

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

Date: **9th June 2010**

Review **Lord Carswell, Chairman**
Panel:

Mrs M-L Backhurst
Mr G Crill
Dr S Mountford
Mr I Strang

Witnesses: **Mr M F Dubras**

Lord Carswell (Chairman): Mr. Dubras, may we welcome you to the Independent Review of the Roles of Crown Officers, set up by the States. We have been sitting and hearing a number of people who have been good enough to give us their views and we are continuing to do that for some little time yet. We are simply looking at the principle, as you have dealt with in your written submission, for which we are grateful. As I think you are aware, these are public proceedings; the States requested that and we are doing it, and the written submissions go on to our public website. When the oral hearing is over then today's proceedings, like previous ones, will be transcribed and you will have an opportunity to see the transcript to make sure it is accurate and then it will be put on to the website, too, and we shall continue with the process until we have completed taking evidence then discuss and reach conclusions and prepare our report, so that is where we are.

Mr. M. F. Dubras: Good. Thank you. Yes, I have been taking advantage of what is on the website to try and keep track.

Lord Carswell: Good. I am glad people find it informative.

Mr. M. F. Dubras: It is certainly very different from the approach taken by the second Clothier Review; whereas we had these sorts of sessions, obviously it was not as open, and I think that is a good move forward.

Lord Carswell: Well, that is what the States wished, so that is what we are doing.

Mr. M. F. Dubras: Thank you.

Lord Carswell: We have your written submission. Is there anything you would like to add to it before I ask members of the Panel for questions?

Mr. M. F. Dubras: There are 2 areas, some new points that I thought we might cover in some way; we might find them in the general discussion. I thought there was a time before the change to ministerial government, and about 2 years before I left the States when, as part of the effort to anticipate the new States of Jersey law and the way in which the States would operate, having an Executive clearly identified for the first time, to see whether there was a way to manage the order of business of the States, recognising that there would be propositions coming through from the Ministers and the Executive as whole through the Council, as well as accommodating any propositions that so-called Back-Benchers might want to put forward. So there was an ad-hoc group that took place over a period of weeks involving the Bailiff, involving the people who were working up to what is now the P.P.C. (Privileges and Procedures Committee) of the States. There was an effort to see whether or not that would work; it did not proceed, I think for a number of reasons, but it was interesting to see and to be part of the interaction with the Bailiff in his role as President of the States with Members who have subsequently become P.P.C. I think that is something we might want to cover: in comparison with other parliaments, other legislative assemblies, the role of the Speaker and politicians who are working to manage the way in which it is run, the development of Standing Orders, the development of discipline and so on. The second area that I had involvement with, that did not really occur to me at the time I wrote the initial paper, was the whole issue of remuneration of senior officers of the States and Crown Officers and, in my role on the Human Resources Committee of the States and latterly on the precursor to the Employment Board, I was very much involved in looking at the surveys that were taken and the evolution of pay for Crown Officers and other legal positions, as opposed to all the

other administrative chief officers and senior positions. That is particularly in the public domain this week with the publication of the latest allocation of money but it is only a continuation of what has been happening over the last few years, it has just been a bit more high profile this week. But that links in with the fact that I also, at the moment, am a member of the States Members' Remuneration Review Body which I have been on now for the last 18 months. Having had the previous experiences and dealing with the Bailiff and the other Crown Officers with regard to their pay, I am now in a position to be working on the States Members', so just to put it in that perspective. Other than that, as I said just now, I have reviewed some of the other submissions and I have got thoughts about people's comments. I have picked up one book which I am sure, given the Crill name, may well have come to your attention, but it is the recent book by the late Sir Peter Crill and he has got comments in there which, if he were still alive, I am sure he would have come to you and made very clear to you his views on a number of matters. But I found points in there that, to some extent, support the arguments that I have been making. Anyway, that is all that I ...

Lord Carswell: I shall look at that with interest because I knew of the existence of the book but I have not yet seen it, but I shall repair(?) that. Yes.

Mr. M. F. Dubras: There are a couple of chapters that I think are relevant to your review.

Lord Carswell: Yes. That is interesting. The question of remuneration is really not within our remit and I do not think we will attempt to comment on that.

Mr. M. F. Dubras: No, I understand that. But it afforded me an opportunity, if you like, to work with the Bailiff and the other Crown Officers in a different juxtaposition than as a Member of the States with them as colleagues or as officials.

Lord Carswell: Did that lead to you drawing any conclusions about the role of the Bailiff and Crown Officers or the way that they carry out their work?

Mr. M. F. Dubras: I have not reflected on that point. If you will allow me just to allow that to work its way through as we deal with other matters, I might come back to that.

Lord Carswell: Yes. There are 2 major items, in relation to the Bailiff's position, that form the thesis of your paper: first that it is not appropriate for the Bailiff or Deputy Bailiff to preside in the States and, secondly, the question of clarifying and possibly modifying the status of civic head. May we take the question of presiding first? Your reasoning is based on general principle, I think, rather than any specific problem that you have encountered or concerns about the European Convention.

Mr. M. F. Dubras: Yes.

Lord Carswell: Would you like to enlarge on that a little bit, we would find it helpful?

Mr. M. F. Dubras: Yes. Listening yesterday afternoon, I was slightly amused by the questions about whether the Bailiff can influence the order in which and who is selected to speak during debates. I was, as others, in the difficult position of being hidden by the mace from time to time, depending on which seat I had been allocated, so it takes a bit more effort

to catch the Bailiff's eye, but that is just a light point. I have not found any particular difficulty in the manner in which the President, be he the Bailiff or the Deputy Bailiff, or the Greffier for that matter, has presided.

I have been disappointed that there seems to have been very little made of the fact that, at times, States Members have been asked by the President to sit in his place; 2 particularly, Senator Horsfall and Senator Le Maistre, presided on a number of occasions. But that practice seems to have fallen by the wayside over the last 5 years, I would say, since the change to ministerial government. It is possible because the senior Senators have been occupied with other roles and therefore it would not be appropriate. I am not convinced by the argument that has been made that ordinary States Members could not take on that role in the same way as is common in the House of Commons and in New Zealand and Canada, 2 places where I have met the speakers and I have sat in on debates if I happen to have been visiting Ottawa or Wellington. I think too much is made of that. I believe that the principle is a fair principle. I would prefer an elected Member to be Speaker than I would a non-Crown Officer or a person from outside the system, to be appointed or elected in some way.

Mr. G. Crill: Would you have put yourself forward?

Mr. M. F. Dubras: I would but I would not be placed in that role because ... it was a thought that went through my mind, as we were looking at the whole process, as one who has had the chairing skills and the practice and the knowledge of how these things run. But it would take a very specific piece of training, I think, somebody would have to really want to do it, and it is a bit like would you prefer to be Chairman of the Privileges and Procedures Committee as opposed to being somewhere else on Scrutiny or somewhere else within the Executive; it

depends on your interests and it depends on your whole manner. I think it does take a shift, a mental shift, to move away from being an active representative, for example, to being the Speaker or the President. But I do not see it being impossible, and I think the Assembly is more than large enough to cope with one Member being elected. As I said, I tried to get a proposition through that would reduce the Assembly to something of the order of 37, one of whom would be an elected Member acting as the Speaker.

Mrs. M.-L. Backhurst: Do you think, though, that those who elected you to be Deputy or Senator would feel aggrieved that you could no longer then speak on their behalf in the States?

Mr. M. F. Dubras: No, I do not think so because I do not believe that that is necessarily the case. I have had this discussion with a Speaker of the House of Commons in Canada, I was fortunate to sit next him when he was attending a dinner here as part of the Commonwealth Parliamentary Association, and I then was invited to meet with him in his chambers and this sort of conversation took place. Peter Milliken MP has been a representative for the Kingston Ontario area for a number of years now and he has remained Speaker during a change of Government. I think, if someone establishes themselves in that role, they are able to deal with these issues and I think the constituency has ways of being represented and it is managed. But one would have to ask people like that how it is done; it is not something I spent a lot of time with. But I think it is do-able and I think part of the difficulty we are confronting with this review is that any sort of change of such a significant kind is resisted because of the unknown and the people who are in place do not necessarily see an alternative way of doing it because they will lose something by that.

Lord Carswell: Regarding an individual Deputy for a particular Parish he represents, to what extent is it important in practice that that person should have a voice and be able to uphold interests in that particular Parish? That might be lost and I am just wondering how important, from your own experience, you can say that is.

Mr. M. F. Dubras: The closest analogy I could bring in real experience, and fortunately there were 2 of us Deputies plus, of course, the Connétable for St. Lawrence, was when I took on presidency of the committee for a while that was responsible as the planning authority and therefore I had to distance myself from specific applications within that constituency and I made it very clear publicly that my colleague Deputy would be taking on those cases if individuals felt they needed direct political input. My analogy is to transfer that responsibility, and the corollary of that was that, if I was phoned as a Deputy of the States by someone living in St. Helier, I would encourage them, if they felt that they were just not aware who to talk to, to talk to a Deputy in their own constituency and I would sort of hand over the issue. On the other hand, there were cases when I would be phoned and the person calling me said: "Well I do not want to talk to my Deputy, I need somebody else to act for me." I think there are practical solutions to what might be considered a theoretical issue at the moment but I believe that, within the way in which things operate, that there is a way round this if it is deemed that this is a justifiable shift to be made. Of course, the point that I have highlighted in my presentation is if the change is demonstrably necessary, and I think this is the argument that has been waging: should we anticipate a problem, as you asked yesterday, and therefore make the change because theoretically it perhaps should be made, or do we wait until there is a challenge and a real issue to bring about change. I prefer to anticipate rather than to be forced into a situation where you sometimes will get unexpected consequences.

Lord Carswell: There was a delicate question raised once or twice as to authority of a States Member taking over as Speaker and what authority that person would have by comparison with the Bailiff. I would be interested to know what you think about that.

Mr. M. F. Dubras: Well, I think - as with organisational change - when someone within an organisation is promoted or is appointed or takes on a role that replaces somebody who has had that authority, it has to be earned. It doesn't necessarily come as a cloak that you put on or a mantle that you put on when you take on such a role. But, remarkably, people do gain presence and they gain authority and I think it comes back to your question of myself; plus one might have fleeting thoughts as to whether you take on a particular role, regardless of what it is, and you need to have a feel and a sense. You need to have antennae which tells you whether or not you would be accepted in that situation, and if there is a sufficient warming-up period to the transfer from the Bailiff - that we'll say for the moment - to a member of the elected body and you then go through the normal electoral process and you end up with however many Members of the States and one of them is going to be appointed Speaker for the first time, I think during that process of transition, individuals will come to the surface or the preparation for that will make sure that the protocols and the arrangements are worked out so that it will be a natural transition.

Dr. S. Mountford: What if you didn't get anyone? You have identified a previous reluctance of States Members to take the place of the Bailiff; what if nobody said, "I want to be a Speaker"?

Mr. M. F. Dubras: I am aware of 2 Senators in particular who have handled that on a number of occasions when asked by the Bailiff. I think the only reluctance, if I am interpreting your question correctly, has been, since ministerial government, the senior Senators have been otherwise occupied so that perhaps, from among their number, there have been fewer. But if it was known that one of the States Members was going to be asked, then people would position themselves differently in the run-up to the election for Ministers or taking on chair of the various Scrutiny Panels. I think that was one of the concerns in the design of what we have now as to whether so-called: "Good people" would be chairmen of Scrutiny Panels because all the so-called: "Good people" would be selected as Ministers. Yes, it is an observation, but I think that, once you are faced with this, people will decide for themselves what they want to go for, they do not just wait to pick up the crumbs off the floor, as it were.

Dr. S. Mountford: But what about the training you suggested, because not everyone has got the skills of leading a group of people so ...?

Mr. M. F. Dubras: Correct. I think again, in much the same way as the States very thoughtfully, and I cannot remember who decided this, but there was a period of 3 years when we went through Shadow Scrutiny prior to ... in fact, I think it was the then Senator Qu  r  e who suggested there should be 'Shadow' Scrutiny because it was known we were going into that in good time and a whole range of us participated from time to time and had people from Westminster come over and put us through some training. That was good and I think, again, there would be in my view a period of time between a decision of the States saying that there would be a speaker elected among the Members, and when it took place, and possibly half a dozen or less candidates would go for some training to see whether they

would really like to do it. I do not know, I do not see these things as insurmountable obstacles, I think that it would unfold in a sensible way.

Dr. S. Mountford: You mentioned that there was a group that involved the Bailiff when there was the transition. Do you think the Bailiff should be involved in that experience of retraining, or that shift from one system to another, bearing in mind the expertise?

Mr. M. F. Dubras: It is quite possible. I understand completely from what I have read that the perception now is that the President of the States is managing the Standing Orders, is acting as an independent neutral chairman. One of the thoughts that crossed my mind, as I was coming up here this morning, it is a question more than a conclusion, is how difficult is it for the Attorney General to stop giving advice and take on the mantle of the Deputy Bailiff and then the Bailiff and, when the Members are asking for legal advice during the debate, not to give advice from the Chair. I think, again, it is a transitional thing; it is getting your head around these sorts of issues.

Lord Carswell: It is a little bit like the transition from being a barrister to a judge; occasionally at the start you feel the impulse to question witnesses at the sound of the trumpet, but you get used to it quite quickly because you have had a legal training and you just get adapted to the rule fairly seamlessly in my own experience. But, yes, I see the point of what you say.

Mr. M. F. Dubras: I am sure, yes. Of course, the interesting question on that is is it better to go through that transition and have had the barrister's experience as opposed to some other jurisdictions where people learn to be judges right from the outset and they never experience what it is like to be a barrister? It is the same as becoming a manager or going through the

supervisory role. I do not want to side-track but I was reminded of it yesterday; I am glad to see some people today have taken their jackets off, and this is an aside not necessarily to be reported, but I had done work in organisations when somebody becomes a supervisor, he becomes known as: "The guy with the tie." Suddenly people take on this persona, that is right, and we do not know necessarily what it is. I was asked once: "You are not acting like a Vice President should" and I said I did not know how a Vice President should act; nobody has put me through that training programme.

Mrs. M.-L. Backhurst: One of the advantages of the Speaker (a) being elected, that is one advantage, but also from the number of the Members that exist already, would be the financial advantage in some respects because other States Members could deputise for that person and they would already be there, they would already be being paid, as it were, and they would not then require a separate office in a sense that they would already be in situ. So just looking at it purely from a financial point of view, there would be a saving there, would there not?

Mr. M. F. Dubras: Yes, although the point was quite well made, I think, in some of the presentations: on the one hand that perhaps the Speaker then would require access to legal advice, but I am not sure just how much legal advice the Speaker needs other than help. Of course, the Greffier is there to help with the procedural aspects because the Greffier, by tradition, had been very much involved in the development of the Standing Orders. But the other side of the coin is, of course, there is no reason why there should not be Deputy Speakers also drawn from among the Members; again, with 53, there is more than ample resource there. I am not comfortable with the Greffier, as presently arranged, taking on so many occasions when he sits as President. Michael de la Haye does a fabulous job, I am

not suggesting otherwise, but I think it runs counter to the real purpose of why you have a Greffier, a clerk-at-table, performing certain administrative roles. He is very much critical to the way in which the business is put together and advice given to Members and I think, to some extent, the Greffier could be perceived to be in conflict when he is asked to take on the chairmanship so often because the States does run on.

Mr. G. Crill: There has been criticism of past holders of the office of Bailiff in their capacity as President of the Assembly that they have overstepped the mark in making statements or comments. If the position of Speaker is essentially apolitical, does not the election of a sitting Member make it more political because his political leanings will have been declared at elections and throughout his political life so will there not be an increased politicisation of the role rather than an increase of the apolitical element of it?

Mr. M. F. Dubras: I followed the recent election in the House of Commons quite avidly when the Speaker Martin stood down and the present Speaker was elected and, of course, he brought a lot of baggage with him, apparently, including changing sides, although he was elected recently as a Conservative, I gather. I am sure there is a certain amount of risk of that but the manner in which he conducts himself is either going to gain approbation of the colleagues and the Assembly or not and the Speaker will either last and survive several times. That is why I was happy to know that the Canadian Speaker, for example, has retained that role notwithstanding there being a shift in governmental party. I am confident that, given the situation and a transition, people are competent and capable of handling what is required of them in taking on a new role. You have made reference to the barrister becoming a judge and so I think this is something that the human psyche, and maybe Dr.

Mountford can help us with this, is that we are able to make that transition from non-parent to parent and so on.

Mr. G. Crill: Leopards and spots.

Dr. S. Mountford: Some people can.

Mr. M. F. Dubras: Some people struggle but all I am suggesting is that, in my view, the obstacles that get put up, and I am particularly disappointed in one or 2 of the submissions of former States Members who say: "No, no, it is not possible", I just think one has to open one's mind to the possibility. But it should inform your report not be the be-all and end-all. I started to look at the Hansard report of the actual debate that led to this Panel and I found it was just so long that I did not have the time to read it but there must be some information in that. I do not know if you have had the opportunity to read the transcript of that and whether it is going to inform you or not, but I would have thought more Members of the States presently, who were party to asking you to do this, would have perhaps presented themselves, because they must have some rationale for having asked you to do this and therefore I would have thought they would want to communicate that to you. But maybe it is sufficiently in the transcript.

Lord Carswell: From your observation of the process as a Deputy, to what extent would you say yourself that legal experience and skills on the part of the Presiding Officer are necessary?

Mr. M. F. Dubras: I do not think they are. Because of the fact that the legal advice comes from the Attorney General -- the Speaker, whomever, turns to the Attorney General for that information. I think it requires someone who is familiar with process and procedure and a good understanding of standing orders.

Lord Carswell: That, of course, is vital for any speaker.

Mr. M. F. Dubras: That is right. It would be interesting to do research on all the Speakers in the Commonwealth to find out what percentage of them has a legal background. I do not know; I have not done that research.

Lord Carswell: I can only think of Speakers of the House of Commons, and there are relatively few in recent generations, but it is perhaps not a fair comparison because they have got an array of clerks who are highly-skilled people, very experienced, who can give them advice. The States are fortunate in having an experienced and able Greffier who, no doubt, would advise a Speaker if there was some question of interpretation that the Speaker was not sure of. Whether it goes further than that and needs skills of interpretation, as some of the witnesses have suggested to us, is something in which I would value other people's experience.

Mr. M. F. Dubras: The fact that at least 2 Members of the States, and I am sure in the past there have been others, have sat in at the request of the President, for whatever reason he was not able to be there. It has been tested; one should perhaps seek their views. Mr. Jean Le Maistre and Mr. Pierre Horsfall perhaps could be asked those questions. I do not know if either of them has submitted. I do not want to belabour the point. Your question was very

explicit and I have given you a direct reply: it is nice to have; I do not think it is essential, because one does not require a legal background during the debates. Knowledge is obviously a nice thing to have but there are other resources within the Chamber to provide that knowledge.

Mrs. M.-L. Backhurst: We have had a thing from the Bailiff giving all the sort of functions and roles that the Bailiff does as President of the Royal Court and the Court of Appeal and as President of the States of Jersey. A lot of the ones as President of the States of Jersey are civic head-type functions which I am not really quite so worried about, but I was just wondering how you would deal with things like the constitutional matters for Jersey. He says: "They advise States Members on procedural and constitutional matters out of the House, they administer the flow of official correspondence" that is one way of looking at it, but it is also this kind of thing that you do not write down: the behind-the-scenes, the steady hand, the advice, the consistency; that there is somebody there for a length of time rather than chopping and changing. A speaker could well be elected a Member of the States and, 3 years later, they are out so you have lost that continuity. How do you feel about that?

Mr. M. F. Dubras: Again, Lord Carswell, you raised this question yesterday with Sir Philip Bailhache. I personally see the Bailiff ... if we start from the traditional position of the Island being headed by a Bailiff on behalf of the Monarch and that Bailiff is also the Chief Judge, I see no problem in maintaining that role but I do not see the role of Bailiff necessarily disappearing because of the shift that we happen to be talking about at the moment. I also see that role as having an influence on constitutional matters and I think the point was well made yesterday that, when you are tackling sticky problems, it is good if the Bailiff, the Deputy Bailiff, the Attorney General get together and discuss the issue. That does not

prevent them from drawing in Ministerial Members of the States to have opinion but, if it is purely a constitutional issue, we know that they tap into counsel in London if they require that further advice and potentially others, constitutional lawyers and experts. I would see that continuing. In terms of the issue of the official documentation, I could still the Bailiff being part of that process, as part of the tradition, we happen to have a Lieutenant Governor and there is an interesting interface there. I think that is a different interface than the Chief Minister and the Lieutenant Governor would have and so I see the 2 roles operating comfortably once you sort out the interface. It is always dangerous to use the parental model but a mother and a father are 2 very different roles but they need to work 'as a team' in their dealings with the unit, both family and externally. I just draw that one out as an example but you could pull many others. I see no difficulty with the concept of a Bailiff and a Chief Minister working alongside one another, each being responsible for their realm domain; one potentially changing more frequently, as you have suggested, and that happens to have been our experience recently, but I think that is purely because of the ages at which the Chief Minister happens to have found himself. I am not sure about the civic head aspect but I suggested in my paper that is something that will evolve over time and I think there is a place, given our tradition, for someone called the Bailiff who acts for the Island in certain situations.

But the one I alluded to particularly was when visiting Normandy for discussions and there is clearly, notwithstanding King John, King Henry and all of that, still a tremendous respect for the role of Bailiff; it means something to the Normans, no question. There has been a much greater affinity there than there has been with Brittany, for example; it took longer to establish the business relationships as well as the constitutional ones. I mention that because it was an eye opener to be alongside the Bailiff in discussions when that happened. I think those of

us who have not had that exposure or knowledge, perhaps through being involved in the legal profession in the Island, it is good to have that experience. It changes one's mind a little bit; just as reading some of the other submissions, my Lord, have caused me to think, since 31 March: "Well, maybe there is a perspective there." But I am responding this morning from the mind and the heart, to some extent, from experience of the last 20 years in the Island.

Lord Carswell: That is very helpful. Thank you, indeed. On the question of the roles of the Attorney General and Solicitor General, you would, if I understand your submission correctly, would regard that they should not be Members of the States. Have I understood you correctly?

Mr. M. F. Dubras: No. Whether they are Members of the States or not, I really do not know; there is a fine line there between whether they are on call to give advice or whether they can sit in the States and be part of the process. My point was that they should definitely be Crown appointments not political appointees -- the Attorney General might come from the House of Lords advising the Prime Minister, for example, and being part of the Cabinet. Because sometimes the Attorney General or the Solicitor General are elected Members of the Commons, there is that choice so I am saying, no, I would not see that model. In the U.S. (United States) a lot of legal 'appointments' are publicly elected; I am uncomfortable with that. I am very comfortable with the appointment process rather than the elected process.

Lord Carswell: The U.S. Attorney General is not a member of Congress at all, that is their separation of powers. In some other states, the Attorney General is close to government and

a government appointee, not a Crown appointee, and is also not a member of the legislature. There are different models and different countries seem to find that different ones work for them. So there is nothing sacrosanct about any particular model but the fact that you have a law officer who is not dependent upon the government of the day for continuation of his post means a lot in terms of independence, and a lot in terms of perceived independence, in that you would not leave the Attorney General open to the possible criticism that his advice was leaning towards supporting his own party.

Mr. M. F. Dubras: I am very clear about that. I think that it would be a retrograde step for us to move away from what we have in that regard which, if you like, takes me on to, if I may, the point that I made ...

Lord Carswell: Please.

Mr. M. F. Dubras: It is a question of curiosity really although, since I made it, it was one of the points that Sir Peter Crill made in his book. I have real concern about whether any member of the Crown Officers should at any time have been an elected Member of the States. I think one of the submissions did talk about people bringing political baggage with them and I think we have to be thoughtful about that and I raise the question of human rights. I do not know whether there is anything in there to prevent people being elected while a practising lawyer and then leaving that role and then going on to become Crown Officer. I will leave others to work that one out. I just feel that if we are clear about the Crown Officers being totally independent, then ... Sir Peter Crill talks about that transition that he had to make between being a Member of the States and then becoming a Crown Officer almost instantaneously; it was not as if there had been a gap, and that must have been quite difficult

for him. I would surmise that it could well be the case with the Sir Philip Bailhache, he also has been a Deputy for a while. I think it is just something we need to be thoughtful about.

Lord Carswell: It is a view of extreme purity, if I may put it that way, but there have been many examples of people who have been able successfully to distance themselves from their former ... people vary; some people are very good at that, at being objective when they change from one position to another, other people are not so good at it.

Mr. M. F. Dubras: I suggest that extreme purity is exactly the point that you are considering at the moment between whether the Bailiff should be the President of the States or not.

Lord Carswell: Yes, that is true.

Mr. G. Crill: Can I just ask if, in your experience as a States Member, you ever felt that the Bailiff exercised political influence insidiously, not personally, but by virtue of his position? Was there any sort of feeling that there is, shall we say, almost an unseen power overlooking you which comes from his role? I am not talking about within the Assembly.

Mr. M. F. Dubras: I would like to respond 2 ways: there has been the reported concern that was made when Sir Philip wrote at the time of the Clothier report, and other people have submitted to you on that; as a member of the P. and R. (Policy and Resources) Committee at the time, I was personally taken aback by that. I think partly it was the manner in which it happened, because of the way things get into the media and so on, and some antennae went up on that one. Otherwise, I will answer it this way: when one enters the States for the first time and meets with the Bailiff for the first time or for a series of meetings for various

reasons, it was very difficult, in my mind anyway, to differentiate between whether I was going to his office with other colleagues, officials as well as States Members, say from the Planning Committee or something like that, or Harbours and Airports Committee, as to whether he was there in his role as Bailiff with his legal hat on or whether he was there as President of the States, keeping a watching brief on the executive business, if you like. That was just a learning process for me - to be getting comfortable with going into the Bailiff's office because it was not something I had previously experienced. I will not say it is like going into the headmaster's office for the first or second or third time, but I think any time you go into the office of someone in authority and if you have not been used to dealing with them and you are not used to the procedural side, you are trying to get a feel for how to behave and how to deal and how much you can confront situations and arguments. So that was a learning process in the first 2 or 3 years that I was in the States. Subsequently, I found myself working with the Bailiff as President of the States in various capacities and I got very much more comfortable with that, leading up to the point where I was talking to him about the salaries of the Crown Officers and other legal appointees versus the salaries of other people. You asked me earlier whether I had a view, and I did jot down something on that. The connection with that role and those discussions that I had at the time do have a bearing because of the perceived difficulty, that has been mentioned in some of the submissions, of finding people who are willing to stand coming out of the private sector and being willing to transfer as public servants, albeit as Crown appointees, or whether as Crown Advocates, and so on and so forth. That is where that link and that experience would have some relevance to the review that you are doing. It is an issue, it is a serious issue for the Island and, I imagine, possibly Guernsey as well, I do not know.

Lord Carswell: It is a problem in every jurisdiction whether people will be willing to take on public posts which entails some personal sacrifice and there is an amalgam of reasons why people will do it (1) duty (2) because they want a change and (3) because they like the type of work that they are moving into and, if all those 3 come together, then you have got somebody who is the right person.

Mr. M. F. Dubras: And stage of life and things like that. You see, for example, we were confronted there with a situation of do we compare salaries and appointments and level of hierarchy with the U.K. (United Kingdom), which is the most immediate comparison, and establish a relative value to the Island in that regard, and then you turn to the private sector and compare the relative value with what people can earn or people have expectations for; it is a balancing trick. Then, of course, you then place it in the economic context of the Island so, from time to time, that shifts and always the objective has been to try to get independent review panels to do that sort of work. But then it came down to a political decision so ...

Lord Carswell: Yes, I have some experience of that in different capacities so I know exactly what you mean.

Mr. M. F. Dubras: I have raised it this morning only to show that, as a Member of the States, one can have a sort of one-up-one-down situation where you are a Member of the Assembly working with the President of the Assembly and then, the next moment, you could be sitting in his office where you are in a position of responsibility for making a decision and the President of the States is an 'employee'; do not quote me, because clearly Crown Officers are not employees in any way, shape or form. The relationship dynamics do change and so one gets used to dealing with people and respecting them in a whole variety of situations.

Lord Carswell: We have been asked to look *inter alia* at resource implications of any recommendations. If we followed your suggestion of having a States Member act as Presiding Officer, there would be a minor resource implication, and you may have to make some allowance in the Presiding Officer's remuneration, you would have to have accommodation and you might have to have some secretarial back-up, it would not be like a major department but there would be some implication, I think.

Mr. M. F. Dubras: Yes. I am sorry, I smile because at the moment the States of Jersey Law prevents any differentiation in remuneration between one Member and another, regardless of what role they take on, so in this case it would not apply. But, yes, there would potentially be some supporting expenses. On the other hand, there would possibly be a requirement for one of the Crown Advocates or Crown Officers to provide legal advice from time to time. But the other side of that coin, as was mentioned in some of the submissions, that less call would perhaps be made on Commissioners. Mrs. Backhurst mentioned earlier the statistics and the allocation of roles that was presented by the now Bailiff; I thought it was particularly helpful because it did rather flag up the fact that while presiding in the States came third in terms of time allocation, that does not necessarily mean it was third in responsibility or importance but those statistics did help to say how relatively much smaller a component it is. I see releasing the Bailiff or the Deputy Bailiff from that responsibility would enable them to place all their time on just as important, if not more important, matters of the judicial process.

Lord Carswell: The resource may cancel out then, yes. That is quite possible.

Mrs. M.-L. Backhurst: Could I ask ... I appreciate you had quite a lot to do with Scrutiny but did you leave just after Scrutiny really came into effect?

Mr. M. F. Dubras: I left as Scrutiny really came into effect, at the end of Shadow Scrutiny.

Mrs. M.-L. Backhurst: Right. Because there has obviously been some ... you are saying that the Law Officers' Department should be the source of information provided to Scrutiny as well as to the Executive in the States Assembly and the A.G. (Attorney General) has explained the difficulty of providing or giving the advice that he has given to, say, the Council of Ministers, giving that information, or letting them have the benefit of that, to Scrutiny as well. He feels they should seek separate legal opinion. Would you agree that that is how that should work or do you think there is some other way?

Mr. M. F. Dubras: Again, this has been a transitional, an evolutionary process. I think Deputy Le Hérissier expressed it very well in his paper to you, and I allude to it, that I think one has to establish a procedure where, because both Scrutiny and the Executive are dealing with policy-making and one has to get past the stage where Scrutiny is seen as adversarial -- and this has always been a concern, if Scrutiny either plays the role of being in opposition or being adversarial as opposed to intellectually challenging -- then the intention of Scrutiny is to assist in the process of policy-making and therefore the information that they have access to should be the same, basically. Yes, there is always the caveat of 'need to know'. There are certain aspects of the Executive and, of course, there is also the planning authority role, which is different, where advice needs to be given which perhaps should not be placed with too many others, because that then can defeat the whole process of having legal advice, because you are dealing with legal matters. I think this is a very difficult area

and I know, during the Shadow Scrutiny process, we first encountered it and I think because some of it was adversarial it created concerns in the minds of the Attorney General at the time. I do not know whether that is working its way out of the system and therefore there is more cohesion and we are all on the same side: “We are all in it together” but we are challenging some of the results of the deliberations and, therefore, we need to have the same advice. I have been in the States where there has been *in camera* advice given to everybody on matters of significance and that is, I think, the principle that one would be expecting to work through. I can understand why the Attorney General of the day had reservations; one can go into a situation but, through experience, you start to have concerns or doubts about how you should continue. I think it is fair to say some States Members, as they become familiar with being a States Member, are awakened to what they are really doing. When you stand for election you have no knowledge. I had a brother who was a States Member before me and, sadly, he did not tell me just how busy it was and how complicated it was.

Lord Carswell: They never do.

Mr. M. F. Dubras: It was mind-blowing, the first 3 years were an amazing experience of finding out just what is involved and anyone who ...

Lord Carswell: Just to come to the point you were making there: Scrutiny Panels are not dissimilar, perhaps, to select committees in the House of Commons, which are not opposition because they are cross-party, but they are probing bodies.

Mr. M. F. Dubras: Correct. Yes. We looked at that model.

Lord Carswell: They get information, they do not necessarily get the advice. Take a case in point: Iraq, you have a select committee which is probing the decision over war in Iraq; one thing they will not get is the Attorney General's advice, that has been kept very tight, and doubtless there are other situations the same, British Aerospace and things like that. I think it may be difficult to say that in every case the Attorney General's advice should be made freely available to Scrutiny, but my own feeling, and I am only speaking on behalf of myself and thinking aloud more or less, is that with the assistance of the Code of Practice which the Attorney General developed for the States, it may be possible for the large majority of cases to have a way forward and it would only be in a minority of cases when Scrutiny Panels would have to say: "Well, we really think we need separate advice." I hope that might be so but I am still open to people's views.

Mr. M. F. Dubras: As I say, I am not familiar with what has evolved in the last 5 years but you saw from my submission my closing comment is very much in line with what you have just expressed. I think that is critical and I think it is part of the transition process. My anxiety is, I think, both the public and the States Members themselves have expected the change from ministerial executive government, away from what was, to a situation where we now have an executive and a legislature; that it would be very instantaneous, it would happen very quickly and smoothly. I certainly did not have that expectation and I said so in the States as we went into this approval process for doing what is now, I said we could well be dealing with something like 2 or 3 or even 4 election cycles to a great extent until all the Members who have had 'government by committee' experience are no longer in the States. These things do take time to work their way through.

Lord Carswell: Yes. Quite true.

Mr. I. Strang: Just one point on, I guess, going back to the civic head, if I could just ask? It has been suggested to us that, if the Bailiff is no longer President of the States, that there will gradually be an eroding of his status and power as civic head. Do you think that that can all be given as an absolute or do you think that that is unlikely to happen, or do you think it can be worked out as to his position vis-à-vis the Chief Minister, for instance?

Mr. M. F. Dubras: I think it can be worked out. It started to work itself out from Pierre Horsfall. I was at a dinner for the New Zealand High Commissioner, I think, the first time that the Bailiff was not the only one who spoke at the dinner to thank the visiting ambassador or high commissioner for being there and they each made a speech. That first time Senator Horsfall also made a statement, so from something as relatively innocuous as that, but it was a moment of change. During the warm up to the transfer to ministerial, there were meetings, there were times when the Bailiff would come to a P. and R. and there would be conversations about some of the things that took place and changed in the 2005 States of Jersey Law. There have now been 2 Chief Ministers and the expectation is that, unless the present Chief Minister continues in the States, there would be possibly a third one. I am sure with each time you make that shift ... now if you made that shift, for example, at the same time as moving to an elected Member being the President of the States, you would have yet another piece of work to do because, as in other jurisdictions, the Speaker does have some precedence in the sequence protocol of things. In different places, the Speaker is quite close to the top or quite a way down, depending how many other roles you have. I would expect the present Speaker of the States of Jersey still to have quite a significant role to play, particularly with other parliamentary associations and bodies and visitors because the

Speaker is considered in other places to be a very significant role. That should not take away from the appropriate role for the Chief Minister politically, nor from the Bailiff, because I believe the Bailiff should continue to have that sense of civic head.

Mr. G. Crill: Who would be Mr. Jersey?

Mr. M. F. Dubras: It depends whether you are talking diplomatically or whether you are talking politically or whether you are talking legislatively. I think if one imagined a Chief Minister and a Speaker and a Bailiff and Chief Judge being one and the same, Mr. Jersey would be those 3 people, depending which of the areas you were coming into. But if you were looking for a supreme Mr. Jersey, you have also got to take into account the Lieutenant Governor - and the Lieutenant Governor has a role to play. We heard yesterday that outside the States he has precedence, within the States and within the court, 7 inches difference. I think it would take quite a long time to shift that Mr. Jersey was not the Bailiff and had become the Chief Minister and I am traditionalist sufficiently to like the idea, I think, that the person with longevity appointed by the Monarch is more likely to be seen as Mr. Jersey than the Chief Minister, who could change after quite a short period of time. It depends whether you are dealing ...

Lord Carswell: Every country has its own model, some have a president who is given everything, or a chancellor, but the United Kingdom is a totally different set up: there is the Queen, the Prime Minister, the Speaker, other people, so that there is, as you suggest, a division of roles and not one occupying the whole of the centre of the stage at any one time.

Mr. M. F. Dubras: One can understand what it was like to some extent in 1771 and that transition must have been a very significant one, just as the one in 1948 had quite a lot of significance. The thought went through my head, and it has gone again ... yes, I know what it is: there has been discussion quite recently about whether or not one of the Ministers should be a Minister for External Relations whereas, at the moment, the Chief Minister was perceived as carrying that responsibility. Things change and I think the allocation of responsibilities has to reflect what is going on outside: yes, we are the centre of the world for certain things but we are very much not the centre of the world for most things. I think we have to reflect that there is a diplomatic role and this where, I think, the Bailiff working with people like high commissioners and/or ambassadors is a very comfortable one because it is apolitical, even though, in some places, those roles are political appointments. I think one has to see them as more to do with diplomacy and, in that regard, relationships with Normandy, for example, I think there is the diplomatic aspects of traditional and the role of the Bailiff versus the Chief Minister dealing with the president of the regional or departmental councils. There is a duality which I think can be worked through.

Lord Carswell: Yes. If that is the way it was going it might be wise not to get too specific and draw too many bright lines at the start. It might be better to go at it gently, ease into understood spheres of influence until it became clearer. But it depends what conclusions we reach and what we recommend.

Mr. M. F. Dubras: Yes. I think one of the things that I have drawn from this reading and preparing for this process is a reflection that the whole issue of the official lines of communication between either the Privy Council or the British Government and the Island administration, to use a very generic term, I think has been hidden from most of us for many,

many years. It worked, but the pace with which it has had to operate in the last 15 to 20 years has changed dramatically, I think. In the time that I was a Member of the States the nature of topics that we dealt with has been dramatically broadened and hence the, I think, appropriate efforts for the Island to have an international personality. I think that that whole thrust is appropriate, whether it goes to the ultimate stage of independence remains to be seen, and that might be some sort of *force majeure*. But because of the change that is taking place and because of the greater role that we have taken with significant international treaties in the financial sectors, it has placed a greater burden on us to manage our own affairs more like a nation state than anyone could ever have envisaged. I think we have to make sure that our framework is appropriate to anticipate the future and not always be in a reactive mode.

Lord Carswell: I think, on that note, I would like to thank you for your very helpful and thoughtful contribution to our proceedings, Mr. Dubras. We will, of course, give it very careful attention and take it into account, along with the many other contributions we have received and will receive, and then we will proceed to reach our own conclusions, make a report which, of course, will be published and present that to the States.

Mr. M. F. Dubras: Thank you very much, my Lord, it has been a privilege to have this opportunity and to do it in a free-wheeling way; I feel very comfortable with that and my only request is I hope that each of us who have made submissions will get a copy of the report to go to go to sleep by.

Lord Carswell: I think that would be a nice politeness.

Mr. M. F. Dubras: I would be challenged by it because I think it is important to have that opportunity. Thank you.

Lord Carswell: Thank you very much, Mr. Dubras.