convention". It was shown to me, as Attorney General, which was the practice at the time, I looked at it and thought, "Okay, nothing to do with me really, it's a political matter".

It went off to the Bailiff, who picked up the phone and said, "You do realise, don't you, that we will have to close down the Bellozanne station for waste if we do this, because it breaches this convention?" I said, "What? I didn't know that". I then got in touch with the Chief Executive and said, "I am told this is the position". He said, "What? I didn't know that". He got in touch with the person who had given him the advice, who said, "Oh yes, but we are going to change it one of these days, anyway". So a rather different reply went back. It is quite a good example, in a small place, of the Bailiff who has been in the system for quite a long time, acting as a long stop. It should not be necessary, but it is quite a good example of it. I forget what

the second part of your question is, I probably have not answered it properly.

MR CRILL: I think that as far as the protectors or the advisors on constitutional matters to the States are concerned, you are saying that the Bailiff still, basically, acts as a long stop?

MR BAILHACHE: Yes, he does. All States Members have, in their oaths of office - I am not sure about the Connétables - but the Senators and Deputies have an obligation, in their oaths of office to uphold the constitution, as does the Bailiff. In practice, one would expect the Bailiff, being a lawyer, and more accustomed to things than States Members might be, in constitutional terms, he would flag it up with the Attorney General, who would then give the constitutional advice. I think, in practice that is the way it would work.

When I was preparing this submission, I thought it was quite marked, and I was surprised myself looking at the statistics to think that a quarter or something like that of States Members have been there for less than two years, and something like half have been there for less than four years, and a third only have been there for more than nine years. I think that is quite a telling statistic myself.

DR MOUNTFORD: We have heard from the Bailiff quite a lot of detail about appointments, and I understand, I think, you were the first Deputy Bailiff to go through an appointment, an application system, a process. Having been Attorney General, have you found that useful, or would you have been able to have walked into the Deputy Bailiff's job, or applied for the job, if you had been not AG?

MR BAILHACHE: I do not think the Attorney General's experience is relevant to the judicial

part of the job in great measure, no more so than any other lawyer would have had. Maybe, subject to one thing in relation to moving conclusions in criminal cases, where the Attorney General is required to reach a provisional view about what the right sentence should be. That is what the exercise of moving conclusions about what the appropriate sentence is, or is intended to be. So that is, if you like, a judicial training, that it is a quasi-judicial decision that is taken by the lead prosecutor, and in practice, the prosecutor who is putting forward the case must discuss it with the Attorney General or Solicitor General prior to going to court with conclusions. That apart, I do not think being Attorney General is really very relevant to the judicial side of the job. I think it is more relevant to sitting in the States. It is quite different, because as Presiding Officer you cannot afford to stop listening at any given time. As Attorney General, sometimes you might get distracted and not give something 100 per cent attention, but I think that the experience in the States is useful.

DR MOUNTFORD: But not essential?

MR BAILHACHE: No, I think it is really not essential. Guernsey have had a position where the present Deputy Bailiff was never Attorney General, was never the Procureur, and there are some people, I know, at Guernsey, who take the view that he comes to the position of presiding in the States of Guernsey without any baggage at all, because he has never been advising Members that he does not agree with what they want to do or threatening to prosecute them, or whatever the case may be.

But for my part, I think it is helpful to have been formerly in the States. I have become aware of people and the way in which you have to react to people, so I think that has been useful. I think, in a sense, it works the other way around, that if you do not have a position whereby the

Deputy Bailiff is drawn from Attorney General, there is a risk that the job of Attorney General would be less attractive. Most of the people who have gone in for being Attorney have done so because they want to end up judging. So I think there is a risk that the job of AG would become less attractive if you were to tinker with that system.

MR CRILL: But the opposite could also apply, could it not?

MR BAILHACHE: It could do.

MR CRILL: There are some people who would like to be judges, but do not want to be head of ...

MR BAILHACHE: I see what you mean. No, no. Of course, they can, at the moment, if they are appointed Commissioners. But I was thinking more about the difficulty of obtaining some decent legal advice for the States, which I think is necessary.

THE CHAIRMAN: How much in practice did you go to court in recent years as Attorney?

MR BAILHACHE: Hardly at all. Obviously, for ceremonial functions and for more significantly, as I said, in the Court of Appeal I went sometimes, occasionally Privy Council, as you will be aware, and occasionally in the European Court of Justice. Not -- not frequently and that's simply because the preparation time, being comfortable with litigation, wasn't available.

THE CHAIRMAN: Well, it has changed over the years that, has it not?

MR BAILHACHE: Yes, and as I understand it, also in the United Kingdom.

THE CHAIRMAN: Yes, it did.

MRS BLACKHURST: The Deputy of St Martin, who brought the proposition that constituted this review, one of the reasons why he brought it, he said, "Was because if there was a complaint against the conduct of the Attorney General or the Solicitor General, where is the remedy?" He felt that there was a lack of accountability, generally. How is that dealt with?

MR BAILHACHE: Because it's a Crown appointment, the right place to make your complaint is to the person or body which makes the appointment and, therefore, it will be investigated by the Ministry of Justice if they think it's something which they think is worth investigating.

THE CHAIRMAN: There was some suggestion from somebody that they did that and were told it was a domestic matter for Jersey so it went around in a circle.

MR BAILHACHE: I think -- I think that may be code for saying there wasn't anything in the complaint.

MR CRILL: As a Member of the States, does the Attorney General feel accountable to the States Assembly?

MR BAILHACHE: In some respects, I think -- I think you are, AG, accountable to the States. Certainly, where it comes to how you've spent public money and investigations of fraud or any of the -- any of the statutory functions which the States have -- have conferred upon the AG,

the Attorney must be responsible to the States, accountable to the States for that.

And there were occasions where I did spend much more money than the Finance and Economics Committee of the day thought I ought to be spending and so that debate was had, not in the States, as it turned out, but it could have been. So in that respect, yes. I was accountable for the legal advice which was given. I think if I'd given some legal advice which was plainly wrong and the States had taken a decision which cost the Island a lot of money, then I would expect to -- you know, I was expected to have been, in effect, accountable because the States would have lost confidence in the legal advice that it had received.

And there was a motion of no confidence in the Bailiff about 18 months ago or so. There's no reason why, in theory, there shouldn't be a motion of no confidence in the Attorney General, and if that were passed, slightly depending on what the subject matter was that gave rise to the vote, I think the Attorney's position would become untenable. And I qualify it because I think if it were a decision to prosecute a Member of the States for doing something, I think different considerations arise because I -- I would be pretty robust in saying to the States, "I didn't really care what they thought if I'd taken a prosecution decision".

MR CRILL: Does the Attorney-General, as head of the Crown Officers' Department, the Law Officers' Department, produce a business report to the States?

MR BAILHACHE: We produced what was rather posingly called "The Attorney General's Review" which I produced and published annually and it's on the website, but I never formally presented it to the States. It probably would have been a good idea to present it. I don't think anybody read it. But --

THE CHAIRMAN: To what extent to the Members of the States question the Law Officers about the conduct of the Law Officers' work?

MR BAILHACHE: Conduct in what sense?

THE CHAIRMAN: Speed of decision, actual content of decision, are they entitled to a question of content of prosecuting decisions to prosecute or not to prosecute, and do they do so?

MR BAILHACHE: In terms of -- well, can I take it in stages?

THE CHAIRMAN: Yes, please.

MR BAILHACHE: On the civil advice that was given, there would regularly be complaints that advice was too slow and that was just a function of having too much to do and not enough people to do it and I think that is probably still the position, although there has been some improvement over the last five years, perhaps.

I don't think there has ever been significant criticism of the content of the advice and, indeed, quite the reverse. I actually think the legal advice which is given by the lawyers in the Department is of a very, very high standard, particularly when one compares that with the salaries in the private sector.

In terms of prosecution decisions, I don't think on the whole that I would regard myself as

accountable to the States for prosecution decisions as Attorney General. It's a Crown function rather than a States function and that's the nature of the constitutional relationship we have.

However, there was a difference when the historic child abuse inquiry was proceeding and prosecutions were being brought. It was so obviously a matter of intense public interest that I don't think it was right to make some statements in the States and I think I did on two or three occasions, I did ask -- answer questions with as much detail as I thought was proper.

DR MOUNTFORD: I have read reviews of the annual report in your reviews, and there are quite a lot of statistics and targets. So if you set targets in some way you have to monitor how the targets are achievable or not because that is all part of the reflective evaluation process. So how would that occur? Going back to the AG's role, he is responsible for the Law Officers' Department so he must be a part of some sort of monitoring in order to determine whether targets can be achieved.

MR BAILHACHE: The targets were mostly set, I think, by the present Bailiff when he was Attorney General.

DR MOUNTFORD: I see.

MR BAILHACHE: And there were structural targets such as, "How long does it take to indict a case in Royal Court from the date of committal? How long does it take to prepare the report to the Privy Council on legislation that has been adopted by the States?" Which, in the first case, say it should be indicted within six weeks.

DR MOUNTFORD: Is that the normal time? Is that the expected time?

MR BAILHACHE: That was, if you like, delivery target and then the Chief Clerk would monitor how frequently we achieved six weeks and how frequently we didn't and whether we did it in two weeks sometimes, and likewise, with the preparation of Privy Council reports.

So most of the targets are that sort of target. It's quite difficult to prepare a sensible target about, "How good is your advice?" You don't know until it's tested later on, half the time, "How quickly you provided advice? How quickly has the letter gone back to the Ministers asking for advice?" Well, you can monitor that but on the basis that the letter could easily say, "We don't have enough information. Please give me the following information" it's not a very sensible performance target itself.

But certainly there are performance targets and probably they ought to be reviewed. I don't think we've reviewed them for a while and that's partly a function of not having the staff to review them because you need -- there's a bit of chicken and egg in that.

DR MOUNTFORD: I remember at the beginning of the report a clear statement that it had been designed in that way to fit in with the rest of States' policy because each States --

MR BAILHACHE: That is a slightly different point because the -- the reviews now are drawn up to be consistent with the States Business Plan and the States Business Plan has been drawn up by the ministerial departments and the Ministers. It doesn't obviously fit with the objectives of the Law Officers' Department and the targets in the Law Officers Department, but we have tried to shoehorn our business into a business plan for the -- for the governmental

departments and I think it works reasonably well, but it -- that's why it's structured as it is. Yes.

MRS BLACKHURST: Would it be helpful for Jersey to have a Ministry of Justice?

MR BAILHACHE: I used to joke with one of the Ministers that there was a Minister of Justice, and that's really the Attorney General.

MR STRANG: If there was a vote of no confidence in the States about the Bailiff and that was passed -- probably the case, but if it was passed then he would then find his position as President untenable, and even in effect presumably then he would cease to be Chief Justice. So do you think the States would then actually have an ability to, in effect, dismiss a Crown Officer?

MR BAILHACHE: I don't think the two necessarily follow and I think you'll have to again look at what the --

MR STRANG: So I mean, you can cease to be --

MR BAILHACHE: -- what the Bailiff's offence might be as far as that goes. But the Bailiff's position in the States is governed by the States of Jersey (Law) 2005. So there's no reason, in theory, why the States shouldn't pass an amending law which removes the Bailiff as President of the States. So that's dealt with the problem. He's still Chief Justice because he's a Crown appointment.

MR STRANG: Yes, so no linkage?

MR BAILHACHE: I don't think so. Not in that way.

THE CHAIRMAN: Criminal justice policy would now be the affair of the Home Affairs Minister?

MR BAILHACHE: Yes.

THE CHAIRMAN: To what extent does the Attorney General's Department take decisions in consideration of policy?

MR BAILHACHE: We certainly did. This is slightly linked to a point I made earlier about the lack of lawyers in the individual departments. So the Home Affairs Department doesn't have any lawyers in it. The Attorney General is concerned with criminal -- with delivery of criminal justice and so, naturally, the Minister would consult with the Attorney General who, as it were, were at the sharp end of dealing with whatever justice policy issues arise.

And it was one of the recommendations of Professor Rutherford, which was taken up, that there should be regular liaison between the Home Affairs Minister and the Bailiff and the Attorney General so there could be a discussion informally of what criminal justice policies which arose, and certainly, that occurred until more recently. I mean, I think, it still has occurred from time to time with the present Home Affairs Minister. He happens to be a lawyer and he was the Magistrate and so for the first time, the Home Affairs Minister has had a real understanding about the criminal justice process, but that core structure is not always going to be the case.

THE CHAIRMAN: Yes, thank you. That is clear.

MRS BACKHURST: Just a final question, just to confirm the Deputy Bailiff is precisely that; deputises for the Bailiff in everything that the Bailiff does? There are not any additional roles that the Deputy Bailiff throws out or no division of labour in that?

MR BAILHACHE: I think I probably ought to make him a cup of coffee if he wants one, but no!

MRS BACKHURST: Thank you.

MR BAILHACHE: But that -- no, that's absolutely right. The only functions I would have are if he is not available to perform his functions and that in practice means that we tend to share the sittings in the States. If you look at the diary for the next six months -- four months, it's pretty much on a 50:50 basis and we take court sittings similarly.

DR MOUNTFORD: If the Bailiff did not sit in the States, how would that affect the workload? Because I think it is immense, the workload of the Bailiff. I think he is spread so thin. Where do you think that time would be given?

MR BAILHACHE: I think probably we would need to call upon Commissioners less. We would still need Commissioners for some sorts of cases, but we would probably need Commissioners less so there would be a saving of money in terms of the cost of paying Commissioners. On the other side of the coin, taking the Bailiff outside out of the States would, I think, mean that the Presiding Officer would need some legal resource which would cost money which at the moment is not being incurred. I don't know where the balance would

come.

MR CRILL: Sorry, can I just ask back to the Crown Officers' Department, they have some sweep-up responsibilities; the States property matters, the (inaudible) function, the functions under mental health and all those sorts of things. Are those appropriately placed from the point of view of the efficient management or resource of the department as service providers?

MR BAILHACHE: I am reasonably confident you know much more about the mental health law than I do and so when you say we have some sweep-up functions, are you thinking only about curatorships?

MR CRILL: Yes.

MR BAILHACHE: Right. I mean, in practice, those do not engage a Law Officer to any significant point at all. I think I, as Attorney, I was involved in curatorships probably twice in nine years and in circumstances where there was a question mark over the way in which a curator was behaving. So generally speaking, that is a ministerial job which is done at a very low level within the Law Officers' Department; low level is perhaps not the right word, junior level. At any rate, not done at a legally qualified level. Most of it is done as an administrative matter.

In terms of the Regulation of Investigative Powers Law, that does take more time. I was quite surprised when I became Attorney General that I -- when I was asked to sign a telephone intercept, I didn't realise the Attorney General had to do such things. That does take a bit more time and, of course, with the Regulation of Investigative Powers, it's much wider than just

telephone intercepts now as well. The question really is, if you don't give it to the poor old Attorney, where do you give it? Where do you put it? If you gave it to the Home Affairs Minister, which one might think is the natural place to put it, there are some people who think that the relationship between the Chief Officer of Police and the Home Affairs Minister is such that there isn't the same independence and thoughtful independence of action by persons signing the warrants. It may be that the Minister would want to get legal advice so you would end up back in the same place anyway. I think there is a -- there is a view that that would be likely.

I found the Regulation of Investigatory Powers work quite intrusive in time terms but until we can find a better person to do it, it seemed to me the AG is probably best person to take it on. It may just be chatter but I think I was told at one point that the reason it was given to the Attorney General in the first place is that nobody thought that another -- no politician thought that another politician should have the power to execute a warrant on grounds that he might do so for some political reasons, but that probably is not entirely fair.

Extradition is another ministerial task where the Attorney exercises the non-judicial functions which are in the UK exercised by the Home Secretary. I think the same sort of general principles arise. If you gave it to the Home Affairs Minister, which in principle is absolutely fine, the likelihood is he'd be taking advice from the Attorney and it is probably convenient to have it dealt with in the AG's office, but again, it's one of those things that could be taken away if it's properly resourced somewhere else.

I think it was given to the Attorney under the 2004 law, if I remember correctly, because at that time there was a committee assisting the government and I remember negotiations taking

place with the Lord Chancellor's Department as to how Jersey's extradition law might be structured, because until then, the Island had been covered by the 1989 Extradition Act and extraditions had, in fact, been decided by magistrates in Bow Street.

I think the theory was that it would be too difficult for a committee to do this and, therefore, finding a single person who would do it meant getting the Attorney to do it. So it would be quite possible to do that through the Home Affairs Minister if that were thought appropriate.

Investigation of Fraud powers there I think fall very naturally as part of criminal justice with the Attorney. I think it's useful. I think I -- I hope I made the point in the submission that there's a tremendous link and mutual legal assistance internationally, serious fraud investigations and the prosecution process and it actually in this small place works very well to have responsibility located in the same place for those functions because the information flows -- feed naturally because they're all in the same place. You don't have to worry about a new Memorandum of Understanding between the Director of the Serious Fraud Office and the Director of Public Prosecutions and that and so on. It's the same person and, actually, I think one of the reasons why in terms of the IMF review of Jersey's performance against the Financial Action Taskforce recommendations, those parts of them which refer to the justice process as opposed to the regulatory process is one of the reasons why they were scored so highly.

MR STRANG: The conveyancing you dealt with could be outsourced but you would not end up saving?

THE CHAIRMAN: There is expertise there which is economical.

MR BAILHACHE: In the Law Officers?

THE CHAIRMAN: Yes.

MR BAILHACHE: Yes. We did look at outsourcing regularly while I was there. We routinely outsourced all insurance claims against the States. Major litigation the Attorney's Department is not geared up to cope with and so we would outsource that and particularly where there were heavy discovery obligations. It would be possible to outsource conveyancing, as mentioned, but I'm not sure there would be a saving. Any major commercial contract negotiations we tended to outsource. Occasionally, commercial advice was given by one of the lawyers in the Department or the Attorney, but by and large the major stuff would be outsourced.

I think there are things that are private law things which the private sector is best left to deal with, but there are public law things which I don't think the private sector should best be dealing with, and that includes Convention advice where you want to have a continuity of approach through government. I think it's quite undesirable to have different lawyers advising different parts of government on Convention points because different policy views may be formed.

I think judicial review, again, on the whole, I think that's better dealt within the AG's department because there's a better public law feel to that and I think probably the same goes for some of the administrative appeals which, Lord Carswell, for your benefit, a lot of our legislation provides for administrative appeals from a Minister to the Court in a different way from a judicial review. It's a --

THE CHAIRMAN: More like the Australian model?

MR BAILHACHE: It's more like the Australian model, yes.

THE CHAIRMAN: Mr Deputy Bailiff, thank you very much for your assistance this afternoon. You have cast a great deal of light on a lot of things for us and if you have any thoughts about Centeniers and Parish Hall Inquiries that can assist us further, we would be very grateful, but with or without that, may we thank you for your contribution to our work. We will consider it along with all the other things that we have to look at and reach our conclusions in due course and report to the States. Thank you for your attendance today.

MR BAILHACHE: Thank you very much.