

**Bailiff's Speech for Assise d'Héritage
15th September 2014**

1. I remember a few years ago, when the Court was sitting in D'Hautree School, a new Lieutenant Governor attended his first Assise d'Héritage. Unfortunately we had between us all forgotten to brief him on his role and so, when his name was called out in French to answer for the Bishops, Abbots and Abbesses, he sat silently in his seat assuming that someone else was going to do something. Eventually I leant across to him and whispered that he must say "*Garde*". With a somewhat puzzled expression he duly did so and we moved on. I am pleased to say that no such problem has arisen with our present Lieutenant Governor and I am delighted to welcome His Excellency and Lady McColl to the Royal Court today.

2. I am also delighted to welcome two Law Officers from other jurisdictions. First, I welcome Frank Mulholland QC who is the Lord Advocate of Scotland. Like the Attorney General in Jersey, he is ultimately responsible for the prosecution service and is also the chief legal adviser to the Government. Like Scotland, our law has its roots in the civil law of continental Europe and therefore a Scottish lawyer may have more familiarity with aspects of our customary law than an English lawyer. Since early on its history our Court of Appeal has always included one leading Scottish lawyer and more recently it has been two. We have been extremely fortunate in the calibre of Scottish members. To illustrate this, three of them have gone on to become members of the House of Lords or the Supreme Court ie the highest Court in the United Kingdom. These were Lord Jauncey, Lord Clyde and more recently Lord Hodge. These are significant times in the affairs of Scotland with the referendum which will take place very shortly. We are therefore particularly appreciative that the Lord Advocate has taken the time to be present at our ceremony today.

3. The second Law Officer is Howard Roberts QC, Her Majesty's Procureur in Guernsey. Guernsey may be very much smaller than Scotland but the relationship between the two islands is of great day to day significance. Mind you, it might all have been so different. As you know Jersey and Guernsey took differing stances during the Civil War with Jersey, through its Bailiff Sir George Carteret being Royalist, and Guernsey Parliamentary. This clearly ran deep for Sir George because, when he was in France after Jersey had surrendered to Parliamentary forces, he entered into negotiations to hand over Guernsey to the Dutch! I am glad to say that these negotiations came to naught with the result that we both remain dependencies of the Crown and my brother Bailiff has not had to learn to speak Dutch. In these days of international challenges, it is more important than ever that Jersey and Guernsey work together. The old saying 'united we stand, divided we fall' is a truism when small jurisdictions are dealing with larger neighbours and I am therefore delighted to welcome Mr Roberts to the Court today.
4. Finally, I would like to welcome Dominic Grieve QC. Mr Grieve was until recently Attorney General of England and Wales. The invitation was originally extended in that capacity and I am delighted that he has chosen still to come in a private capacity. I know from English colleagues that Mr Grieve is highly regarded. If I may say so, his departure from office highlights the differences between our system and the English system. In England, the Attorney General holds office at the pleasure of the Prime Minister and there is always a risk that, if advice is tendered which is not received favourably, a Prime Minister may try and find another Attorney General who will give him advice more to his liking. In Jersey, the Attorney General is appointed by the Crown and is therefore able to proffer his advice fearlessly and independently. I would suggest that, in the long term, this

arrangement is in the best interests of the Government of the Island as it means it will be getting the best legal advice rather than the advice which it wishes to hear. I know that Mr Grieve always gave independent advice and I am delighted to welcome him here today.

5. This will be the last Assise over which I shall preside as Bailiff. I believe the justice system is generally in good shape and that the Courts deliver independent and respected decisions within a reasonable timescale. But all legal systems face their challenges and we are no exception.
6. The most difficult remains that of access to justice. The Island is fortunate that the burden of providing its legal aid system is borne by the legal profession rather than by the state. As I have said before, I do not think that the public in general appreciate that, for the most part, the legal aid system results in the lawyer being paid no fees or very little. I wish once again to place on record my appreciation of all that the profession does in providing legal aid. It is an enormous honorary contribution, wholly in keeping with Jersey's long tradition of honorary service.
7. Nevertheless, because of the financial limits introduced in the legal aid scheme, and the high cost of litigation, there is a section of the population who simply cannot afford to go to law, either because they are not eligible for legal aid or, even if they are, the contribution which they are called upon to make is excessive in relation to their realisable assets.
8. Efforts are being made to address this on two fronts at the moment. There is the working group, which I established last year under the chairmanship of the Deputy Bailiff, which is mandated to try and simplify Court procedures, particularly in relation to smaller cases, so that the costs can be brought down. That work is progressing and I understand that a paper is about to be

released for consultation. More generally, the Chief Minister has established a group to look at access to justice and I hope very much that all those interested will contribute. In the long term, this is one of the most important issues we face. A justice system is there to serve the whole community and if it is not doing this, it is not fulfilling its function.

9. A second major challenge is to get the different constituent elements of the justice system to work together in order to make changes and improvements. In this respect an important innovation in the last few years has been the establishment of the Justice System Board. This is a board which I chair and which includes the Chief Minister and other Ministers, together with representatives of all those with an interest such as police, the legal profession, the court system and many others. We have established a number of sub-committees which are working on improvements in particular areas. For example, work is taking place on the reform of legislation, including the Criminal Procedure Law of 1864, on arrangements to enable prisoners to be present in Court by video from the prison for remand hearings, on establishing electronic courts, on improving witness care, and on improving interdepartmental efficiency. Some of these will take a little time to come to fruition but in the long term I have no doubt that the Justice System Board will prove its worth, and if we were all to come back in ten years time, we would see many significant changes.

10. I have mentioned the decisions of the Royal Court. The ability of the Court to reach the right answer depends not only on the quality of advocacy but also on the calibre of those who are members of the Court. Under our system, not only do you have a presiding judge but you have the Jurats. I consider it one of the blessings of my judicial career to have had the privilege of sitting with Jurats. As I have said before, I think a Court

consisting of a legally trained presiding officer and two able lay people has a better chance of reaching the right answer than a judge sitting alone. I suspect that many lawyers, particularly those who work in the commercial field and never come to Court, tend to take the system for granted. Well this would be a rash thing to do. The ability to reach the right decision depends upon the calibre of the Jurats. Electing a Jurat is therefore a very significant event. There was to have been an election to fill a vacancy for Jurat on Wednesday. However, two of the candidates have now withdrawn leaving Mr Geoffrey Grime, as the third candidate, to be appointed. There will therefore not be a meeting of the Electoral College this Wednesday. But there is a further vacancy for Jurat arising in the next few weeks and an election may well be necessary at that time. If so, I hope very much that members of the profession will take the necessary short break from filling in their timesheets to fulfil the really important role of choosing a member of the Royal Court.

11. As I say, this will be my last Assise. I will not say too much as you are stuck with me as Bailiff for another four months or so! But, with so many advocates present, I cannot let this opportunity pass without expressing my thanks to the profession for the courtesy and the ability which they have shown throughout my time as Deputy Bailiff and Bailiff. You will no doubt be amazed to hear that not every single submission made to me during my time has been a model of clarity or brevity; but what I have always felt is that every advocate is doing all they can to represent their client to the best of their ability and to assist the Court in trying to reach the right decision. I want therefore to place on record how much I appreciate all the assistance you have given to me over the years.

12. But that is enough from me. I have no doubt that, as so far this calendar year, the new legal year will again be a busy one with considerable pressures on the Court. But, with the assistance of the profession, we look forward to the challenges that are to come.