

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 M Birt, Bailiff of Jersey

**THE CHAIRMAN:** Now, we are just a couple of minutes ahead of our time, but if people come in in the next couple of minutes I can always repeat what I am going to say which is, first of all, Mr Bailiff, a welcome to you and we are very pleased to have you and thank you for coming to assist us in this review into the roles of the Crown Officers.

I made an opening statement in the morning on which we held our first hearings, which will have been reported, and I do not think I need to repeat it, except to say two things, publicly, again.

The first is we are looking at the roles of the Crown Officers in principle. We are not concerning ourselves with individuals or the quality of their work; and we are looking at the principles that we ought to apply and whether the roles ought to be changed in any way by application of those principles.

And the second thing is to say that the discussion has centred to a certain extent in parts of our inquiry about the issue of perceived bias and, of course, it must be publicly clear that there has been no suggestion whatsoever of actual or personal bias on the part of any Crown Officer whose integrity is unimpeached. But if it comes up in context, it is in the context of objective and perceived bias only, and I just want to be sure that the public are clear about that.

The States have asked us to hold our hearings in public; we are glad to comply with this request. So the proceedings will be transcribed and, of course, you will get a chance to check the transcript to make sure that it is an accurate reflection of what you have said. When that has been done, it will be published on the review website, complete, and the written submissions have also gone on to the website and are open to public access.

But as I said before, and repeat, this is not an inquisition; it is an inquiry, literally so. We are inquiring about the institutions of Jersey and how they operate, to inform ourselves and in the course of that we are hearing opinions from all sides of all types, and they are all of them welcome. When we have heard them all, we shall then discuss the matter ourselves and endeavour to reach conclusions. At the end of the process we will make recommendations to the States and complete our function.

Mr Bailiff, we had the benefit of a detailed submission from you - for which I would thank you on behalf of the Panel - which has been most helpful, together with the material that you have appended. Before I ask members of the Panel to start off, are there any matters that you would like to amend or add to what you have given us in writing?

**MR BIRT:** No, thank you, Chairman. I don't think so, no. I think that everything I wished to say is in there and I do not wish to amend it.

I thought perhaps I could just emphasise two points, though, before I started. The first is to repeat a point I made right at the beginning. I take very seriously the need for the President of the Royal Court and the President of the States to be seen as being impartial in the sense that he does not express views about matters of political controversy. I think that goes to the heart of both roles. I do strive, therefore, to adhere to that.

Now, inevitably, as you will have seen, I have expressed some views in the course of the paper about the position of the Crown Officers. But I do regard this as exceptional and as justifying a departure from what I would normally do, for the three reasons I gave there. First

of all, you have asked for it, quite naturally. Secondly, I think it is perfectly right that you should ask for it and that I should proffer whatever assistance I can give about the position, seeing as I am the current Bailiff. And thirdly, I do think it has a constitutional aspect on which the Bailiff can properly speak.

But I just wanted to emphasise why I regard this as an exceptional matter on which I can depart from what I regard as being a very strong principle.

**THE CHAIRMAN:** Yes. Very well.

**MR BIRT:** The second matter I just wanted to emphasise was this: I greatly enjoy the varied aspects of the Bailiff's role: the civic work, the work in the States. But I am a lawyer by training and I applied for this career path because of my enjoyment of the law. So if one was looking at this purely from a personal perspective, I would view with equanimity the prospect of having to return to be a full time judge.

But my personal views are irrelevant and do not affect what I have said. I am content to fulfil whatever role is set out for the role of the Bailiff. But the reason I have proffered the opinion I have, is because I think it is in the interests of the Island. It is nothing to do with what I might personally prefer.

**THE CHAIRMAN:** Yes. Thank you.

**MR BIRT:** So, those are really just a couple of introductory remarks.

**THE CHAIRMAN:** Yes. Thank you, Mr Bailiff.

We thought we would approach this under a number of headings and, although it could be debated whether the roles of the Crown Officers include the method of their appointment, a number of people have raised it and I thought that we might ask you about your views about the appointment process; whether it is satisfactory or whether it requires amendment, in respect of any of the several Crown Officers. Geoffrey, would you like to lead?

**MR CRILL:** Thank you.

Mr Bailiff, there has been, obviously, a recent flurry of appointments of the Crown Officers and I think it would be helpful if you could set out, broadly, both the formal process and perhaps the more informal process of the appointment, perhaps starting with the Solicitor General's appointment. And, if possible, if you could identify where that process has evolved or developed, particularly in recent years?

**MR BIRT:** Certainly. I personally, of course, have only been involved in the last round of appointments. Previously I was on the receiving end in the sense that I was an applicant. And certainly if one goes back to the time of my original appointment as Attorney General, the process was undoubtedly much more informal and less structured than it now is.

I think in those days, the Bailiff of the day would consult with a number of relevant parties but there was no structure to the process, no interview, and I think it was done on a much more informal basis. But it has undoubtedly developed in conjunction with the Ministry of Justice, because the Secretary of State has made it clear that he wishes to be satisfied about the

procedure.

So if I can go to the most recent procedure, which is probably the most relevant: as you know, taking the Solicitor General then, we advertise and any members of the local profession can apply. On application the applicant receives, amongst other things, a job description and the main terms and conditions, and a short summary of the process. And applications are made to the Lieutenant Governor, because it is, of course, a Crown appointment. The Lieutenant Governor then --

**MR CRILL:** Sorry, does the Lieutenant Governor's office manage the process?

**MR BIRT:** No. The process is managed out of my office, but the Lieutenant Governor receives the applications and will, of course, ultimately be responsible for forwarding them on together with any matters he may wish to raise.

So, we receive the applications. What we do now, is we have convened a selection panel. The panel consisted, on each of the last rounds, of myself as Chairman, the senior Jurat and Lieutenant Bailiff, Jurat de Veulle, and the Chairman of the Jersey Appointments Commission, who at that time was Mr Michael Liston; so the three of us formed the panel. We then --

**MR CRILL:** Sorry to interrupt. Was that panel established ad hoc, or is that set down in an existing procedure?

**MR BIRT:** Well, this was the first time we have had a panel. It was established ad hoc, but in consultation with the Ministry of Justice so that they were aware of the nature of panel we were

convening.

**MR CRILL:** Was there any concern that you, as the Chief Judge, should be involved in the process of the selection of a prosecutor?

**MR BIRT:** No. My own view is that I think it is extremely important the Bailiff should be involved. He is in the best position, I think, to form a view of the ability of various lawyers by reason of his experience. The fact that it happens to be a prosecutor, I do not think makes any difference. So I would staunchly defend the desirability of the Bailiff being involved in the process.

**MR CRILL:** So the panel chooses a shortlist for interview, if that is appropriate?

**MR BIRT:** On this occasion, in relation to the Solicitor General, we did in fact not interview one applicant. So, to that extent we did prepare a shortlist. I would add that that applicant had previously applied for the position of Attorney General and had been seen and consulted upon on that occasion. And it seemed clear that the candidate was unlikely to be chosen.

**THE CHAIRMAN:** But if you had a large number of applicants, would you follow the usual procedure of whittling it down to a shortlist?

**MR BIRT:** I am sure one would have to, yes. You would not be able to interview an enormous number and would not want to. I think experience has shown that is an unlikely state of affairs.

**THE CHAIRMAN:** Yes.

**MR BIRT:** So, we then sent out to what I would call the “consultees” the application forms from the various candidates and their statements as to why they were applying and so on, coupled with the job description setting out the key qualities and abilities. And we asked the consultees to assess each candidate against the job description and against the key abilities and qualities. And then we met with them. We met with each in turn.

And the consultees are - I take them in no particular order - the Jurats, as the first; the States Consultative Panel was the second - as you know the Bailiff has a consultative panel which consists of certain people there by right - from memory, the Chief Minister, the Senior Constable I think, possibly the Senior Deputy and the Senior Senator; and then a number of Members elected by the States, but certainly, none of them nominated by the Bailiff. So those are the second body. The third body is certain senior lawyers; and that was the Bâtonnier, the President of Law Society, the former President of the Law Society and the President of the Chambre des Ecrivains.

**MR CRILL:** Again, that is a fairly ad hoc selection, is it?

**MR BIRT:** It is an ad hoc selection, yes. It is a traditional one which has usually been followed, because they are the senior spokesmen for the legal profession.

And the fifth group -- well, then we also consulted the other Crown Officers and the local Commissioner; in other words, Advocate Clyde-Smith, Mr Clyde-Smith, and on the last occasion, Sir Philip Bailhache, who by then was a Commissioner, and no longer a Crown Officer. That was to get the view of the judiciary, who of course again, would have seen quite



often, some of the applicants before them.

So, it is a wide group, and so the selection panel - the three of us - would see each of those groups and ask them to give us their views in respect of each candidate, measured against, as I say, the qualities and requirements set out in the job description.

Then, having done that, we then interviewed each candidate and again tried to test them in the ordinary way, against what was in the job description.

Having undergone -- finished that process, then the three of us sat down to decide who we felt was the strongest candidate. And we then passed on our recommendation to the Lieutenant Governor, setting out the process, setting out the details of the other candidates and, in effect, writing a fullish report for the Lieutenant Governor and in turn, for the Secretary of State.

**MRS BACKHURST:** Could I ask if, when you are choosing the Solicitor General, are you thinking of a potential ladder?

**MR BIRT:** One, yes, clearly has at the back of one's mind the possibility of the Solicitor General going on further but you are not choosing a Bailiff; you are choosing a Solicitor General.

**MRS BACKHURST:** Thank you.

**MR CRILL:** Given the --

**MR BIRT:** I'm sorry, if just may intervene? Of course, in the past, some Solicitor Generals have quite clearly never been going on, either by desire or for age reasons. So it is not a -- you are not sitting there thinking, "Is this the right person to be a Bailiff in 15 years time?" You are thinking, "Is this the right person to the Solicitor General now?"

**THE CHAIRMAN:** No, but it may cross your mind, as in the appointment of a junior judge, "There is a possible Lord Chief Justice. There is a possible Bailiff". It is bound to.

**MR BIRT:** Of course, of course, of course. Yes. You have it at the back of your mind, but your priority is to appoint a --

**THE CHAIRMAN:** The priority for the individual position?

**MR BIRT:** Yes.

**THE CHAIRMAN:** Yes. Thank you.

**MR CRILL:** Looking at the consultative panel and the selection panel, one might think that the process is geared towards the Court function of the Crown Officer. Do you think that there is adequate weight in the process given to his advisory function?

**MR BIRT:** I think so. Certainly the Jurats and judges might, I suppose, be more aware of a lawyer who appears in court. And in certain respects, I suspect that the skills necessary for a litigator are helpful in Crown Office. You probably, as a litigator, will have quite a broad experience of legal matters, because we certainly do not specialise as litigators in Jersey. And

you will be used to having to think on your feet and respond quickly.

But there, certainly in my opinion, is no requirement that you should be a litigator. If the best person was, in fact, somebody who tended to advise more, one would choose them. As I say, I suspect a litigator is often in a stronger position; many advisors will tend to advise in quite a narrow field, nowadays, unfortunately. They will be specialist company people, specialist trust people. And so far, we have not had a plethora of trust and company advisors applying for the job.

**MR CRILL:** The selection panel's recommendation goes to the Lieutenant Governor and he then passes that through to the Ministry of Justice --

**MR BIRT:** Plus any observations he wishes to make on the process.

**MR CRILL:** All right. Would those observations come back to the panel first, before ...?

**MR BIRT:** No. I have no idea what he says.

**MR CRILL:** Yes. And, are you aware of there being any further discussion as between the Justice Minister --

**MR BIRT:** Sorry, if I can just intervene. I mean, the reason I know that, is the Lieutenant Governor, I know, takes seriously that he is associating himself with the recommendation which is coming from us. So he takes very seriously the fact that he should be comfortable with what is being put forward.

**THE CHAIRMAN:** If he had a strong contrary view, would you expect him to come back to you and express it?

**MR BIRT:** I would, yes, just as a matter of courtesy and because, after all, this is an appointment of a Crown Officer for Jersey. The recommendation is coming from the Jersey Selection panel. If the Governor was going to put in a contrary view, I would certainly expect him to come and let me know.

**THE CHAIRMAN:** And it is not impossible in such a situation that either you and your panel would reconsider, or that he might be under a misapprehension and he would reconsider. One would hope that these things can be ironed out?

**MR BIRT:** One would hope so. Yes, absolutely. As I say, this has not happened, but I cannot believe it would not be possible to resolve it. One would have a discussion.

**DR MOUNTFORD:** I wonder why the Lieutenant Governor is not involved in the interview process, because it is quite usual to -- a non-specialist person is often invited in, and he is very much part of this process if he has such power to veto any decisions that you arrive at.

**MR BIRT:** Well, I do not think he has the power to veto any decisions. It is clearly though, that the Secretary of State will no doubt want the comfort that he is happy with the process.

**DR MOUNTFORD:** All right.

**MR BIRT:** This is very much an Island appointment. I know it is a Crown Officer but it is to be a Crown Officer of this Island. Personally, I think it right and proper that the main driving force for the appointment should come from those who are within the Island. The Lieutenant Governor is very important -- plays a very important role, but --

**DR MOUNTFORD:** Do you think it is likely that the Ministry of Justice would say no? Or is it just a process that one goes through, a traditional process?

**MR BIRT:** Say no to a recommendation that has come forward?

**DR MOUNTFORD:** Yes.

**THE CHAIRMAN:** It has happened in other spheres. But, what in practice, happens where this process has been established for a longer period, is that the Secretary of State or Lord Chancellor will ask to discuss it and say, "Why, this, this, this, and why not the other?" And if he is satisfied that the reasons that you have given are sufficient, he will then say, "Well, that is all right then". I have never been in the unhappy position of it going further the wrong way. But that is a perfectly good point; they can raise it. Because it is a Crown appointment, they are entitled to.

We had a view expressed from some quarters that there is considerable intrinsic value in the independence, in that it is a Crown appointment of both the Bailiff and the Law Officers. Is that a view that chimes with yours, Mr Bailiff?

**MR BIRT:** Very much so. I regard it as fundamental for a number of reasons. First of all, as a

judge, looking at one's judicial career, independence is absolutely fundamental. I believe it is equally important for the Attorney General and the Solicitor General, both in respect of their prosecution role, that they must have complete independence and not feel that they might be in trouble with any local group because of a decision they have taken to prosecute. They must be independent there. I would say similarly in relation to the advice they give to the States. I think it is beneficial that they are not hireable and fireable at the behest of the Chief Minister or Council of Ministers. One only has to see, in my opinion, some of the weaknesses of the position of the Law Officers in the UK, to think that probably our system is rather preferable.

**THE CHAIRMAN:** The controversies which have developed about decisions of the Law Officers in the UK are controversies which relate to their connection to the political party which has appointed them; that is removed in the Jersey situation.

**MR BIRT:** I entirely agree and I think ours is preferable.

**MR CRILL:** Is the process of appointment to the bench materially the same?

**MR BIRT:** Yes. The process I have just described was used for the last round of appointments in relation to the Deputy Bailiff and the Attorney General. It was not used for my appointment. The Secretary of State has accepted that the position of Deputy Bailiff is a training ground for the position of Bailiff, and that, therefore, all things being equal, you would expect to move up, assuming of course that you have performed to everyone's satisfaction. So, although of course, I did not undertake the process, my understanding is that -- certainly there was no advertisement; there was no advertisement for applications for the position of Bailiff --

**MR CRILL:** Was there for Deputy Bailiff?

**MR BIRT:** Yes. The only --

**THE CHAIRMAN:** There was a process for Deputy Bailiff; is that not so, Mr Bailiff?

**MR BIRT:** Sorry?

**THE CHAIRMAN:** There was a process for Deputy Bailiff which was observed?

**MR BIRT:** Yes. For Deputy Bailiff, Attorney General and Solicitor General, the process is identical.

**MR CRILL:** And is the panel the same?

**MR BIRT:** In other words, there are advertisements, open application, open selection. But for the position of Bailiff, so far, that has been not advertised. I applied, the Bailiff undertook the consultation procedure in the same way, with the same parties to see whether, in effect, the Deputy Bailiff had the support of the consultees. So, if at that stage they had said that this Deputy Bailiff is not up to the job, clearly everyone could have thought again.

**MR CRILL:** The selection panel is the same for the Deputy Bailiff as for the Crown Officers?

**MR BIRT:** Yes.

**MR CRILL:** Given the dual function of the Bailiff and Deputy Bailiff as President of the Royal Court and of the States Chamber, the States is singularly unrepresented in that panel?

**MR BIRT:** Well, they are represented by the Consultative Panel.

**MR CRILL:** Oh, I see, but not in the selection process? Only as consultees, if you like?

**MR BIRT:** As consultees, yes.

**MR CRILL:** What --

**MR BIRT:** I do beg your pardon. I forgot to mention that I did -- the panel did decide to consult separately, the Chief Minister. I should have mentioned that, of course. He is part of the Consultative Panel but we took the view - particularly in relation to the Attorney General and Solicitor General, but we applied it to the Deputy Bailiff as well - that as Chief Minister, he was entitled to express his own views. But that was particularly so, I felt, in relation to the Attorney General and Solicitor General because the Attorney General and Solicitor General would be advisor to the States; including the government.

**MR CRILL:** Obviously, we do not want to go into the confidentiality of the specific applications. But I am interested in the relationship of the consultation with the selection panel process. If, for example, there was a lack of unanimity from the consultees, shall we say if the States representatives did not accord with the views of the Court representatives, shall we say, what would be the consequence of that, given the -- I suppose you could say the essential working



relationship between the appointee and both branches of government?

**MR BIRT:** The recommendation to the Secretary of State and Lieutenant Governor is the recommendation of the selection panel. So ultimately, it is their recommendation which is going forward, taking into account the views of the consultees. Now, the views of the consultees are reported to the Lieutenant Governor and the Secretary of State, so that if there were a disagreement, this would emerge and be known to the Secretary of State who ultimately recommends to Her Majesty, the appointment. I don't think one can really go further than that.

**MR CRILL:** Yes.

One interesting point I note from the - this is a bit of an aside really, I suppose - the States of Jersey Law says that you have the power of appointment of the States Greffier?

**MR BIRT:** Right. Yes.

**MR CRILL:** Does that happen, in practice?

**MR BIRT:** Well, I have not had to do it since I have been Bailiff. But I am sure, yes; the Bailiff presumably exercises the power of appointment.

Now, I have to say, I do not know what happened on the last round, whether there was an advisory panel set up. What the Bailiff quite often does where he has a power of appointment, is to set up an advisory panel. For example, the appointment of the Magistrate rests with the

Bailiff. He asked me when I was Deputy Bailiff to chair an advisory panel consisting of myself and three others - I am just trying to remember who they were, including someone from Human Resources, a Jurat and a lawyer, I think - to conduct the process and then advise him. It may well be that on a future occasion the same will be done with the States Greffier.

**MR CRILL:** You mentioned, obviously it just cropped up in submissions, about the possibility or feasibility of separation of the roles of a Bailiff between the States and the Court. Do you think that the selection process would materially alter if that were to happen?

**MR BIRT:** Well, that I think would depend on what the outcome was in relation to a -- because of the States. Certainly one course, of course, would be that such a Speaker would be elected by States members, so --

**MR CRILL:** But as far as the appointment of Bailiff was concerned, yes.

**MR BIRT:** -- that is the most likely outcome, in which case, of course, it would be completely different processes. I do not foresee any change in the appointment of the Bailiff wearing his hat as a judge. In my opinion, for what it is worth, I think the system works well at the moment.

**MR CRILL:** Following on from the appointment I suppose is the matter of accountability. The Bailiff and Deputy Bailiff hold office during good behaviour until their 70<sup>th</sup> birthday. What does good behaviour mean in practice, I suppose, is the question? Is there any accountability, is there any reporting function, and is there any measurability of the role?

**MR BIRT:** I think it means the same as it would for a High Court Judge in England, Wales or in Northern Ireland. There is a great review process, I think, simply by the fact that you perform in public. All your decisions, save for a few children cases and so on are in public, your judgments are available, they are subject to scrutiny by the Court of Appeal.

One thing I forgot to say, although probably the Panel is aware, is that we do have a very distinguished Court of Appeal. I am not sure if Lord Carswell is aware of it but I have brought the current list, if that is of any interest. Because we are very fortunate in the -- sorry, I have one for each member of the Panel, just really for information. We have a Court of Appeal which, as I always like to say in colloquial form, has attracted historically the megastars or the superstars of the British legal profession and the Chairman in particular will have sat with Lord Hoffman, who was previously one, and Lord Browne-Wilkinson.

**THE CHAIRMAN:** Sir Godfray was one for a long time.

**MR BIRT:** Yes, Sir Godfray was here from the foundation in 1964 until he retired.

**THE CHAIRMAN:** Yes and Michael Beloff has been concerned with it for a long time and I was, shall we say, consulted at the time Peter Smith was appointed.

**MR BIRT:** Yes, yes. So we are --

**THE CHAIRMAN:** And Jonathan Sumption, does he sit regularly?

**MR BIRT:** Yes, he sits regularly. They all come over at least once a year.

**THE CHAIRMAN:** Very strong family.

**MR BIRT:** Very often more and it has historically been so and yes a couple of Scottish law lords too, Lord Clyde and Lord Jauncey, he used to be on it. So we have been very fortunate. But sorry, that was a slight aside by you asking about accountability. Certainly the Bailiff's judicial work is subject to scrutiny by a Court of this calibre and I have no doubt that if the Bailiff was not performing satisfactorily steps would eventually be taken, this would come to people's attention.

**THE CHAIRMAN:** If the appeal is not from the Bailiff sitting at first instance, would the Bailiff sit with the Court of Appeal and preside?

**MR BIRT:** Occasionally. I am the President of the Court of Appeal, *ex officio*, and I have, both as Deputy Bailiff and as Bailiff, occasionally sat. But it is comparatively rare, because the Court of Appeal comes over for pre-assigned weeks; comes over six times a year for a week at a time and of course the panel is fixed at the beginning of the year because they are all very busy people; so, in any given week, you do not know in advance whether there is going to be an appeal from the Bailiff or the Deputy Bailiff or the Commissioners. So we normally -- the regular sittings do not usually include the Bailiff or Deputy Bailiff, but we sometimes sit for extra sittings or if a judge drops out and we can fit in, or occasionally if there is a peculiarly Jersey point or we feel that the contribution of one of the two local judges would be of assistance, we arrange that.

**THE CHAIRMAN:** Yes.

**MRS BACKHURST:** Can I just be reminded, after the Court of Appeal one can then go directly to the Privy Council?

**MR BIRT:** One goes to the Judicial Committee of the Privy Council, yes. And indeed a surprising number have gone in the last few years. I don't know whether Lord Carswell ever sat on one, but certainly there have been some. I think some of the cases are of a weight which now justify the attention of the Privy Council.

**MRS BACKHURST:** Do I understand correctly, and Lord Carswell, correct me if I am wrong, but I think it is New Zealand now no longer go to the Privy Council?

**THE CHAIRMAN:** New Zealand, you are right, yes.

**MRS BACKHURST:** So if the Privy Council did not exist, where would one then go to?

**MR BIRT:** Well, that would be interesting. Certainly when the Supreme Court came into being it was floated at one stage as to whether that would take over appeals and the Island made strong recommendations that it most certainly did not wish to go to United Kingdom Courts, not being part of the United Kingdom and that was accepted. The Privy Council still hears appeals from a number of other jurisdictions.

**MRS BACKHURST:** So I think in New Zealand they sort of accept the Supreme Court hearing (overspeaking)

**THE CHAIRMAN:** Yes, they have set up their own Supreme Court and their final appeal is there.

**MR CRILL:** Just in terms of the appointment and selection process, the principles established for the Commonwealth jurisdictions stated amongst other things:

“A culture of judicial education should be developed. Training should be organised systematic and ongoing under the control of an adequately funded judicial body. Courses in judicial education should be offered to practising lawyers as part of their ongoing professional development training.”

Do you think that Jersey is living up to those principles?

**MR BIRT:** So far as training of judges is concerned we are doing our best. It is clearly not easy in a small jurisdiction. We don't have the resources to set up a permanent training college or anything of that nature, but the Judicial Studies Board, as it was, I think it may have just changed its name, but the Judicial Studies Board of England and Wales have been very helpful.

So, for example, I, the current Deputy Bailiff and Commissioner Clyde-Smith all went on one of their courses for assistant recorders before taking up office or upon taking up office; that's a week-long course. I have been on a recent serious sexual offences course in order to make sure I am up to speed on those matters. I am going shortly to go on one of the public law children's courses. So we tap in to their courses and they are very helpful indeed at letting us participate.

We also do organise forms of training for the Jurats. We get people over to speak to them about matters and so we do our best. Whether we can live up to the standards of the larger jurisdictions I cannot say, but we are certainly aware of the need to continue to have training. Your second aspect was training of members of the bar; I am not sure we succeed there. We don't have any training for judicial work for members of the bar, save to the extent of course that we appoint some members of the bar as relief magistrates and we do then send them on the appropriate magistrate's course run by the JSB or district judges as they are now called.

**THE CHAIRMAN:** Thank you. Any other questions on that?

**DR MOUNTFORD:** Can I just pick up a point on accountability, because although you are a Crown appointment you are paid out of the public purse of Jersey and I notice that in July 2003 that you did produce a business plan and an annual report. Were you asked to do this or is it part of the more formal organisation that seems to have occurred?

**MR BIRT:** I wasn't Bailiff at the time and I cannot now quite remember, but I think that there was a general feeling that all of the States Departments should produce an annual report and a business plan and so we felt we ought to do so. It has actually fallen into disuse. I suspect my predecessor perhaps felt it was not very productive use of scarce and over-pressed resources. Whether one should begin it again, I am very much open to argument. I haven't in fact arranged it since I've taken office, but looking back on it, it was quite a useful document in certain ways.

**DR MOUNTFORD:** It certainly demonstrated the depth of your work.

**MR BIRT:** Yes.

**DR MOUNTFORD:** Was that the same reason that those more formal appointments process came into being because you did say that it is now more formal?

**MR BIRT:** Yes. I think everyone's moved with the times and the Ministry of Justice also were concerned that the appointments process should match up to the standards that they require for their appointments in the UK.

**THE CHAIRMAN:** Yes.

**MRS BACKHURST:** Sorry, could I just ask something with relevance from what you just said? You sort of implied that the Bailiff's Chambers were sort of States department, but there is no Ministry of Justice as such. Would that be a good thing to not -- I mean, nomenclature is one matter, but is it in effect that the Bailiff's Chambers is the Ministry of Justice or is it the Law Officers?

**MR BIRT:** No, we're not the Ministry of Justice. I mean, the Bailiff is the Chief Justice, but he is President of the States, he is not the Ministry of Justice.

**MRS BACKHURST:** No. So you are not really a States Department then, are you?

**MR BIRT:** No, technically we are not a States Department but on the other hand our employees are paid by the States and we are accountable for our budget in the same way as other States Departments are, and we feel ourselves obliged to try and comply with all the



guidelines the States set out for controlling expenditure and need to feel accountable for expenditure.

**MRS BACKHURST:** And that obviously does not impinge on any independence of the judiciary, the fact they are paid by the States?

**MR BIRT:** No, all judicial bodies are paid out of central government and ultimately that is an issue that has to be resolved.

**DR MOUNTFORD:** I have to ask then, have you been subject to the Comprehensive Spending Review?

**MR BIRT:** Yes, we have.

**THE CHAIRMAN:** Just one sweep-up question, Mr Bailiff, if anybody, ourselves or anybody in Jersey wished to alter the methods of appointment of any of the Crown Officers, that would be a matter that would have to go up to the Crown authorities in the Ministry of Justice, it could not be done ex-parte?

**MR BIRT:** No, ultimately the recommendation to Her Majesty comes from the Lord Chancellor and the Secretary of State. He has to be satisfied with the process, and indeed these amendments to the process I have just discussed would have been very much in consultation with the Ministry of Justice to make sure they were happy. So you are right, if people wanted to recommend a change it could only be a recommendation which would have to go to the Ministry of Justice.

**THE CHAIRMAN:** Could I turn to your function of Presidency of the States? I would find it helpful if you could tell me what part you play in the administrative arrangement of listing of matters and that sort of thing.

**MR BIRT:** None. The Standing Orders set out what headings, matters are to be dealt with each week, each sitting. The only one which falls under my control at all is the first one which says -- I can't think of the exact word, but "Messages from the Chair" or something of that nature. So I welcome His Excellency, I announce Royal visits, I pay tribute to Members who have died, I may raise other matters of that nature, but these are not matters of --

**THE CHAIRMAN:** Housekeeping?

**MR BIRT:** Yes. But getting on to the substance, the questions are there, I mean, we may come on to this. I do have a role in relation to questions, simply to rule on whether they are out of order. As to the propositions that are to be debated on public business, they are decided upon by the Members at the previous meeting. So the last item of business on each sitting is to consider what is to be on the order paper for the next sitting and indeed the next two or three sittings. And it is entirely for Members as to which matters they take and which they don't take.

**THE CHAIRMAN:** That is very clear, thank you. Would you like to deal with that matter of questions now, Mr Bailiff?

**MR BIRT:** Certainly. Questions form an important part of States work and my only role is to consider whether they are out of order, in other words, contrary to Standing Orders. Now, Standing Orders has certain specific rules about what questions may not do and I have brought along the Standing Orders, as I didn't actually annex them to my submissions.

**THE CHAIRMAN:** No, I have seen them.

**MR BIRT:** You have probably seen them, but there is a specific Standing Order which says what questions may not do, so I -- Standing Order 10, contents of questions. So the questions which come in are simply measured against that. Now, in the vast majority of cases the matters don't get by the Greffier because it is obvious that the question is in order or with a little tweaking of the wording it can be brought in order and so the Greffier does that. Where there is a concern, then he will refer it to me and I will invariably discuss it with the Greffier and reach a conclusion as to whether it falls outside Standing Orders or not. What one tries to do is, where it does, one very often goes back to the Member and says, "Well, perhaps if you asked it a different way you could be within Standing Orders" so one tries to be constructive rather than simply going back and saying no, but eventually in some cases you have to say no, but not in many cases.

**THE CHAIRMAN:** In the course of debate, if a Member should say something out of order, as President it is your function to declare that, is it?

**MR BIRT:** Yes. My role is to again enforce the Standing Orders which members themselves have decided should govern their debates. The Standing Orders are, of course, not imposed by me; they are voted on and adopted by Members as a whole, so my sole duty is to apply

those Standing Orders. So yes, if any Member breaches those Standing Orders it is my duty, whether I am an elected speaker or a non-elected speaker, to apply them.

**DR MOUNTFORD:** Do you actually identify which Standing Order it refers to, to the person who is out of order?

**MR BIRT:** It depends. Not always, because of course most Members are fairly familiar with the Standing Orders, so, for example, if a Member calls another a liar, in all parliamentary assemblies that is not allowed. In some parliamentary -- well, it would be, you know, imputing proper motives or using offensive language contrary to Standing Orders. So I wouldn't say, "Now Deputy so and so, in accordance with Standing Order so and so" I'd say, "Now, Deputy, you know you're not allowed to do that. Are you going to withdraw that?"

**THE CHAIRMAN:** Yes. If somebody starts to ask a question in the Lords and it turns into a speech, the Lord Speaker has no power to stop him or her, but there is a growl goes up and the point is made very quickly.

**MR BIRT:** Right, Standing Orders, so the questions must be concise here and of course we have limited time for questions, so I do occasionally, if a Member is going on, I simply say, "Now, Deputy so and so, you know, can you come to your question, please?"

**MRS BACKHURST:** Could I ask something, please?

**THE CHAIRMAN:** Yes.

**MRS BACKHURST:** Standing Orders have been formulated by the Assembly itself and so where the position is made to us by the Deputy of St Martin, who brought this proposition to inform the Review Panel, he said that one of the reasons he brought it was because the Bailiff can reject States Members' requests and there is no appeal. It seemed possible that whoever was presiding over the States would be in the same position. It is not simply the Bailiff?

**MR BIRT:** Absolutely. Whether you change the identity of the person who is President, Speaker, whatever you like to call it, of the States, the role will be the same, so the Deputy will find that some of these propositions are ruled out of order by whoever happens to be in the chair.

**MRS BACKHURST:** So if you felt that there was a problem because there was no recourse for appeal, he would have to make a change to his Standing Orders?

**MR BIRT:** Indeed. But I don't myself know of any assembly where you can in fact appeal the Speaker's rulings because inevitably in a parliamentary assembly somebody's going to make them.

**MRS BACKHURST:** So in a sense the Speaker's word is right?

**MR BIRT:** Yes. Except that under our Standing Orders you can then bring a proposition on a matter of substance to in effect say that the Chair was wrong. So it could be possible for, I suppose, a Member to bring a specific proposition saying that he considered the Chair's decision to be wrong on a particular matter and ultimately it is a matter for Members. I can get the exact number. Yes. Well, it is not quite as I said, it is Standing Order 167, which is that

the Bailiff shall decide any question, order or procedure not provided for in the Standing Orders and in either case the decision is not open to appeal but can be reviewed upon a proposition.

So actually, I don't think he would be able to bring a proposition about a matter where I had applied Standing Orders. It would be on some other matter or procedure I had ruled upon. So there is probably - you're right - no appeal against a refusal, but that would be so, I suspect, in every assembly.

**MRS BACKHURST:** I do not know what it is in England; the Speaker's word is final presumably as well?

**THE CHAIRMAN:** As far as I know, but I am not an expert in the House of Commons.

**MR CRILL:** With the function in relation to questions and propositions, are they adequately dealt with, for example, by the Privileges Committee?

**MR BIRT:** I think that would be very difficult to have decisions like this taken by a committee made up of politicians. I don't know of any other assembly where that would happen and inevitably on any committee you have a variety of political views. People are elected politicians because they are pursuing political matters. I think to have an interpretation of Standing Orders ruled on by anyone other than the Chair would be a system I am not familiar with.

**THE CHAIRMAN:** Before we shift to the question which has been at the heart of this, about who should be Presiding Officer, whether the Bailiff should, can you give me an idea of the

time commitment and how it interfaces with your judicial commitments? You have given us schedule 3, which is most helpful; the one thing stands out in that, the number of sitting days has been increasing markedly over the past four years.

**MR BIRT:** That is true.

**THE CHAIRMAN:** Is that a trend that is apparently continuing?

**MR BIRT:** We will have to see this year, I think, as to whether it is continuing or not. It is certainly a matter which I know the States itself is looking at. I think the Privileges and Procedures Committee, as I understand it, is already looking at whether things need to be changed at all, because of the time spent. I mean, ultimately it is of course a matter for the States as to how they wish to regulate their business. To go back to your question, clearly the more the States sits the greater the impact on my judicial work. That must follow.

**THE CHAIRMAN:** I see that you had a particularly heavy year last year in terms both of days and in hours?

**MR BIRT:** In the States?

**THE CHAIRMAN:** Yes.

**MR BIRT:** Indeed, yes, there was a record. As you can see, taking the days, 60 over 51 which is quite a considerable increase, really.

**THE CHAIRMAN:** If one adds up the number of days of the different Presiding Officers and including the Greffier, they increased from 29.3 in 2006, 37 in 2007, 46 in 2008, and 54 in 2009. It is becoming a bigger commitment; even if it levels out, it is quite a bit more than it used to be.

**MR BIRT:** Indeed.

**THE CHAIRMAN:** Do you find from your own experience so far that this is becoming a difficult commitment to fulfil in terms of your own time and your other calls?

**MR BIRT:** I think we are better at it now we see what is happening, so to speak. I think when it first began to happen, perhaps my diary had not set aside enough days and so I had Court commitments and so sometimes it was not possible for the Bailiff or Deputy Bailiff to preside on the second or third day of the States sitting. But we are now getting better at planning for that, and so the diary is simply planned to allow for what we anticipate by way of States sittings and if the States ends earlier then I've got another day to catch up on writing judgments.

**THE CHAIRMAN:** Just then on the other half of this commitment coin, your judicial work, to what extent do you find you have long cases that you must sit on yourself, that you feel, as Bailiff, that should not be delegated to anybody else, and how does that work in with your obligations in the States?

**MR BIRT:** I don't think there are long cases that I can think of where the Bailiff as such, must sit. The longest case I personally have sat on was, there was a case called Esteem, which



lasted from memory, eight weeks, I think. That was part 3 of the instalment, but that was when I was Deputy Bailiff. It certainly would not be practical for the Bailiff to do a case of that length.

**THE CHAIRMAN:** This is what has been going round in my mind, because one knows that there are cases which one can quite reasonably delegate because they are long and complicated, but another judge can do them very competently and satisfactorily, but there are some which, for public reasons, the Chief or the Bailiff must do. Do you get many of those in a year?

**MR BIRT:** No, I can't at the moment think of any where the feeling has been that the Bailiff must do it and it is a long and complicated case. I can't think of any. I know in England the Lord Chief will sit on certain appeals, which he feels are particularly significant, but you wouldn't necessarily expect him to feel he's got to go and do a long eight-week first instance case, and I know he sits more in the Court of Appeal than at first instance, whereas here the Bailiff sits more at first instance. But, and I am hypothesising here, if there were some case where one really thought the Bailiff ought to be involved as Chief Justice, one perhaps would arrange for it to be at the Court of Appeal level, assuming it got up there.

**THE CHAIRMAN:** Your sitting days last year in the States were 26.6 and your sitting days in the Royal Court, well, half the time was Deputy Bailiff and part was Bailiff, but you had 33 days as Bailiff and 44 as Deputy Bailiff. So that is 77 as against 26; a little over two-thirds of your time judicially and one-third when judgment writing and preparation would account for more than those days actually in court.

**MR BIRT:** Very much so, and I must emphasise, last year, it is very dangerous to take last year's figures.

**THE CHAIRMAN:** Well, I appreciate that, yes.

**MR BIRT:** We had no Deputy Bailiff for four months and some particularly long sittings of the States, so the whole thing became really very distorted.

**THE CHAIRMAN:** Over a representative year there would be somewhere between 350 and 450 Court days by the look of your statistic in schedule 2?

**MR BIRT:** That's probably in schedule 2, isn't it? Yes, going 362, 359, 348 yes.

**THE CHAIRMAN:** The standard statistic for judicial sitting days is 200 a year, but in fact that does not mean necessarily presiding in court 200 days a year, but is occupied in traditional business. The States makes a fair bit of inroad on your availability, does it not, the Presidency of the States?

**MR BIRT:** Yes, to a degree in that, if one takes 2008 as a more typical year, perhaps, the Bailiff spent 17 -- the then Bailiff spent 17 days presiding in the States as compared with 53 in court. That seems rather low but I think that was the year maybe he was ill, I think it was. At present, the States sits roughly every fortnight, although with breaks every so often, and it at the moment plans certainly for sitting two days, at least; very often it goes into three days, so that time is taken out of the Bailiff or Deputy Bailiff's availability to sit in court, yes.

**THE CHAIRMAN:** Because I see from the days in court that, in 2006, the then Bailiff sat for 99.5 days in court as against 16.6 in the States. The next year it was down to 67 and up to 20.9. The Greffier had been sitting increasingly frequently and it looks as if the Deputy Bailiff's number of days presiding has been going up. It is difficult to escape the conclusion that it is becoming a heavier proportion of the Bailiff's time and is that something which you think, standing back from the constitutional aspects, is something which ought to be reviewed to ease the Bailiff's task?

**MR BIRT:** Certainly, it is taking more time, and that is without a shadow of doubt the case; if the States sits more and if the Bailiff is President of the States, and either he or the Deputy Bailiff ought to be presiding whenever possible, it is going to take more time. I don't myself, at the moment, feel it has got to a stage where it impacts adversely on the management of the Courts because we have the availability of Commissioners and so we, I believe, are still providing a timely service in terms of providing judges for the Court but, inevitably, your premise is right, that the Bailiff cannot be in court as often if he is sitting in the States.

**THE CHAIRMAN:** This is not in the slightest degree intended to be personal about anybody, but I have heard the view expressed in London, where they use deputies an awful lot, that the litigants would rather have a real judge; I do not know if that view is current in Jersey.

**MR BIRT:** Well, you have two legal members of the Panel; I would suggest not. We have, I think, two local Commissioners of the highest ability; one, of course, is a former Bailiff.

**THE CHAIRMAN:** Yes.

**MR BIRT:** And I am quite happy to say publicly that I have complete confidence in the other Commissioner who I think has already made a number of notable judgments which have been well received.

**THE CHAIRMAN:** That is exactly why I say I am not making any personal imputation whatsoever but this situation happens to be fortunately so at the moment, it may not always be.

**MR BIRT:** No, but I think one of the great advantages of our system is that, by being able to pull in Commissioners, you can pull in the right judge for the case too. So, for example, if for some reason it was felt that a local Commissioner was not the right person for a particular case we have the ability, as you will see, to have asked retired High Court judges and others. I doubt very much if most people would regard a retired High Court judge as being anything other than entirely satisfactory.

**THE CHAIRMAN:** Yes. If you have a very specialised case, like a patent case, that would be --

**MR BIRT:** We've never had a patent case that I am aware of. We've certainly had a copyright case and we asked a leading copyright silk from London to come over and try it.

**THE CHAIRMAN:** Yes.

**MR CRILL:** We are obliged to consider the financial implications. Are you aware of the relative cost to the Commissioners over these same four years or even over the last year or so?

**MR BIRT:** No, I'm not; I'm sure that could be obtained if the Panel wanted it. It follows, does it not, if you use more Commissioners, you pay more? They get paid on a daily rate, the same as our Court of Appeal, and it's the same as Deputy High Court judges in England and Wales.

**THE CHAIRMAN:** Going back then to the work in the States, from your own experience you will, I think, appreciate what other people have universally told us: that the presence of the Bailiff himself is regarded as a benefit in terms of the authority and experience and knowledge and that he obtains the attention and respect of the House more than anybody else. How did you find its behaviour when you were Deputy Bailiff? Has there been any change since you went into your present office?

**MR BIRT:** I have to say I'm not aware of any change, no. Our members have always been very courteous and very welcoming, and I have not noticed any increase or decrease in their willingness to take points of order or invite the Chair to rule or their acceptance of decisions I have made with which, of course, sometimes they agree sometimes they don't agree.

**THE CHAIRMAN:** What really I am leading into is that it seems to be a point of general agreement that the House functions well when the Bailiff or the Deputy Bailiff is present. It does function well on other occasions and, on other occasions, perhaps not so well. If the view were to be taken that the Bailiff should not preside then there are various options, all of which have had pluses and minuses put to us. An elected Member of the States seems to be

regarded by a lot of people as undesirable because it would disenfranchise the electorate of that deputy or senator and I do not know whether it would be even much sought after by any of the members.

**MR BIRT:** I think that is one of the difficulties, I've touched upon it in my submission, the disenfranchisement point is an important one.

**THE CHAIRMAN:** Yes.

**MR BIRT:** We are a comparatively small Assembly. It's perhaps a little different to a very large Assembly and, certainly, if you have the Deputy of a country Parish and he or she were acting as elected Speaker, that would materially disenfranchise the electorate of that Parish, although they would still have the Constable.

**THE CHAIRMAN:** This has been raised a number of times with us, that point, and it does seem to have force. If it were decided that an outside person should be appointed or elected as Presiding Officer of the States, there are various advantages and, certainly, definite disadvantages; it is perhaps not a big enough job, in a way, for somebody to do as a fulltime post with a fulltime salary. If you are doing a part-time job like that it may have to be somebody who is basically retired or has time free. Is there much of a supply of likely people in that position?

**MR BIRT:** You have got two categories, really, have you not, perhaps former States Members.

**THE CHAIRMAN:** Possibly not.

**MR BIRT:** They might have an interest in doing it but I think there are, at any rate, issues in relation to a former States Members because, by definition, he or she will have been in there in the political fray; particularly in the current system now with ministerial government, I think most people would say the States is less consensual than it used to be, perhaps a little more adversarial than it used to be. Passions can run quite high at times. One feels there is a risk that any former States Member will come with a political history which will perhaps make it more difficult for him or her to be perceived as independent, because one of the things I do feel about the Bailiff's position is that we should be perceived as being independent because we don't come, normally, with previous political baggage. So that's one category.

The other category of person is somebody who has not been in the States before. But I just don't know how attractive it would be for a person who has never been in the States to then become a part-time Speaker, and how easy such a person would find it.

**MR CRILL:** Do you think that a legal qualification would be necessary?

**MR BIRT:** I think that either a legal qualification or at any rate access to good legal advice. Interpretation of Standing Orders, I think, is helped by being a lawyer and therefore either the person should be a lawyer or they would need either a legally-qualified Greffier or counsel to the speaker. Now that's not to say that it is always essential, the current Greffier is an excellent advisor and an excellent interpreter of Standing Orders but that will not always be the case.

**THE CHAIRMAN:** Yes, the clerks of various legislatures are generally very well informed indeed about procedural matters and a constant source of advice to Presiding Officers.

**MR BIRT:** Yes.

**THE CHAIRMAN:** One gets it in a different sphere in diocesan synods where, if a bishop is presiding, he will have an assessor who is generally a lawyer, and who will be expected to make himself familiar with the standing orders and the constitution of the assembly so that a Presiding Officer who is not steeped in it, as a Bailiff has been, would need to have somebody at his elbow; whether it is a Greffier or somebody else who can do it.

**MR BIRT:** Yes, that would be my view.

**THE CHAIRMAN:** That might have resource implications. Various people have mentioned the possibility of the Greffier taking over as Presiding Officer which of course is an unusual thing for a clerk of parliament to become the presider, but he has in fact presided on a number of occasions and we are given to understand that he has done so very satisfactorily indeed. Have you any views on the idea, in principle, Mr Birt?

**MR BIRT:** I have to say that, in principle, I don't think you can have the Speaker and the clerk in one person. The current Greffier presides with conspicuous ability when he does preside, but he does it only some of the time; he is not the President, he is not the Presiding Officer and I think the roles of clerk and of Presiding Officer are very different. I don't myself know of any assembly where the two are fulfilled by one person and I would think it inherently an unstable and unsatisfactory position.



**DR MOUNTFORD:** Can I ask, just going one step further on the concept of independence, what about someone who is not resident in Jersey but just comes for those occasions but would have the Greffier to support the local knowledge? Would that be acceptable?

**MR BIRT:** Well, that would be a matter obviously for Members but the idea that the Speaker or Presiding Officer of our cherished Parliamentary Assembly should be somebody with nothing to do with Jersey does not strike me as being very attractive.

**DR MOUNTFORD:** That is difficult.

**THE CHAIRMAN:** One of the ideas which has been floated by some of our respondents has been that the Bailiff might retain a titular and ceremonial position as President but, like the monarch, does not actually run the Assembly but delegates it to people nominated or appointed in some procedure and comes along, opens sittings and generally stays above the contest. What is your own reaction to such a suggestion?

**MR BIRT:** It wouldn't in the end reflect reality, would it? In reality, in those circumstances, the Bailiff would be the Chief Justice and in the long term, to have a Chief Justice as the civic head is not tenable, it seems to me. It's the sort of thing which I suppose might last for a while but my own view would be that one has got to face the situation: either what we have now is acceptable and preferred or what is preferred is to have a new form of Speaker. Because you would, in effect, be having a new form of Speaker under that system, you would have to find your new Speaker. You would have all the same problems as you would at present of

choosing who the Speaker would be. I think I just feel that it would be a bit of fudge really, I suppose.

**THE CHAIRMAN:** I wonder if you are being a bit over-concerned, if I may say so, about that. The Bailiff's position has developed like that of the monarch over centuries, from being absolute to being limited very largely by convention, but to some extent by statute in that it mirrors what has happened about the monarch too. It does not seem to have made it impossible for the monarch still to be regarded as the top end of the pyramid. Should it do so with the Bailiff?

**MR BIRT:** I suppose one asks what is it about the Bailiff's position which is regarded by many as being of benefit to the Island? It's historical, but it's also, I think, the fact that he is the President of the States, as well as being Chief Justice. In other words, it's a mix of all the different roles that he still undertakes which gives the stature, the status to the office. Now, if you in effect say that he is not in reality to be the Presiding Officer of the States, he would play no part in it, it would certainly be a considerable change to what he is. What he in fact would be would be the Chief Justice, that would be his job. Would it still be appropriate for him to remain as civic head of the Island?

**THE CHAIRMAN:** This is where I wonder whether Sir Philip's analysis stands up because he says the Bailiff's status as civic head descends from his status as President of the States. I wonder if that is not the wrong way round.

**MR BIRT:** I don't think it descends from it; I think you're absolutely right, it descends from the fact that he used to be --

**THE CHAIRMAN:** He used to be in charge of the civic affairs of the Island.

**MR BIRT:** In charge of the civic affairs generally, that's the historical origin. And then of course he, in that role, became both Chief Justice and President of the States. But I must confess I would agree with Sir Philip's essential thrust which is viewed today: could the Bailiff be civic head of the Island if he was simply Chief Justice?

**THE CHAIRMAN:** But would he be just --

**MR BIRT:** Look, for me, I don't think that he could or should, I don't think it's right for any community to have somebody who is purely a judge as their civic head, it just doesn't seem to me to be a natural fit.

**THE CHAIRMAN:** That I would not dispute at all, in principle, I would quite agree with that. But the Bailiff starts from the position historically that he has been the person in sole charge of the civic affairs of the Island, all of the civic affairs and what he said: he in effect was Governor apart from the military side. That developed because for as society is growing more complex over the centuries and the tasks become more complicated, the Bailiff calls in assistance. The Bailiff runs originally through the Royal Court and the Jurats and that then develops into the States which in time becomes separated out from the Royal Court. But it is essentially the Bailiff as the man with the strings.

Now coming back, bringing those strings down to the present time, the Bailiff is still the head man. The strings are there in respect of the Royal Court very, very directly. In all his other

functions - which we will be coming back to later on - all the very important public things that the Bailiff does which reflect his position as civic head: the Liberation Day, the royal visits, the receiving of people visiting the Island, all the things which go with being the civic head, if they remained and he simply nominally, but not actually, were also the head of the Assembly as Presiding Officer - but not presiding any more than the Queen does - is that viable, looked at that way?

**MR BIRT:** It is clearly a possibility. It is clearly a possibility. It is not a matter I had given a great deal of thought to, and I'd like perhaps to mull it over a bit more.

**THE CHAIRMAN:** Of course.

**MR BIRT:** I suppose my instinctive reaction is that although you would still call him formally the President of the States - or whatever you did call him - and so he would have a ceremonial role there, in reality he would have become a Chief Justice alone, and given I think that we both felt instinctively that a pure Chief Justice couldn't really be a civic head, do you enable him to remain as civic head by giving him a purely formal role in the States with no substance?

**THE CHAIRMAN:** Sir Cecil Clothier's review thought that was possible, but that was not followed up in the changes in 2005.

**MR BIRT:** No. I think the trouble is Sir Cecil's recommendation was that nobody really knew the detail and nobody could see the reasoning, and it was unfortunate the form of his report, I think, but I understand why he did it. It meant it was very difficult to see how anything he said was necessarily going to work in relation to the Bailiff's role. It is an interesting suggestion,

and I would like to think further about it. I certainly don't say that it's impossible or unworkable. I just don't simply warm to it immediately, but ...

**THE CHAIRMAN:** I am not faulting you for that, Mr Birt, of course, but it is one which has been seriously put up and I wanted to explore it with you. I make it clear we are very far from reaching any conclusions at the present time.

But this comes into our next topic about the perceived conflict in the Royal Court and I'll ask Mr Strang if he would follow on with that.

**MR STRANG:** Proponents of change raise the question of perceived or potential conflict and potential bias. Your submission raises the matter of impartiality. In practice, you have indicated you would recuse yourself if those circumstances became apparent. Has that actually happened on any occasions when you have been Bailiff, or are you aware of any occasions when your predecessor - which was a longer period - would have recused himself?

**MR BIRT:** There are certain cases where I have recused myself informally, in the sense that I decided that it is not a case in which it would be appropriate for me to sit. I am not sure, offhand, that I have had a formal application for me to recuse myself which I have heard in open court related to my Presidency of the States. I am not saying there has not been one; I just cannot recall one off the top of my head.

Certainly, my predecessor did have one, and indeed, it went to the Court of Appeal, I think, that there was an application to recuse because he was the Bailiff. I think that's the -- if I'm right that's the Eves v Le Main case, or it might be the Mayo v Cantrade, or it might be both of

them. But I think he sat at first instance, did not recuse himself, and that was upheld in those days.

**MR STRANG:** All right. And it seems to assume quite a degree of knowledge at day one, really, I mean, if you're going to recuse yourself - so without application by counsel - that either counsel or yourself are aware of what's going to come up in the case before the Court. It might refer, for instance, to legislation that had gone before the States previously and that might just come out in the courses of the civil or criminal trial.

**MR BIRT:** Yes, clearly one does not know, normally, in advance what cases are about until you get the papers.

**MR STRANG:** Yes, that is right.

**MR BIRT:** Well, you can usually -- you get the papers beforehand, you read into the papers. So at that stage you become aware of any problems. But we have not, as far as I'm aware, not had a situation where either we've been asked to, or have recused ourselves because some legislation was considered when I happened to be in the chair. People haven't taken the point, although in theory they might be able to, they simply haven't taken the point.

**THE CHAIRMAN:** Have you ever felt it necessary, without it being the subject of an application, that you shouldn't put yourself, assign yourself the case, because you had presided in the States over legislation?

**MR BIRT:** The answer is no. I suspect we probably need to improve our systems if we're to

be very compliant with McGonnell and that one probably ought to keep a running list of those statutes where I have presided so at least I could invite the parties to consider whether they wanted to object or not. I suspect at the moment that if I recalled a particular matter that I had presided, then I would mention it. But after a while of course one's memory fades as to which matters you presided over and which you haven't.

**THE CHAIRMAN:** This is not an insignificant practical problem because a Bailiff, especially one who has been in office for a number of years, wouldn't readily recollect. Litigants mightn't recollect; particularly if their counsel haven't done a detailed search of all the legislation of the sittings involved.

There was a suggestion made by one commentator which you may have seen published in judicial review, Mr Lightman; that the wise course might be for a Bailiff not to sit where there is in question or interpretation any legislation passed while he was in office; whether or not he sat, so as to rule out the possibility. I don't know whether that's --

**MR BIRT:** I hadn't seen that, no. And the answer is we haven't been applying that, no. We do sit to interpret it. I certainly think there is room for debate as to exactly how far McGonnell went. If you actually read McGonnell it talks about where you're departing from a decision of the States, whether that includes interpreting a statute is very questionable, I think. The language used is quite difficult to follow.

Certainly it's quite -- as you will see from some of my submission, it's not easy to see why the simple fact that you have presided in a debate about some legislation means that you can't interpret it, in the sense that you have not expressed a view, you have not been associated

with the legislation in any way, you don't fall within any of the categories in Davidson or Panton where the Privy Council and the House of Lords very much concentrated on people who were associated with the legislation in some way. The truth is that, as Bailiff, you're not associated with the legislation in any way.

**THE CHAIRMAN:** Well, this is something like the debate about the Supreme Court and the House of Lords. We have had unanimous views from the Island judicial authorities and Guernsey that the system works entirely fairly and as far as results are concerned, we wouldn't question that for an instant. But this concern we have about what might happen if the questions were examined at Strasbourg and the Court's decision in McGonnell isn't the only word on the subject. The Commission was much more adverse and the Court didn't rule, apart from John Laws, who put in a sort of concurring dissent, or a dissent in concurrence about it, that if the Commission's decision had stood alone before the Court decided it on a narrower ground, it might be the source of considerable concern.

That is why, I think, the Court of Appeal in England in the Barclay case, although of course it doesn't govern the matter, it shows the thinking of some pretty experienced appellate judges. They were concerned about it as a principle. Can we be sufficiently sure that if the matter went to Strasbourg now, it would be ruled all right?

**MR BIRT:** You can never be sure of anything in relation to Strasbourg. I think the way I would put it is this: on the jurisprudence at present, the structural position should be all right. In other words, the Court has been at pains to say that we don't look at the overall structure; we look at whether, in a particular case, there was an article 6 problem. And all the jurisprudence, so far, like McGonnell is consistent with that. Could it change in future? Yes, it could. It may be that



Strasbourg will eventually say that you cannot be a Presiding Officer and a judge. If we get to that stage then of course we will have to comply and the Bailiff, at that stage, would have to come out of the States.

The question which I would ask the Panel to consider is whether simply because that could happen one day - not that it will or is necessarily likely to, because it could - do we in the meantime move from the system if we, the Island and the Panel, think that the current system works all right and is in the Island's interests? I would myself be against moving away from a system if we think it's the best system, just because there is a risk that one day some European court might in the future say otherwise.

**MR STRANG:** Do you think there's a danger though with this sort of wait and see policy that, in fact, we just bring Jersey into disrepute or cause embarrassment?

**MR BIRT:** I don't, no. I mean, every country in Europe has been found to be in breach of human rights by Strasbourg, in one way or another. I don't think it any longer brings opprobrium on the country. It is a matter which, at the moment, is clearly up for debate. It is a perfectly tenable view and it's consistent with the current jurisprudence to say that the Bailiff's position is not per se a problem. It's only if Strasbourg moves the goalposts that it may become a problem.

**MR STRANG:** I mean, previously the Bailiff may have been the Attorney General because of the -- we'll come on to that probably a bit later, but there has been a sort of ladder effect. Of course, the Attorney General may have advised on the legal effect of a law that has been passed by the States as AG, and then he moves up to Bailiff and may then be presiding on

some interpretation under that law. Do you see that that is another problem with our system?

**MR BIRT:** Well, that was touched on in Davidson in a way, wasn't it? I think in Davidson, the House of Lords made it clear that because he'd played such a leading role there was a problem. I think the fact the Law Officers' Department had given advice on a law previously wouldn't, I don't think, normally, under current jurisprudence, disqualify the person from later sitting as a judge because judges have often previously written articles when they were at the bar, saying what they think the law is and what the meaning of the statute is. That doesn't disqualify them from later considering them as a judge. I don't see that it would necessarily be any different for somebody who has advised as a law officer. You are assumed, once you take the judicial oath, to come on to matters with a fresh mind with the benefit of adversarial argument.

**MRS BACKHURST:** A completely different point. You have one Executive function still left?

**MR BIRT:** Yes.

**MRS BACKHURST:** You may not wish to continue it. I've got this working party which is 2002 and I wondered if the States had moved that forward in any considerable way. This is the Working Party on Public Entertainment and the Bailiff's role there. I noticed that they suggest that there should be an authority made up of five people to whom that function would then be put forward. I just wondered, has that moved along now or not?

**MR BIRT:** No, I think successive Bailiffs have said that they would be delighted for that function to be taken on by some other body. I agree entirely, but no initiative has been taken

to do so.

**MR CRILL:** Could I just ask how the Licensing Assembly differs from that?

**MR BIRT:** The Licensing Assembly? I think that is rather different, that is more a judicial function, it seems to me. It's very akin to a court; you will have attended the Licensing Assembly. The applicant makes the case as to why the licence should be granted. It's measured against statutory criteria set out in the licensing law. The Jurats are a representative cross-section to satisfactorily deal with such matters. They seem to me as good a tribunal as any other to consider those matters. So I don't myself see that as being an Executive function in the way that the entertainment permit is.

**THE CHAIRMAN:** In other jurisdictions it's been a judicial function for a long, long time.

**MR BIRT:** Yes, the magistrates used to do it, I think, or maybe still do in England, I'm not sure.

**THE CHAIRMAN:** Yes, they used to. The magistrates used to do it in Ireland, which was the cause of great concern and then it became devolved into a resident magistrate where it was straightened up a bit.

**MR BIRT:** I mean, it's a matter for others but I myself don't see a problem with the Licensing Assembly. I don't think I put that in the same bracket at all as the entertainment permit.

**MRS BACKHURST:** You quote from the Bailiff's oath of office, it is:

“To uphold and maintain the laws and usages and the privileges and freedoms of this Island and that you will vigorously oppose whomsoever may seek to destroy them.”

It seems that in the last 65 years at least, although there has been some constitutional changes, they have been less needed -- this vigorous opposition -- than in the previous years, particularly the 5 years, prior to the 65 years ago.

Nevertheless, there is quite a strong constitutional role, if not a very strong constitutional role of the Bailiff. Yet when you are dealing with matters either with the UK -- I mean, theoretically we are supposed to deal with matters on an international standing through the UK, but we now seem to be developing a direct international outlook or connections. But the Bailiff, it seems to me that your role is much more -- I don't want to say passive, but you tend to keep an overview, but you tend to be more a conduit than anything else. Is that true, or have I misinterpreted that?

**MR BIRT:** I mean, if I may start with your first point. I think, in fact, the need to safeguard the constitutional relationship is ever increasing, rather than decreasing, because policy and other international matters impact more and more on areas which were previously entirely domestic, where the Island was just left to get on with its own affairs.

International conventions and international arrangements now impact on areas which they never would have before. So the potential for disagreement with the United Kingdom is in greater areas than it used to be. So I think the premise of your question, I would respectfully not agree with.

**MRS BACKHURST:** I was thinking, obviously if there --

**MR BIRT:** But then moving on to the Bailiff's role, I think that it's very important to recognise the limits of the role, whilst I would say at the same time recognising its potential value.

Its limits are that decision on all these matters are to be taken by our elected representatives and that means, presumably, normally, the Council of Ministers or the Chief Minister. But he or she needs, of course, good advice, particularly on a matter as tricky as our constitutional relationship.

Again, as you will have seen from the papers, and I tried to put in my submissions, it's a very subtle concept, our constitutional relationship. You can't pick up a book and find out the answer. There is no case which tells you the answer. It is custom and practice, and the relationship is actually formed by custom and practice. So what you do in every case can affect the constitutional relationship. Now, you can't expect necessarily a non-lawyer who has become Chief Minister to be aware of the subtleties of that and when something might be misunderstood. Nor, nowadays, can you expect the civil servant to, because very often he or she has come quite recently; they don't have a knowledge of the constitutional relation. The people who do are the Crown Officers because they are lawyers and, if they have been Attorney General first and then Bailiff, they have assimilated and worked with the constitutional relationship for the whole of that period, so they are in the best place to advise, but it is advice.

So going back to your question, the primary responsibility for this rests with the Attorney General because he's the legal advisor to the States and to the Council of Ministers. But the Bailiff, in my opinion and, I think, in the opinion of others who have held the role before, is a

valuable additional safeguard, because he's been Attorney General in most cases. He has a pretty good understanding of the constitutional relationship and by seeing the official correspondence, he can generally put up a red warning flag and say to the Chief Minister, "Hang about here, if you agree this, there may be a problem for the constitutional relationship, this may be a precedent which comes back to haunt you in 10, 15 years' time".

**MRS BACKHURST:** So this is really a responsibility which is above being Chief Justice or President of the States, isn't it? It's a much wider enveloping role.

**MR BIRT:** I think it's in accordance with the oath; it's to uphold the constitution. But it is advisory, all you do is you alert the elected representatives to the issue, give them such advice as you think fit, and then it's over to them. If they decide that they want to take a step which you personally think may be damaging, that's their prerogative, but your duty is to advise them of the potential consequences.

**MR CRILL:** In practice, is that advice given to the politician or back to the Attorney General so that he can then incorporate it?

**MR BIRT:** I can only speak personally. I've only been Bailiff for less than a year and I can actually only so far think of one occasion when I've been troubled by what's come through, and I've spoken to the Attorney General about it to make sure that he's absolutely alert to the issue and he's then taken it up with the Chief Minister. On other occasions, I suppose one might take it up with the Minister.

**DR MOUNTFORD:** On the subject of correspondence, I need to find out more about the

relationship with the Lieutenant Governor because that's beyond our terms of reference. Why would correspondence come to you via that office?

**MR BIRT:** Because that is the official channel for communication. It goes from the Minister of Justice to the Lieutenant Governor to the Bailiff.

**DR MOUNTFORD:** But you're the constant person, the Lieutenant Governor changes. I mean, is that wrong?

**MR BIRT:** I agree, but part of the Lieutenant Governor's role is to be in effect the intermediary so that he can advise both the UK and the Island, so he needs to be in the loop, so to speak.

**DR MOUNTFORD:** Am I being naive in thinking it's the wrong way round? That perhaps your knowledge is greater, you're the civic head; that should be the direction of the flow of communication.

**MR BIRT:** Well, the letter isn't changed by the Lieutenant Governor, I receive the letter from the Ministry of Justice; it just comes via the Lieutenant Governor. So, I am getting the communication in effect, directly.

**DR MOUNTFORD:** Right. But not first.

**MR BIRT:** Not first, but in this day and age with email, it's pretty well instantaneous.

**MRS BACKHURST:** But, it's also you, not the Chief Minister who is receiving it.

**MR BIRT:** I receive it and then it is, as I have previously explained, then passed on to the Chief Minister's Department, to the Attorney General's Department and to the Greffe. They, in turn, of course, will then pass it on to the relevant Minister's department. If it's a matter on education it will go off to the Education Minister.

**MRS BACKHURST:** Also as I was sort of saying, you know, you have got the Chief Justice, President of the States but there's this other greater role of constitutional guardian of this symbolic role as well. And I don't want to make this sound embarrassing, but for example, when there's a whole lot of functions that you carry out at various -- not ceremonial. But you went on a visit to Bad Wurzach recently and the Chief Minister went as well. I just wondered, who took precedence? Who does the Mayor hold his hand up to first?

**MR BIRT:** The answer is we worked, I believe, very well as a team. There was no standing on ceremony, but in terms of precedence, the Bailiff in our system is precedent. So, when we went to Bad Wurzach, I gave the first speech, the Chief Minister gave the second speech but we worked, very effectively, representing Jersey together, I hope.

**MRS BACKHURST:** In Jersey's history there has always been this sort of cry that the Bailiff might be a Crown appointment, but the Bailiff must come from the people of Jersey. The Bailiff must belong to the Island and not be an external -- you know, although he is a representative of the Crown. So there are concepts here which are not entirely nebulous but are slightly above the just chopping up into individual pieces. I am sort of trying to wrestle with all those different aspects as well because it is a concept which people believe in it, but they cannot articulate it. I cannot.



**MR BIRT:** Well, it is quite difficult to give a definition of the role. I would certainly share your sentiments that in this day and age, the Bailiff should be of Jersey.

**THE CHAIRMAN:** International relations, does the Chief Minister have a function in them? Does the Bailiff have a function too?

**MR BIRT:** No. Under the States of Jersey law, the Chief Minister has responsibility for our external relations and I would say the Bailiff has no responsibility for our external relations at all. He is there, as I say, as an advisor in relation to the constitutional relationship.

**THE CHAIRMAN:** In one direction only, he does not go out to the EU.

**MR BIRT:** Certainly the Attorney General advises regularly on EU matters, of course because there is a great debate as to which directives do or do not fall within protocol 3. And the answer is by no means clear. I have to say certainly since I've been Bailiff, I've never got involved with any matter concerning Europe. I don't know whether my predecessor did or not. One's duty under the oath, it seems to me, is in relation to the constitution, the constitutional relationship which mainly is with the UK. Whether one would see some impact or something coming from Europe, one might.

Again, you would at least see the correspondence coming through because it comes through official channels, so it probably would come through official channels, and if you thought there was something where you could assist by putting up a red flag, a warning light, one would do so.

**THE CHAIRMAN:** No doubt in the nature of things, if there was something that you had dealt with some years ago and the Attorney comes across it now, it would hardly be surprising if he came and asked for your view. That is any society, Jersey's no different.

**MR BIRT:** Yes. Yes, any society.

**THE CHAIRMAN:** As a matter of interest, on protocol, Remembrance Day, who lays the first wreath? Does the Lieutenant Governor?

**MR BIRT:** The Lieutenant Governor. The Lieutenant Governor does, yes.

**THE CHAIRMAN:** Then the Bailiff?

**MR BIRT:** And then the Bailiff, and then the Chief Minister.

**MRS BACKHURST:** But none of this is laid down? It is just unspoken protocols, tradition, convention.

**MR BIRT:** I suppose so. These things are not written down anywhere. The only one written down, of course, is that there was an Order in Council which said that the Bailiff takes precedence over the Lieutenant Governor in the States and the Royal Court, whereas the Lieutenant Governor takes precedence elsewhere. That was laid down because there was a dispute between the Bailiff of the day and the Lieutenant Governor of the day, so eventually it had to be resolved by the Crown.

**MRS BACKHURST:** So in civil functions where you are both there ...

**MR BIRT:** Then, in most cases, the Lieutenant Governor takes precedence because he is Her Majesty's personal representative.

**THE CHAIRMAN:** Yes. Royal visits?

**MR BIRT:** Royal visits, he would take precedence, yes.

**THE CHAIRMAN:** But you're very much concerned with them.

**MR BIRT:** The Bailiff is very much concerned and under our tradition, the Bailiff always rushes ahead of the Royal party and is there to welcome them and introduce the Royal visitor to the head of the school or whoever it is who will then take over and ...

**THE CHAIRMAN:** It is the Lord Lieutenant's function.

**MR BIRT:** Yes, very similar.

**THE CHAIRMAN:** That is very difficult when you have got two or three venues.

**MR CRILL:** Can I ask how your involvement with the Governor has changed since ministerial government? I suppose through this official correspondence.

**MR BIRT:** I'm not sure I can help on that one because of course I wasn't Bailiff prior to ministerial government but -- so I'm really speculating. I'm not sure that it would necessarily have changed. There clearly has to be a good close working relationship between the Lieutenant Governor of the day and the Bailiff.

**THE CHAIRMAN:** Yes, it's some 10 years, I think, since you were Attorney General, isn't it, Mr Bailiff, 11 --

**MR BIRT:** It is, yes.

**THE CHAIRMAN:** Things have changed quite a lot in the meantime. There are quite a few things I think we want to ask the Deputy Bailiff from his experience, but it may be that we need not ask you about them now. From observation, has the Attorney General's department changed very materially since your time?

**MR BIRT:** I think it's got bigger.

**THE CHAIRMAN:** Yes. More stratified.

**MR BIRT:** And it got bigger between Sir Philip's day and mine. It's been on a steady path, with the increasing complexities of the matters Jersey gets involved in nowadays. The visits by the IMF and all these sort of things, the Edwards Report back in my day, things the Attorney General has to do which he would never have had to do in earlier days.

I would, if I may say so, agree with you that Mr Bailhache, the Deputy Bailiff, clearly has recent

lengthy experience of being Attorney General and would be more up to date than I would. My impression is that the pressures have increased.

**THE CHAIRMAN:** One of the things we were asking the present Attorney General about was the titular headship of the Honorary Police which you would have occupied.

**MR BIRT:** Yes.

**THE CHAIRMAN:** Did you have to take steps in relation to that from time to time? Give directions or overrule or discipline?

**MR BIRT:** I think one needs to be clear in one's mind what one means by titular head of the Honorary Police. I think many people think of it as being the ability to override what Centeniers do for Parish Hall Inquiries, for example in relation to charging. I've always felt that that doesn't arise out of the position as titular head of the Honorary Police. That arises out of the Attorney General's position as being in overall charge of all prosecutions.

**THE CHAIRMAN:** Yes.

**MR BIRT:** And I regard the Centenier's role at Parish Hall Inquiry as not a policing role. It's a prosecutorial role. He decides whether to charge. I don't know whether the Chairman is familiar with what goes on at Parish Hall but I think it's one of Jersey's great strengths. People can be diverted; young people, in particular, can be diverted away from crime. Matters can be dealt with in a comparatively informal manner in the hope that people won't come back again. You can do that without them getting a criminal record. So, I think it's one of the great things

that Jersey does.

But, like all other things, it can occasionally go wrong and a wrong decision can be taken. The Attorney General there can intervene because he is overall head of the Prosecution Service. His role as titular head of the Honorary Police is, I think, much more limited and really relates primarily nowadays to his disciplinary role over members of the Honorary Police.

**THE CHAIRMAN:** Did you have to exercise that function during your time?

**MR BIRT:** I did, yes, I did. Not often, but I did. In those days we didn't have a statute so it was done, as I recall, under the inherent powers of the Attorney General. I think maybe there was a statute, but anyway, we now have the Police Complaints Law which is much more formalised and that came in after my time.

**THE CHAIRMAN:** But whether there's a Police Complaints Law or whether there's a Police Authority, there still has to be a disciplinary personnel body, because Police Authority couldn't do that.

**MR BIRT:** It does. It is something which could be done by a police authority which, I think I'm right in saying, is the way it would often be done in the United Kingdom.

**THE CHAIRMAN:** It doesn't do disciplining.

**MR BIRT:** Does it not?

**THE CHAIRMAN:** No, it does resources.

**MR BIRT:** Right. It's resources and then -- right.

**THE CHAIRMAN:** But it definitely does not do disciplining. That is done by the head of the Force.

**MR BIRT:** Or the Home Secretary?

**THE CHAIRMAN:** Yes, for very senior officers, but this is a little bit -- one of the minor conundrums in this is that if the Attorney General were not head of the Honorary Police, who would have the lovely job of doing the discipline? We have not had any answer to that one yet.

**MR BIRT:** Who would do -- yes. It is a role which is not an essential part of the Attorney General's main role. To that extent it is an adjunct and if some other body suitable to carry it out could be found, it could be hived off.

I have to say I -- my own feeling is that the -- it would be very much a matter for the Honorary Police amongst others. You would have to ask them, but I believe from my own experience that they value the connection with the Attorney General and are happy to have him as the titular head and as therefore exercising disciplinary functions. But as to whether somebody else could do it or should do it, I have no strong views.

**THE CHAIRMAN:** Are there any other matters that occur to any members?

**MR CRILL:** Can I just ask one thing in relation to your position as President of the States? Are there any, shall we say, unofficial functions that you perform? For example, advisory capacity, sort of father figure almost to States Members, discussions with Ministers over content of speeches to visiting ambassadors or ...

**MR BIRT:** I always say to any Members when I see them, "You know, my door is open" if they want to come and see me. Although I do say to them, "Perhaps you could take it up with the Greffier first and only to come to me if you need to, otherwise it might take up time". But the answer is no, I don't have a great informal role. Occasionally, States Members come to see me about a particular matter and I give them such help and advice as I can. It's entirely up to them if they want to come, I will always see them.

In terms of liaison and speeches, I will quite often send a copy of anything I propose to say perhaps to the Chief Minister, just to make sure that I'm not saying something which is completely contrary to what the Island would like to be put forward, but I won't always. It varies.

**THE CHAIRMAN:** Yes, that was something I was going to ask you about. To what extent do you and the Chief Minister consult with each other about matters which have Island effect, or outside Island effects?

**MR BIRT:** As I say, for instance, when we have foreign ambassadors coming over, they will come and see me. Then they will go and have briefing sessions with the Chief Minister and some of his advisors. Now, it is the latter which is the matter of substance. They are the ones



who are going to be talking about whatever it is that the Island might want to talk about.

I tend to talk in more general terms about the Island's constitutional relationship with the UK, why are we self-governing, give them a bit of history talk. So, I certainly -- the Bailiff is not there to talk matters of substance with visitors of this nature, that's for the politicians.

**THE CHAIRMAN:** If you are speaking abroad, do you have any particular protocol as to how you go about preparing?

**MR BIRT:** I think I've only done two since I've been Bailiff. So there's Bad Wurzach recently and because the Chief Minister was out there, I did show him what I was preparing to say beforehand, as a matter of courtesy. But of course it was very non-controversial, it was not political.

The only other one I can think of is I gave a speech to the Jersey Society in London about the constitutional relationship. I didn't show that to anyone in advance but then I was very careful not to express any views, I just summarised the competing arguments.

I would judge it on a case by case basis. If I thought the area I was getting into was in any sense something where political representatives should be consulted, I would consult them. I'm a strong believer the Bailiff is not there to speak about political matters.

**THE CHAIRMAN:** Well, I am very grateful to you, Mr Bailiff, for coming and giving us a morning of your valuable time. It is important for you, as well as for us, so I think we are glad that we have been able to pursue a lot of matters with you.

If you feel on reflection about what we have discussed this morning you would like to give us any further views in writing or in person, please, you will be very welcome to do so and we will be very glad to have them.

**MR BIRT:** Thank you very much. I mean, perhaps when I get the draft transcript I'll be able to review it and see if there's anything further that I want to add or retract.

**THE CHAIRMAN:** Thank you very much for coming to us this morning.

**MR BIRT:** Thank you. Thank you.