

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 30th MARCH 2011

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[09:30]

**The Roll was called and the Vice Dean led the Assembly in Prayer.**

**PUBLIC BUSINESS – resumption**

**Deputy A.E. Jeune of St. Brelade:**

Excuse me, Sir, if I may can I give notice that I will be missing in the early part of this afternoon to attend a funeral.

**The Deputy Bailiff:**

First of all I give notice to Members that the Bailiff has received from Senator Shenton notice of his resignation as President of the Chairmen's Committee. I understand you do not wish to make a statement, Senator?

**Senator B.E. Shenton:**

No, I will circulate to Members a copy of my resignation letter later this morning.

**The Deputy Bailiff:**

It will be necessary for the next agenda to contain arrangements for the election of a new president for that committee. **[Interruption]** Very well, we now continue the debate on Deputy Le Hérissier's proposition as amended and it is open to Members to speak. Deputy Power.

**1. Salaries over £100,000: notification to States Assembly (P.30/2011) - as amended**

**1.1 Deputy S. Power of St. Brelade:**

I want to pull together different tentacles of this debate because Deputy Le Hérissier has focused on a specific issue and that is the salaries of public servants earning in excess of £100,000 a year. The actual substance of this report and proposition has ramifications across this Assembly and, indeed, all the different responsibilities that different States Members have. I would like to touch on a few of those, if I may. All Members of this Assembly are collectively responsible for the approval of the annual budget. The Minister for Treasury and Resources has specific responsibility for delivery of the budget but we have responsibility for passing that budget and while some of us dissent from it and some of us dissent from specific aspects of it, we are responsible for a budget in excess of £650 million a year and rising. A great deal of that budget is in the salaries and wages of the 6,900 souls that employ for and on behalf of the public purse. When you look at the figure in isolation and you look at the salary portion of it, it is quite an astounding figure for a population of 100,000 people. So I wanted to start this by saying that we are responsible for the disbursement of those funds and, indeed, if one wanted to be quite pedantic about it every day that we are an elected Member each one of us is responsible for £33,000 of that money, every day of every year. The next thing I would like to say is that the report and proposition itself on the salaries is symptomatic of a much larger problem. But before I deal with that I want to bring Members back to what Deputy Jeune put down as a written question and the reply on question 18 yesterday. Again, I will refer to the back page of question 18, a page number is not on it but right down at the bottom it has a list of non-States of Jersey staff, these are agency staff paid by the Health and Social Services Department, and it refers specifically to a 9-month contract, a 6-month contract and an 11-month contract. I think part of the problem we seem to be dealing with is that when you look at the role of say a commercial manager on £850 a day, or if you annualised that over 9 months it is £230,000; a head of procurement, who is at £1,000 a day, that is a 6-month contract and that annualises at £180,000; and you have an Interim Director of Human Resources at Health and Social Services, £960 a day, and that is an 11-month contract which annualises to £320,000. The point I want to make is that to those voting members of public, those people in middle income Jersey, these salaries are a pipe dream to a lot of people. While many members of the public think that this Assembly is well paid, when they see those figures they probably realise - in keeping it in

perspective - that these people are extremely well paid. I want to link that to what I said when I opened my speech by saying that we are responsible in this Assembly for spending large amounts of the public purse. I think that is why there is such a disconnect between the public and this Assembly right now in that we appear to be almost losing control of what I would refer to in some areas as a runaway train. I have heard it said in this Assembly many times that this Assembly tends to follow a lot of the practices in the U.K. What works in the U.K does not necessarily translate and work easily here. Deputy Le Hérissier referenced in his speech the work of Eric Pickles and, indeed, he then referred to the Hutton report and I think Deputy Martin referred to the Localisation Bill and the attempt within local authorities in the U.K. to control the salaries within county councils and local authorities. They are trying to control them and I would say that what has happened in the U.K., there has been a runaway take-off in salaries within the public sector that now, with the benefit of hindsight and with the recession, these local authorities cannot afford. I would suggest that the problem here in Jersey, not only is Deputy Le Hérissier correct to focus on these salaries that people are aghast at but I would suggest that Jersey's problem is multi-faceted, and I would make the following suggestions as to the overall problem in conjunction with what Deputy Le Hérissier's report and proposition says, amended. That is, there is a view out there, and I came across it in the Population Office as I am sure Deputy Green is now, there is a view out there that there is expertise in the Island that sometimes cannot be attracted into the public service in Jersey. I think that is wrong. I think that in this Island today, whether you are Jersey-born, whether you are an immigrant or you have come into work, is awash with highly qualified people, experts - just to name a few - in running businesses, experts in small businesses, experts in accountancy, experts in law and we see, time after time in the local media, local companies getting international awards for their expertise. So we have this pool of expertise on the Island and the next thing is to translate, how do you get that expertise out of the private sector, take a drop in salary and come into the public sector? That may solve part of the problem that we have got in terms of these salaries of over £100,000 a year going out of control. I would suggest that the psyche in the public service ... Sir, I am struggling to carry on here because there is an awful lot of noise coming from my left.

**The Deputy Bailiff:**

It is most unlikely, Deputy.

**Deputy S. Power:**

It is not this left, it is over there somewhere. I do not mean left, left, I mean left of my left ear. There is psyche in the public service that discourages recruitment from the private sector into the public service and I do not know why that psyche exists but it does exist and I did come across it. I know the Constable of St. John and I had a number of battles last year with regard to recommendations that were not happy with that encapsulated that problem. The other problem that is occurring out there and why I think we have got this runaway train, is the States itself.

[9:45]

This Assembly can be incredibly destructive in the way we approach appointments, the way we approach competent authorities that we hire and at times there is gross political interference in the way we set up competent authorities to hire these people that we know we need. I would say that this Assembly must take some responsibility for some of the problems that we have out there at the moment. The next problem that I have identified is that within the public service, when you get into the salaries of £100,000 plus, there is a phenomenon called empire building and this empire building is simply manifested like this. You may have a very competent person in a States department ... I will take out the word "very". I will say that there is a competent person in a States department, who he or she feels that they are under pressure and they then suggest that in order for them to progress their career, in order for them to be promoted within the public sector, they then recommend the recruitment of somebody else to come in under them. So therefore the pyramid

increases exponentially and the States then, through its Ministers, hire people to increase the pyramid and that is itself a problem. That comes back to what somebody else said yesterday, that responsibility must reflect performance-related competence in the public sector and I agree 100 per cent with what Deputy Gorst said yesterday, I think the Hay evaluation and the Hay way of assessing public servants **[Approbation]** is completely out of date. Deputy Gorst gave one example of the Chief Officer of the Social Security Department who disperses a huge cash budget every year and I will give a second one, and that is the Chief Officer of the Housing Department who does not have as big a cash budget as the Social Security Chief Officer but he has a responsibility for running an annual turnover of £35 million, but not only that he has the responsibility for an asset base of something approaching £1 billion. He is one of the lowest paid chief officers in the public service, and I would say this Island gets extremely good value for money from chief officers like that. So there is something inherently wrong with the way we do business within the public service. This Assembly has got to take responsibility for it and has got to act. I have said this before, and I am going to say it again, when we deal with the salaries of senior public officials - senior civil servants - it seems to me that at times, in certain States departments the tail is wagging the dog. In other words, that we are being dictated what to do by those that we employ. I do not know quite how we deal with that, except that Ministers and the Council of Ministers are going to have to deal with that. It seems to me that we are awash in reports and Regulations and Orders and reports and propositions and we do not necessarily drive them but we do have to process them. I sometimes wonder at some of the stuff that comes through this Assembly, who is producing all this paper work and is it really necessary. So, I speak this morning with a degree of frustration because I think Deputy Le Hérissier's report and proposition is symptomatic of a much larger problem within the public service. There are very good departments but there are other departments where the control and the performance is like a full moon in a fog, we are not quite sure what we are looking at. I learnt in my time as an Assistant Minister, from Senator Le Main, how difficult it can be sometimes to refuse to make decisions which would make the Minister or the Senator unpopular, but to give Senator Le Main his due, he did make those decisions and he did get a berating from certain other States departments. Going back to my opening remarks, this Assembly has got to be acutely conscious of how we spend money. One of the biggest ways we spend money is on salaries within this Island. Deputy Le Hérissier's report and proposition is necessary, it is symptomatic of a much larger problem. I would like to see the whole recruitment process within the States of Jersey looking towards the high calibre management that are already in the Island, in the public sector, in legal, accounting, finance and looking to recruit those people. Sometimes working in the public service is not just about salary. Sometimes working in the public service is about prestige, it is about status and it is about public service. For the number of times that this Assembly is criticised we must ... I am reminded of the fact that we are in here and we are public servants. We are here because we do want to serve. There are private individuals out there who would be attracted into the public service but, for whatever reason, this Assembly and the way that we carry out our business does not allow that to happen. I hope when we come to the end of this debate that most Members will support this proposition. I find it a frustrating experience to go through again but I think it is necessary and I hope Members will support the report and proposition. Thank you.

#### **1.1.1 Deputy P.V.F. Le Claire of St. Helier:**

Yesterday I spoke about the 33rd report on senior salaries that I discovered from the U.K. (United Kingdom) Parliament website, which was presented in March of this year and I have spoken through the debate in relation to each of the amendments as to how I thought it was linked and why I thought it was necessary for us to support all of the amendments. I think the amendments have made the process much stronger and especially the late approval yesterday of Deputy Vallois'. I would like to put across - and the Chief Minister is possibly listening in the ante-Chamber, he is not in the Chamber at the moment - a view that hopefully that the Minister for Social Security can take to him, on the back of Deputy Power's speech, we set up a States Members' remuneration body to

take these issues away from this Assembly so that we would not be forever in here debating our pay. More importantly, I do not think we should be in here forever debating other people's pay either. I would just like to touch upon this review because I think what it is doing and what is achieving is something I think we need to consider implementing ourselves. I think it would be wise for us to consider having a similar review body standing in place, working with the Comptroller and Auditor General on a regular basis. Now, it may be something that the States Members Remuneration Review Board could tack on or it may be something that requires greater expertise, possibly, or greater funding or greater resources, I am not certain, but I am certain that what they are doing in the United Kingdom seems to be a positive way forward. The first thing is that the review body would ... I just put this into context, in supporting this proposition I think that we have taken a step in the right direction but I would hope that the outcome of this debate would be that the Ministers, in bringing back their solutions, would consider this as a possible solution; whether or not we would like to extend in the future or in the near future an invitation to the States Remuneration Review Body to incorporate these other sectors. This independent review body, which is a standing body, as I mentioned yesterday, has far-reaching abilities, it provides independent advice to the Prime Minister, the Lord Chancellor, the Secretary of State for Defence and the Secretary of State for Health on the remuneration of holders of judicial office, senior civil servants, senior officers of the armed forces, very senior managers in the N.H.S. (National Health Service) and other such public appointments as may from time to time be specified. They take into account in their terms of reference a number of matters, I will not go through them, but they do include such issues as the recruitment, retention, motivation and suitable availability of people, the regional local variations, government policies, funds available, the Government's inflation targets, the differences in employment conditions, the rights and access to relative job security and they weight them on different criteria. What is important is that they do this all of the time and they go and seek evidence all of the time on these issues. At the same time they take on board the other reviews that are ongoing within the United Kingdom, such as the Hutton report and the Cunningham... I think it was. They take on board the other bodies of work that are going on and they incorporate those into their review and recommendations. When they come back with their review, they do not just talk about what they think they should be awarding as a percentage, they break it down comprehensively and talk about the salaries and whether or not those salaries are appropriate for the positions and the level of operation of those positions as we got forward. They call for evidence, they take into account the economic climate and the government policies and, most importantly, they are funded by the manpower and economics arm of the Government so it is possibly something that would be available to take on board from economics. I think unless we are going to forever come back ... I would like to commend Deputy Le Hérissier in doing this because it is a good step in the right direction. In fact it is a massive step in the right direction. But unless we are going to be brought back here again and again and again on these issues - and I certainly would not like to be - I think we have got to do something like this. I would really like to ask the Minister for ... I know he is busy looking at the Island Plan but I would really like the Minister for Social Security, whose attention I am trying to seek, to take on board my speech today. I think that we do need to look at implementing a standalone separate review body that can call for evidence, and in all areas, not just the £100,000 band but also in senior salaries from £50,000 upwards, including the Judiciary, because they do. If we are going to focus our attention from time to time on runaway trains and huge matters of importance ... I will give one example as I finish, we have just allocated a shadow board to Harbours and Airports because we recognise the huge body of work and the important work that they have got to do. But I would put it as much as that remit is important, the portfolio of property in the long term does not equate to anything like the payroll costs of this Island long term. It is the payroll costs that need to be looked at. Finally, those also include the benefits as highlighted by Deputy Power and in this report, which I am hoping the Minister will have a read of, they make a judgment about pensions and they give a clear steer as to where they are being steered on the pension issue. It is not just the salary that is attractive to people that want to work within the States of Jersey, the States of Jersey is, in the main, in my view,

although there are in any big organisation some downsides, I think overall the States of Jersey as a place to work is a good place to work, it is a place where a lot of people want to work and like working and I think it is something we can be proud of. But I also think that we need to bear in mind and need to recognise it is also a pretty safe environment. They do not have targets to meet like in the corporate world ... they have targets but they do not have bonuses to achieve like in the corporate world. In the corporate world they have to run their organisation and they have to make a hefty profit.

### **1.1.2 Deputy A.E. Jeune:**

The reasons for this proposition are clear to us all and have been explained by Deputy Le Hérissier and endorsed by others. I really do not know that it is our role to be controlling senior pay. We have Hay evaluation which appears to work in a number of other places. So I do not know why it does not work for the States. Or maybe I do. We employ H.R. (Human Resources) people and pay them well in my opinion, but at this time I feel we have no alternative but to rein-in something that has clearly gone well outside of what might be called normal acceptable boundaries and away from policies that have been set in the past.

[10:00]

This is endorsed by the Comptroller and Auditor General's report we received this week, for which I believe we should thank him for producing in such a timely manner. This report states that policy has not been adhered to. Policy is our role but given that we now have a vacant position at the helm of H.R. we must be seen by those who we represent to be taking control. We in this Assembly are supposed to be working towards reducing our spending. Yet it would appear that we have - and I will say it the same as Deputy Power said - a runaway train. Maybe it is because we live close the Railway Walk that we use that expression. But this is a runaway train certainly in one area of the States and at a time when other jurisdictions are finding it necessary to dispense with a number of persons with such management expertise. We appear to continue to empire-build in some areas. What part of savings do we not understand? It really is not rocket science. I should very much like to know how the Minister for Treasury and Resources justifies some of the goings on right now. Was he and the Treasurer of the States aware of the amount of money being spent? As the Minister for Social Security said yesterday, the Chief Officer of Social Security, when it comes to the points scoring fee remuneration, because he and his staff work so efficiently and effectively they do not come so high in the pecking order as those who just spend, spend, spend. We have been paying high salaries in some areas for years and all we seem to have achieved is a mess. Yesterday this Assembly agreed to exclude all clinical locum appointments from this proposition and on my way home I heard on the radio that this was interpreted as locum doctors. I would like to remind Members that clinicians are not just doctors. I would also say to Members that I believe if we looked at other hospitals we would most likely find that there are agreed pay bands that determine how much can be paid to locum doctors. At this point I must say I do believe we are very fortunate to have the medical and surgical staff we do. Certainly the one I am aware of, whose professionalism and dedication I acknowledge... and I hasten to add I have not been the patient and I wish to keep it that way. But again, what I saw certainly ticked all the right boxes for me. But I want to ensure that we keep people of such calibre and I can think that we make our environment a place where they want to live and work, that they know we value them. How could we expect them to stay and work for us if they felt we gave preference to excessively paid managers or locum doctors who they believe can name their price? While I am talking about managers, have we seen any reduction of such in the Health Department? I seem to recall we saw some reduction of nursing staff though. How sustainable will our health service be if we keep haemorrhaging money in the manner that we currently are? While it is noted that the Comptroller and Auditor General in his report has shown openness, which included his own remuneration, I believe we do not have openness everywhere and this can be seen the answers that officers are providing their Minister with, for example, question 18 of the written questions this week. The



reply decides to exclude clinical staff, why? We were not given an explanation. Members will be aware that when I asked the Chief Minister yesterday whether there was any policy that excluded information relating to clinical staff being provided, he was not aware of any such policy; although I appreciate he said he would check. But as the chair of the States Employment Board I would expect if there was a clear policy for this he would be aware. We must also accept that when we are looking for senior posts at the centre we are highly unlikely to find someone who has expertise in every area that the States covers unless we look at a similar jurisdiction, for example, Guernsey, the Isle of Man and other small Island environments which is why we must also look to sharing posts with our sister Island, something we seem to do a lot of talking about - does that sound familiar - but we do not seem to demonstrate any action about. We are also doing a very poor job on succession planning. Deputy Vallois' amendment ensures that the Minister will be held to account for decisions made to highly paid posts and that is fair enough. What we still do not appear to have is a process which ensures that those in highly paid posts are held to account. We have seen this time and time again over the years. As I said at the beginning, I do not know that it is our role to be in the nitty-gritty of deciding on pay scales but it is our role to set the policy and Deputy Gorst's amendment should hopefully bring forward a mechanism to ensure that any procedure this Assembly has set within its policy is adhered to and those who administer it are held to account. Let us not forget that this is taxpayer's money that we are charged to manage, that we are charged to ensure that Islanders get value for money, that services they need are provided in the most appropriate way. This is about them, not us, and I certainly hope we will all support this proposition.

### **1.1.3 Deputy M. Tadier of St. Brelade:**

Before I start the main thrust of my speech I want to qualify what I am about to say by saying that of course I completely endorse this proposition, even as it is amended and it is absolutely good for transparency as a government that we are accountable to the public, especially when there is a great perception that there are very high salaries - perhaps too high - that are being paid in certain sectors of the public service. I also want to say that of course I agree that there can always be efficiencies and we should always challenge the way we do things as a business to make sure that we are getting value for money for the taxpayer. But I do think it is also necessary in a debate like this to bring perspective on to the nature of the public sector and the staff, wherever they are in our organisation, because I think it has to be reiterated that the majority, the vast majority of staff, in the public sector do an amazing job and often it is not recognised. **[Approbation]** That is a good thing in one sense because a good system you do not necessarily want to see what is going on in the background, the machine keeps on working. We had a good meeting yesterday with the new Police Chief and he said similar words, that you do not want to notice the police, if policing is being done well you do not notice them and I think the same applies, to a certain extent, to the public sector. Clearly there are high profile cases which do get flagged-up for media attention in particular, especially when very high salaries or very high fees are being paid to staff and we have seen some very high profile cases. I think it is necessary to put that into perspective because out of all the staff who are being paid more than £100,000, I am sure that the vast majority do provide value for money. That is something that we need to continue to monitor. We also need to ... I am very concerned of the line the media take and the line that we sometimes take as politicians leads to a system which breeds cynicism of the public sector and also in a similar way to sometimes the media breeds cynicism of politicians. We are all workers, we are all doing our jobs and clearly we are never going to keep everybody happy. I am concerned about the consequences that has to our organisation, which, at the end of the day, is here to serve the public. It seems to me sometimes that we want, or the public want, or there is an argument that we want socialism in the public sector so we want everybody getting paid the same. We do not want people getting high wages; we want everyone getting roughly the same wages. But in the private sector if we even suggested we would be called communists, and say: "No, keep your noses out of what is going on in the private sector." It is important, I think, to remind us, if we look at the ratios which are being paid between the

lowest paid in the States and the highest paid, you are looking at roughly a ratio of 1:10 so somebody at the bottom who is maybe getting, let us say, £20,000 a year, somebody at the very top end is getting £200,000, maybe £250,000 a year, but that is completely at odds with what happens in the private sector where people are working for the minimum wage and people are getting very high wages in certain industries, not to mention the benefits in kind, the bonuses. I think it is important that the public in particular remember this. Of course they should be asking, and we should be asking, for value for money in the public sector but it is also incumbent, I think, for members of the public or ourselves to ask why is it that things are so expensive out there. The other point is that I think it has been raised already, the public sector does not work for profit. There might be some areas which are cross-subsidised but ultimately the States of Jersey, and any government, should not be a profit-making organisation. It should aim to fund the social need and roughly come out with balanced books. So I think these are necessary statements to make. Of course that does not mean that the system is perfect. We have heard - and I have certainly seen - anecdotal evidence in some departments of empire building, of perhaps cronyism. I am not saying that is widespread by any means but there is an element of that, there is a perception certainly on the surface of things that some people get their friends in, they have been in positions for 20, 25 years and of course they are perhaps slightly too cosy, more so than one would want. But that raises the question, where is the responsibility, where does the responsibility lie? Clearly there has to be political responsibility. This is not something which is unique to Jersey of course because we know that civil servants are there pretty much ... not for life but they are there for a long period of time and they are, in reality, the ones who set policy direction and get things moving. That should not be the case and it is very important I think over the next few years we have politicians who, for all of our differences, need to make sure that we provide political leadership and we have clear policy direction. Perhaps that is difficulty in our system because we do not stand for election on political directives, so to speak. It is pretty much luck of the draw what you get and then civil servants can carry on running the show. So we should not necessarily be surprised that we are in this situation. I would just emphasise that it is ... I do not think that the public necessarily worry about high wages *per se*, it is value for money.

[10:15]

That is certainly something I want to know that I am getting and it is not always the case in certain instances. I think that is all I really need to say but I think we need to put this in perspective, we need to remember that the people who are the public service are doing exactly what it says on the tin, that they are serving and they are serving the public. Many of these people, even though it may sound strange for me to say, even if they are earning £150,000, £200,000 a year, where else could they be working? They could be in industries where they could be getting £500,000, £1 million plus bonuses plus company car, which they do not get in the public sector. Of course there is job security, of course we hope that the States of Jersey is and will continue to be a nice work environment in which to work. However there are trade-offs and I think that it is very important that during these debates we remember that because we can have unintended - or perhaps intended - consequences which can breed false cynicism in what is, at the end of the day, a very good public sector with very good workers. But if there are problems, let us show the leadership and let us make sure we get our house in order.

#### **1.1.4 Senator S.C. Ferguson:**

I can assure Members that I may sound as if I am dying but I have not gone yet. Deputy Power annualised the figures for agency staff in question 18 of the written questions yesterday. I would remind Members that those figures include agency fees plus transport and accommodation. I was recently told with some indignation of a short term post which was being paid at the equivalent of £228,000 a year. However, I looked into it and once we had dissected the figures the actual underlying salary was on an annual basis, £125,000 for a high level, short-term contract. We must look at the underlying numbers before we pontificate. Not that I am accusing Deputy Power of

pontificating. Basically I am all in favour of transparency. We are now all aware of the salaries and pension funds, of our senior civil servants. We are also told in the Comptroller and Auditor General's report that such information will be published in the annual accounts of the States as a matter of course and in the interests of transparency. Deputy Le Hérisier has apparently brought this proposition because of the perception that the States have lost control of the salaries of senior civil servants. But according to the Comptroller and Auditor General this is not the case as he states quite unequivocally on page 8 of his report: "Those instances, almost all, relate to a single appointment, the lack of control relates to a single appointment." I am really rather concerned about the insistence that salaries for new appointments over £100,000 will be notified to the States possibly in a format similar to the 168 declarations for property. This seems to me to be taking micromanagement to the extreme. I share the concerns of Members over the lack of adherence to States policies of the single appointment which has been highlighted recently. However, I cannot see any logic for the States to demand that they should be advised of the salaries of every new employee over £100,000. I agree that the policies should be reviewed to ensure that there is consistency and compliance with overall policies but other than that, the publication of details in the annual accounts should suffice. We have to balance a right to privacy with value for money for taxpayers. My feeling is that this is an intrusion too far. The problem with a witch hunt such as this is that it starts to look as if we begrudge paying this money. In fact it might even look as if we were indulging in a slight touch of the green eye. Whatever you think about senior civil servants, they have had considerable training, in fact more training than perhaps the average politician. I accept that some of the Members have had more years of training or study than others but that does not necessarily count for anything at the ballot box. On the other hand, if you are working within an organisation such as the States then the years of training and working do count. My feeling is that the solution is not to try and impose salary control; and make no mistake, this is salary control. It is surely ... it is pretty well *Animal Farm* type politics. It is surely better to have fewer well paid people who are fully utilising their talents. Our main concern is that there should be an efficient organisation. It should not be to nit-pick and pontificate. While I am on my feet, perhaps a few words regarding Hay would not come amiss. I, like Deputy Gorst, wondered about the Hay system so I googled it. It seems to me, looking at the evidence, that this is the only widely used system available to make comparisons for non-comparable jobs. It is widely used throughout the world and no one has managed to come up with a better system. However, it does seem that it is possible to update and calibrate use of the system, usually by calling in the Hay Company to evaluate current usage. It seems to me **[Interruption]**. Sorry, Sir, yes I hold up my hand.

**The Deputy Bailiff:**

Are you talking to yourself again, Senator?

**Senator S.C. Ferguson:**

Absolutely, it is the only sensible conversation I get, Sir.

**The Deputy Bailiff:**

No doubt, but £10 will be duly credited to the fund in due course.

**Senator S.C. Ferguson:**

Yes, Sir. Returning to the Hay system, it does seem that it is possible to update and calibrate use of the system, usually by calling in the Hay Company to evaluate current usage. It would seem to me that before we throw out the baby with the bath water we should perhaps consider whether the system needs recalibration. To return to the proposition, while we are somewhat of a cross between a local authority and the central government, we in this Assembly are legislators. We consider policy and it is up to the civil servants to deliver on that policy. Ministers devise policy which is then brought to this Assembly. Ministers should not get involved with the minutiae of delivery of a policy, they should only give political guidance to their chief officers on aspects of the policy

proposed. We should be approving a policy for pay within the Civil Service. If a proposed salary looks excessive then the Minister should give political guidance to the chief officer. We should not, in this Assembly, expect to pronounce on the salary level for a particular job. How will we assess it? On what basis? How many people in this Assembly have the knowledge or experience to do this? I am particularly concerned that we are starting to micromanage the States, and I am also concerned that we may have started to erode Article 8 of the Human Rights Law, the right to privacy. Yes, we must have transparency, we must be seen to be getting the best value for money for taxpayers but do we really need to have a star Chamber for every position earning more than £100,000 a year? I think not. I shall not be supporting this proposition.

### **1.1.5 Deputy T.M. Pitman of St. Helier:**

That was a good cue because I am the star of the Chamber after all. Only joking. I know the Senator did not mean it that way. I am shocked. It is really good what Deputy Power would probably call one of my fellow colleagues of the far left just spoke recently because we did indeed meet the Police Chief yesterday and he was really refreshing, a really positive gentleman and it was really refreshing to hear him say how he absolutely welcomed political scrutiny because some of the nonsense we have heard put out from certain Members over these last months really give a false picture of about how people need to be held to account. I think that is the bit we are missing in some of the speeches today. I am obviously going to support my colleague, Deputy Le Hérisier, in this but I do want to speak briefly on a small number of points. The first is that while this is certainly warranted it is possibly not the best way to achieve the intent, because I see it as just one part of a problem. One part of a problem that certainly will not be eradicated just by supporting it. To this degree, I believe that we really do need some of the more vociferous Members of what some of us would call the far right, certainly the free market capitalists, to try and develop at least a basic understanding of global economics because it does inform all of this. A good illustration of this, and it is very, very relevant, is that those interviewers need to recognise that the recent and indeed current global economic meltdown was caused by colossal stupidity, greed and incompetence of elements within the global finance industry. Not only do they need to accept that but they need to stop trying to transfer the blame for this on to hardworking, generally low level public sector workers, because this is being spun the world over and it is disingenuous to say the least. It is, I think, totally immoral and it is funny how the capitalists get all very quiet on this issue when they cannot face up to the flaws in their own system. I am not anti-capitalism but as many economic commentators will say, the way it is being worked in the world at the moment is not the best way to do so. I will go back to my favourite economist of the moment, Ha-Joon Chang's - who I seem to be completely enamoured with - assessment of the world. I am pleased that some Members have touched on Hay because it does need to be commented on and as someone who has worked within, and indeed been actively involved in this process as a staff representative, I do think that I am well placed to comment on some of the problems. The first is probably to simply observe that while I understand why my colleague plumed for this magical £100,000 threshold, Mr. Pickles' figure - it is a very emotive figure, is it not - I would have preferred it probably if he had targeted this with closer analysis of particular grades involved. Because one of the real problems in Hay is when you get to those gradees who get themselves into a position where they can subsequently grow their own empires, that is where the problems with Hay really lie. As a consequence, much to our surprise, before long they can see justification for their grade rising because they have become ever so more important, with ever more staff under them, with lovely titles often. This does have much more relevance to this than this £100,000 figure. The sad fact about Hay is that it serves a lot of lower grades well, but worse it fails many on lower grades because it does not do them justice. When I hear the Hay system just dismissed out of hand it does make me a little angry because that is quite wrong and it shows a lack of understanding of the situation.

[10:30]

It leads to some of those people who are on very low grades yet do very good work being made scapegoats for, as I say, the free marketeers who are happy to pay some people at the very top astronomical salaries, far beyond their merit, far beyond what they deliver, yet when we talk about great saving drives and we end up sacking a couple of road sweepers or manual workers or frontline staff and a pen-pusher who does not do a great deal of work but gets some of his subordinates to do that work, is happily left in place to grow and grow their little empire. That is the real problem with Hay and it is something that needs to be recognised. Senator Ferguson talked about bringing in the Hay company to evaluate this when problems happen and I have experienced that, people coming in. What it unfortunately resulted in is newly created managers who have very strangely come out exactly the same grade and score that the people they were going to be managing, or the people below them were manipulated down 1.5 points as I recall. That is the way it works, it cannot be relied on. That is the other flaw. We have to remember, as Deputy Tadier rightly said, the average public sector worker does an absolutely brilliant job and we are really being unfair to them when we are setting up the situation, and we hear it in this House time and time again from the right, these people are being made the scapegoat for all the ills of the world at the moment. It is bad for their morale and it is has to be bad for the community, especially one as small as ours. These are Jersey people, or our people, the Island's people, they all contribute to the Island's economy and I think it is about time some in this House started respecting them a little more. I supported the amendment yesterday because I really was convinced about the problems that we had to make sure did not emerge in Health. I would hope that that can be kept in check by the Ministers involved. We often argue that we spend too much time in this Assembly discussing ourselves or irrelevancies and we certainly do not want to be discussing 300 or 400 alleged contentious pay awards. I think this can work but I suppose the proof will be in the pudding. I do think that the Deputy deserves support. I do not think it is the perfect answer. It certainly will not work without the other issues being tackled that I have highlighted and I applaud him for bringing it. I would urge all Members to support him.

**Deputy R.G. Le Hérissier of St. Saviour:**

Could I make a point of clarification - and I thank Deputy Pitman for those words - to Senator Ferguson. The notion of the automatic referral of every position earning £100,000 to the Assembly has, of course, been put at rest by Deputy Gorst's amendment. My proposal is now a consideration which the States Employment Board will take on board when they are looking at this issue and report back to us in an interim way in 2 weeks' time. We are not discussing, in the pure sense, what I originally put forward. We are discussing it as very substantially amended.

**1.1.6 Connétable M.K. Jackson of St. Brelade:**

As a member of S.E.B. (States Employment Board) I feel I must comment on the Hay evaluation process and comments made by Deputy Power earlier. One of the key indicators in the Hay system is, of course, manpower and as a consequence chief officers of departments employing higher numbers will have a higher points score. It is easy to criticise this system but in the absence of a better alternative it is at least best to have a system that is proven. That is not to say that it should not be reviewed and I think this is the case. Given that the proposition has been prompted by a contract appointment at the hospital and the Comptroller and Auditor General in his report has remarked upon the disconnect between central H.R. and the hospital, and notwithstanding the S.E.B. amendment, I think it is necessary for the S.E.B. to work with Health and the Social Services Department to formulate a controlled structure to enable short term necessary appointments to be made but in a structure dictated by the S.E.B. I do not think the S.E.B. have enough knowledge of senior management appointments and arrangements with agencies and suggest that the Deputy's proposition, and the Comptroller and Auditor General's report will stimulate a clarity in this situation which is long overdue. As a member of the board I need the knowledge, we need the knowledge, all Members need the knowledge if they are to be accountable

to the States and I thank the Deputy Le Hérisier for his proposition, I think it will advance progress.

#### **1.1.7 Deputy R.C. Duhamel of St. Saviour:**

I am reminded in this debate by words that were written by an eminent mathematician, Augustus de Morgan, a number of years ago which do have some relevance to the subject that is under discussion. Perhaps I could read them. It is very short. He said in answering a poem that was written by Jonathan Swift about systems that had the tendency to grow in an unbounded fashion the following: "Great fleas have little fleas upon their backs to bite them and little fleas have lesser fleas and so *ad infinitum*. The great fleas themselves in turn have greater fleas to go on, while these again have greater still and greater still and so on." It strikes me that the comments from the Constable of St. Brelade about the Hay evaluation being based on manpower and the comments that are being expressed by some Members at the ability of the system to grow in an unbounded fashion perhaps demand further discussion. I think a number of Members have also begun to touch on the wider debate which really should, and I hope does, come about as a result of an acceptance of the proposition by Deputy Le Hérisier and that is the fairness of paid differentials in any particular society. We heard from Deputy Tadier that at the moment, in his estimation, the people at the bottom to the people at the top are roughly separated by a difference of 10 times of the salary of the lowest, but that begs the issue as to whether or not in today's society this is fair. If we pick up what happens in other countries, certainly if we take the American dream for a capitalist society, we do have a tendency for an acceptance of the norm to agree to pay people whatever they can receive. Certainly that system has crossed the Atlantic in the last few years, I feel, with the difficulties that have exhibited themselves within the banking system. Is it right, and I am not suggesting at any point at the moment that our top paid officials are paid in equivalent terms to famous footballers or indeed banking members to the levels that have been expressed in the newspapers where some people are earning salaries of tens of millions of pounds for doing jobs that are really questionable in terms of their importance compared to the people lower down the food chain. This really is the nub of the problem. If in endorsing a pay system which is based on differentials between the top and the bottom... and it does exhibit some tendency to follow the hierarchal nature of control systems that we have, then inevitability there is going to be a bit of a problem. But that problem really has to be addressed by the wider community through the States, through the Government to determine what type of society, as I said earlier, is fair and should be supported. That is probably enough on that issue. As I said, just to recap, I do support Deputy Le Hérisier in bringing this forward. It at least opens the issue perhaps to the consideration of the wider problem and I am hoping that both Deputy Le Hérisier or indeed others who look at the issue will be encouraged to come forward to bring the wider issue to this House for further debate so that we can all endeavour to set out what is the fairest system for the whole of the Island into the future.

#### **1.1.8 Deputy G.P. Southern of St. Helier:**

I am somewhat surprised to be an hour and 10 minutes into the proceedings and still be talking about this proposition because it seemed to me that yesterday we had a lengthy and good presentation by Deputy Le Hérisier of what he proposed and the principles behind it and we had an excellent debate that lasted nearly 2 hours on the amendment which, again, explored all the issues. I did not speak then so I will beg your indulgence to speak now. I would encourage Members to recognise that I think we have done this to death for a while now. I just draw Members' attention to what it is we are proposing. We are proposing to request the board to give consideration to the feasibility of introducing a notification procedure as part of new procedures. "To request the board to give consideration to the feasibility of introducing a notification procedure." Earlier it says: "A new mechanism to control and monitor senior salaries." Can we really control senior salaries? I am always somewhat amused when I hear free marketeers hoist by their own petard. Can we, in Jersey, control senior salaries? Unlikely. Why? Because of the basic law of supply and demand.

Where do we get our senior managers from? By and large we get them from the U.K. What is happening in the U.K.? Senior management salaries are spiralling. They may be able to control senior management salaries, although I doubt it, we certainly cannot. We are at the mercy of market forces, basic supply and demand. So when Deputy Power said: "I feel frustrated." Yes, it is the frustration of Canute, I think, trying to control the tides. It is almost inevitable, supply and demand will out. So let us bear in mind that what we are voting for here, while we would love to be able to control, we are not. Just like with the migration debate that we are going to have in 3 or 4 months' time, it will say it will control but what it means is we will count, we will receive notification: "Oh yes, these people are being paid over £100,000." You cannot get a heart surgeon to come and work for £50,000. That is the reality. Where we might have control, and this is what I fear is while we shall let the top-end continue in its ever rising spiral, because simply, quite simply, we cannot control that. Where will we, therefore, attempt to control? I believe we are going to end up, before the end of this year and very shortly in fact, in debating the next business plan, to start to try and control from the bottom-up. That is where the frustration will come out or we must be seen to do something, we are going to control salaries at the bottom end. Indeed the Tribal report says exactly that. First item on the agenda for discussing terms and conditions for our public sector workers is the possibility of a 2-year pay freeze, which would save us £14 million over the 2 years that we are talking about. What is the target that we are supposed to get from pay and conditions, reductions for public sector? Why? It happens to be £14 million. We can control that and I believe that is where we will end up doing it. That is going to be as much trouble as trying to control the top-end. But let us face reality. We cannot control those top-end salaries, we are monitoring only, we are counting them in and we are counting them out.

#### **1.1.9 Connétable J.M. Refault of St. Peter:**

I just feel compelled to have a couple of words very quickly, if I may. While supporting the principle of the proposition, I do intend to go with it in the spirit of openness and transparency, I am rather disappointed about some of the comments that some of the Members have made about the general process of H.R. Can I, through you, Sir, direct them to page 8 of the independent review by the Comptroller and Auditor General delivered to us just a few days ago, and if I may just pick out a couple of comments from this report. Under section 20, item 3: "In all other instances, for the appointments covered by my review the States rules and policies were followed in every particular" and the most telling comment is on item 21: "In short I have not found evidence that suggests that the States have lost control of the remuneration offered to senior management." I need to make that point clear that an independent review says: "We have not lost control" and I think Deputy Le Hérisser's proposition helps us to maintain our controls.

[10:45]

#### **1.1.10 Deputy J.A. Martin of St. Helier:**

It is good to follow the Constable of St. Peter this time because I agree and I think I will probably support this but I do think we have a sledgehammer to crack a nut. It says one appointment and it does happen to be at Health. It started before that, it was within Treasury. Even the C.A.G. (Comptroller and Auditor General) says interim appointments are out of our jurisdiction. I do like when central H.R., everything comes from the centre except when it goes wrong and they have gone heading for the hills and suddenly it is all down to H.S.S.D. (Health and Social Services Department) interim human resources who were employed by the centre. So we can go round and round and round. Yes, obviously there were mistakes made. Are we paying too much? Only time will tell. This person has been set a task to do and it is a very hard task, and I have been in Health since 2001 and nobody there has been able to this task. It is not going to be a task that is going to help everybody and politically as well. I just heard a mumble in the back of my head that we do not need heart surgeons in Jersey. Yes, heart, maybe not because it is so specialist but where do we cut the line, who do we need in Jersey? This, as I say, and I think Deputy Southern also said it, we are controlling ... the price of what you pay is what you get, and I do think ... and I upset Deputy Le

Claire yesterday because I said I could use the internet as well and he took it personally and it was not meant to be personal. But I do think him and Deputy Power are totally naïve to think that there are people working in big accountancy firms, legal firms, who would drop £150,000 to come and work for the States of Jersey. Why are they not clambering up? We have had it through the Law Officers in the last few years and I was on the panel, the Advisory Panel. They were not clambering to come and work for the States. Why? I think we do have a problem. We talk about you cannot touch them if they are at the bottom, you cannot touch them at the top, and I think the frustration of getting anybody to work in the public sector is you are only as good as your weakest link. Some of our weakest links seem to hang around for a very long time. We have just paid millions and millions in V.R. (Voluntary Redundancy). Nobody seems to get the sack and that frustrates me. This is not just here, this is in the U.K. and if anyone things Pickles or this other report is sorting them out, they are already running for the hills, it is not M.P.s (Members of Parliament), it is not covered by M.P.s, M.P.s will not be discussing the secretary like in *Yes, Minister*. It is *Yes, Minister* behind the scenes, very, very highly paid, been there for years, have no political alliance, who look after themselves very, very well. So, the Deputy has brought something... C.A.G., they will not have any problem to come back because on page 37 all the recommendations of the C.A.G. where it was not included will be interims. Will be interims. S.E.B. should know what is going on, central H.R. should know what is going on, and if Health do need, because it is such a specialism ... I have never been happy that Health, and there is probably others, went to the centre because it is such a specialised area. Not in management but in clinicians and obviously maybe sometimes in management because managing consultants and everything else, who have had a good ... they work under their own rules. They have done it in the N.H.S. for years and they are being pulled back and we need to do it here. Have we got the right man for the job? That is probably getting a bit off of the ... but this is what this is all about. It should have come last year, it should have come when the Interim Treasury person ... and I think they were earning more than this. We started something but is it good to pay an interim a bit more on a set contract that they are going to get the job done? If the service and the tick boxes are not there after so many months they are off. You do not pay them any more or you employ someone with full pension rights ... and somehow we have got nothing, and it has to be top to bottom, I cannot defend a low paid worker who does not do their work or a high paid worker. So it is a complete overhaul of this we need. This will not do it. It will take years, it is political, you are asking people to cut the Education budget, put the private school fees up, that obviously come from a chief officer, the Minister never thought of it all himself. Politically, everyone went running for the hills, even all the other Ministers, in the majority. So please do not think that this is going to work. I will support it only for the fact it is a start but it needs a complete overhaul. Performance-related pay is exactly... if you have not got any performance you get no pay and your job is not there because it is not the cosy club, it should not be the cosy club any more and I am just sorry that we are just focusing on one mistake that was not ... to me it is across the board. It happened at Health, as I say, through central H.R. and I wish S.E.B. good luck in the next 2 weeks but, as I said before, C.A.G. have done their recommendations but it is systemic, it goes a lot, lot deeper and it is, why did we pay millions? I am not saying to take people out of the system. Were all of them needed? If they are not needed and they are not performing, why is there not a performance and they go. I think I have said enough, I will support this grudgingly because I really do not think it will do what the Deputy wants and although he says it does not mean that everything can be discussed, when S.E.B. bring back their recommendations for amendment, and I already know a Deputy behind me is waiting to see what the recommendations are, we will amend. So then we will have another discussion again. That is the way it goes in the House and good luck to everyone involved, but I really wish this was the answer, but, as I say, it is a much, much more deeply rooted problem.

**Deputy A.T. Dupré of St. Clement:**

If I could just correct the Deputy, it was a Ministerial team who decided about the fee-paying schools, as reported by our officers but it was a Ministerial decision.



### **Deputy S. Power:**

Am I allowed to correct one comment Deputy Martin said, she accused me of being naïve. There are 4 examples of people who left the private sector to go in the public sector. That is, at the moment, the Bailiff, the Deputy Bailiff, the Attorney General and the Solicitor General. They all left private practice for public service.

#### **1.1.11 Deputy I.J. Gorst of St. Clement:**

I am just challenged to rise by the turn of events of the last couple of speakers, which seem to epitomise their “woe is me, woe are we” and that it does not really matter, everything is terrible, we are not going to be able to deal with problems. I want to congratulate the Deputy, I recognise that it is not an easy job and it is not going to be an easy job for the States Employment Board because as with all arguments and all policies that we wish to develop to address the issues of our community, they have to be nuanced and we have to look at evidence and we have to come forward sometimes with ideas that, in the fullness of time, need to be amended to deal with issues that arise. I would, however, agree with Deputy Martin when it comes to interim appointments. I think what the Comptroller and Auditor General is talking about is the transformation of an interim to a fixed term contract and that is where he shed his light and suggested we could have done things better there. I am sure the States Employment Board will take up on that. But there can be no doubt that there is a positive role for interims in the State sector. Inevitably those interims are more expensive, we are talking now hundreds if not thousands of pounds a day even to consider a financial professional to come in and work in departments. They say they are expensive, we have to recognise that but providing we recognise that, providing that is part of our acceptable policy and we have made that informed decision that that is what we are going to do, then we should not have a problem with that. It is where these things are not appropriately considered, they are not part of our policy and we are not in control of that policy. That is where the issue is. I do congratulate the Deputy, I hope this will be the first step in moving forward on some of these issues and that we will be able to deal with them in a positive and proactive way.

#### **1.1.12 Deputy M.R. Higgins of St. Helier:**

Just very briefly, as most of it has already been said, I just want to say first of all that I, like many members of the public, and many Members of this House, do feel that some of the salaries being paid to some of our senior civil servants are not simply just large, they are obscene. According to the Comptroller and Auditor General, he says it is just one appointment. I do not believe that. I can think of one senior person working ... I am going to talk widely here, not necessarily a civil servant, but working in the public sector, who moved from a salary of £110,000, working in the public sector, to a salary of £250,000-odd overnight. Now, was that person more knowledgeable, more qualified, more capable, that he justified a salary increase of £140,000 overnight? No, not at all. It is the system, and so what I would say is, although there are people who are very able and very capable, not everybody is motivated by money. I do not believe for a moment that individual would not have done the job that he has moved into for £120,000, a £10,000 increase. £140,000 was just a great bonus, if you can get it great. But the point is people are not simply motivated by money, and I almost feel that the senior Civil Service has become corrupted, corrupted in the sense they look at their private sector colleagues and think: “I want the same”, and who are the people who are determining these salaries? Very often, it is like Deputy Le Hérissier was just saying about remuneration committees, it is the same people who are moving **[Interruption]** ... no, I will not sit down. The point is that these same people are determining the salaries of their colleagues, and we have to find a better system. Again, I was listening to much of what was said about Hay. A lot of it is rubbish. Many, many years ago I was trained as an evaluator in the Hay system, and I can tell you the system can be manipulated any way up and down, and the key factors are the number of people you have working for you and budget. You control the budget you are going to get the highest possible score, because every manager underneath you cannot claim that he controls the budget, only one person controls the budget, the person at the top of the tree. So the more people

you have in your department, so empire building is great if you can do it, if you can bring in extra people, you can change titles, you can restructure, there are all sorts of things you can do. So a trained Hay evaluator and the experts can do it - and I have seen it in practice - if they wanted to destroy someone's job they can knock it down, if they wanted to build it up they can build it up, it is quite easy. So do not believe that Hay is the answer to this necessarily. Now what I would say is that I am not in the process of just bashing civil servants, I am not. I have worked in both the public and private sectors and I have admiration for people in both, there has been some really dedicated people, hard-working people. But equally you have the others who are lazy and manipulative or are simply driven by personal ambition, and those people will try and get to the top of any organisation anyway they can, over any bodies they can. Now they are the people that I do not want to see in the public sector, I still believe in public service and I do believe, going back to what Deputy Power said earlier, we have to take control of our own system. I really do believe that this Chamber and States Members do not control the public sector; it is controlled by the senior Civil Service who are looking after their own. So I shall be supporting this proposition even though, like everyone else, I am not convinced it is going to deal with the matter at all, but it is a step in the right direction.

**Deputy I.J. Gorst:**

I wonder if the speaker, before he finishes, would care to consider his assertion that the senior Civil Service has become corrupted. I do not believe that is the case. I do not believe that he has the evidence to say that, and I am afraid that I believe its assertions exactly like that in this Assembly that means that we have a dearth of good people willing to come forward and serve this community.

**Deputy M.R. Higgins:**

I will of course; I do not mean corrupt in the sense of all taking bribes or anything like that, I would not possibly say that, but I do believe that motivation, people's motivation... I am not saying that everyone is, there are highly dedicated public servants and I have nothing but admiration for them, so, no, there are individuals, and I think everyone in this House knows there are individuals who are looking after their own and not the public interest.

[11:00]

**1.1.13 Senator T.A. Le Sueur:**

As chairman of the States Employment Board, I cannot say I relish the prospect of doing this in the next couple of weeks, but I do appreciate very much the concerns that Members of the States and members of the public have about the level of salaries in the public service and the need also to employ the right people for the right job. I also welcome the chance to produce a report, which I hope might clarify some of the hobby horses that have been ridden this morning, which I believe give rise to all sorts of pet theories. I fear that we are in for a further long discussion once the report gets produced, but I hope that can be a better-informed debate than some of the matters we have heard this morning. Like Deputy Gorst, I deplore some of the wild comments made about staff in the States' employ, at whatever their grade, and I fear that one of the reasons why we may be paying salaries higher than I would like to pay is because of those sort of comments and the detrimental effect that has on the recruitment possibilities of people who might otherwise be very happy to do the job. While we maintain that sort of carping, sniping attitude, then I fear we are in for a continuation of a difficulty in finding and retaining good quality staff. So, with those comments, I hope that the debate that we have in due course on this matter, the further debate, will be a properly-informed and sensible debate, leading to a sensible outcome.

**1.1.14 Deputy D.J.A. Wimberley of St. Mary:**

Just briefly, partly as a result of what the Chief Minister has just said, and I am glad he spoke of course. He mentioned carping and sniping, I hope that does cover both sides of the House, because

I made some notes of one or 2 of the comments of one of our more right-wing Members and I was absolutely astonished at what she said, but I just hope that is a balanced appraisal of these problems that we have in making pretty unsubstantiated statements in this House. I noted other comments, which I am not going to detail now, that people said that just were simplistic, and I welcome what the Chief Minister said that he is going to lay the hobby horses to bed - or whatever you do with hobby horses - in the S.E.B.'s report when it comes out. I think that is very important that we do clarify the issues with a clear statement, because certainly we have heard some nonsense spoken over the last few hours, not all of it, but some has been quite extraordinary. I just want to make one further comment about what I would like to see in the report. I think people have mentioned performance and monitoring, but perhaps not quite in the sense that I want to refer to. The proposition as it now reads is that: "The S.E.B. has to lodge for approval by the States proposals for a new mechanism" - well that will be interesting in 2 weeks, but anyway - "a new mechanism to control and monitor senior salaries." Now that will be interesting how the S.E.B. proposes to look at performance when the range of tasks in senior management in the public sector is so vast, but, leaving that aside, will this monitoring, and I hope they do address it in their report, will the report cover the question of failure? People have talked about sacking people when they do not do the job right, and I think that does have to be ... it is an unpleasant thing to have to talk about, but what if a mistake is made, not a political mistake, but in an area of professional expertise, where it is not the Minister's fault that, to mention one example that sticks in my mind, it is not the Minister's fault that a hole was dug above Beauport Bay and potatoes were put into it and the bay was polluted for years I think because of that mistake. That is not a Ministerial mistake, it is not a political mistake, the politician fell on their sword I seem to remember on that occasion, but that was a completely inappropriate response, and I just hope that the S.E.B.'s report covers that aspect as well, because, if we are paying good money, and I think that has been well covered by speeches from behind my from Deputy Duhamel and Deputy Tadier about this matter of parity with the private sector and these strange almost double standards we have that it is fine to pay whopping salaries in the private sector but when we apply the same logic to the public sector it suddenly becomes very strange and nobody wants to go there. But the other side of paying good money for good professional skills is that we are able to call people to account when their professional skills are not in evidence and the thing goes wrong, so that is all I would like to say and I hope we do see those things in the report when this goes through.

### **The Deputy Bailiff:**

Does any other Member wish to speak? Then I call on Deputy Le Hérissier to reply.

#### **1.1.15 Deputy R.G. Le Hérissier:**

I will be replying to every point line-by-line and word-by-word. There is no doubt that the proposition... I thought for a moment Deputy Wimberley was going to analyse the proposition, but very kindly he chose not to, because we could have been in deep, deep trouble. It does hang together, but you have to read it very carefully to convince yourself. But basically what we have agreed, contrary to what Senator Ferguson implied, and I must make this point again, we have not agreed at this point that every position at £100,000 will come back to the States and be individually analysed and micromanaged. I never even intended that, I wanted a warning shot across the bows - that is what I wanted - and I wanted justification to be provided. In other words I wanted people to go back into the policy and start to justify it much more. With Deputy Gorst's amendment in particular, and Deputy Vallois' as well, we have a more explicit commitment to do that, so I have no problem with that, but I must put to Senator Ferguson, because I was very disappointed in the sense that she has been engaged in the crusade to deal with hospital management and the fact that it cannot be identified what is going on, who is doing what, she has been pursuing that for years with great frustration, and I would have thought she would have liked somebody who said: "Look, let us try to get to grips with this and let us try to find out why we keep appointing people, layer upon layer of people, and yet why we never appear to get the results." Maybe we are on the brink of

getting the results because we know we do have good appointments there, whether we have placed these people within a totally dysfunctional system is of course another issue, but no doubt they are coming to their own conclusions about that. So that ... and I think another very good thing that has come out - and I totally agree, I thought I was going to disagree, as is my want, with Deputy Martin - is that underlying this of course is the need for accountability as the P.A.C. (Public Accounts Committee) said, and the C.A.G. says. Performance management... and we know in many cases it is not working, we know that and the Deputy of St. Mary - that was his valedictory comment as well - we know it is not working. So again that has been highlighted, how do you manage a Civil Service where, in some departments, as Deputy Power said, or intimated, there has been a high degree of complacency, there has been a high degree of detachment from real issues, and people have lost touch with those issues and it is just drifting along and we are not sure who is controlling who. That has come out. I think we have had a very mature discussion. I disagree with the Chief Minister. Yes, there may have been some unfortunate comments, but we have looked at the whole role of the public service, our role in managing that service, and the immense frustration the public feel that there is, as Deputy Power said, a runaway train. Despite the fact we know we have immensely good workers in that service, we have dedicated workers, and despite the fact we know when it comes to issues like, for example, doctors, which Deputy Martin mentioned, and lawyers, which I think Deputy Power mentioned, we know that we have to have special requirements because of the special supply and demand situation, which affects those professions. We know there are special issues. So we are not denying that and trying to put some kind of damper and saying: "You have to be subject to this minute control." We know that there are going to be these issues. But if it brings to people's minds that the situation has to be controlled in the sense of we have to put in policies that work, we have to get better accountability, better performance management, then I think we are on the road to some real reforms. Because the public are immensely frustrated, they do not think it is working, and I think, with the kind of... insofar as we can sort it out, with the kind of proposition we have in front of us, I think there is the possibility that we will get there. When people say: "Oh, we only have 2 weeks", an awful lot of work has been done, Deputy Le Claire has referred to that a lot in his contributions. There is an awful lot of work out there about how you deal with Civil Services. One final comment I would say to the likes of Deputy Martin, because there was a bit of this ping-pong going on about when you read the C.A.G. report, who is to blame, is it Central H.R. or Health H.R.? Remember, we as politicians have ultimately to ask these hard questions. How many of the hard questions do we ask about management, management structures, management accountabilities, or do we leave those situations just float? It strikes me, if those questions are being asked in departments, then we do not have the need to micromanage, but frankly, if they are not asked, much as I totally dislike the fact it has to happen, they will have to be asked in this Assembly, until we get a feeling that people are really starting to get to grips with the problems, and until that happens, and until I am assured that happens, I will keep amending this to the *n*th degree. Thank you.

**The Deputy Bailiff:**

The appel is called for on P.30 as amended, I invite Members to return to their seats and I will ask the Greffier to open the voting.

<b>POUR: 45</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 1</b>
Senator P.F. Routier		Senator S.C. Ferguson		Senator T.A. Le Sueur
Senator T.J. Le Main				
Senator B.E. Shenton				
Senator J.L. Perchard				
Senator A. Breckon				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				

Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy of St. Peter				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

## **2. Public Holidays and Bank Holidays: designation of 19th October (P.33/2011)**

### **The Deputy Bailiff:**

Very well, we now come to P.33 - Public Holidays and Bank Holidays: designation of 19th October 2011 - lodged by Deputy Southern and I ask the Greffier to read the proposition.

### **The Greffier of the States:**

The States are asked to decide whether they are of opinion: (a) to agree that Wednesday 19th October should be designated as an extra public and bank holiday for 2011; and (b) to request the Chief Minister to bring forward for approval the necessary Act under the Public Holidays and Bank Holidays (Jersey) Law 1951 to give effect to the decision.

### **Senator B.E. Shenton:**

Before we start, can I just declare a direct financial interest in this proposition; I employ staff that will have to work on that date because the stock market is open and it will affect me financially if this goes through. I therefore withdraw from the debate.

**Senator J.L. Perchard:**

Many of us will be in a similar position, and while I will declare an interest I do not think I should be withdrawing from the debate.

**The Deputy Bailiff:**

The Standing Order in question, I see Senator Shenton has gone already, but the Standing Order in question is Standing Order 106, which says this: “A Member of the States who has or whose spouse or cohabitee has an interest in the subject matter of the proposition must, if it is a direct financial interest, declare the interest and withdraw from the Chamber for the duration of the debate and any vote on the proposition. If it is not a direct financial interest, but a financial interest, which is general, indirect, or shared with a large class of persons, declare the interest.” It seems to me to be appropriate that, if the consequence of adopting this proposition is that there will be increased wages paid by a Member as an employer that is a matter that is a financial interest, which ought to be declared, but it is clearly shared with a large class of persons; that is to say all employers, and therefore I do not take the view that it is essential for a Member to withdraw under Standing Order 106(1)(a).

[11:15]

**Deputy M. Tadier:**

Can I ask for clarification, does the “large class” refer to a large proportion of States Members or just a large class within society?

**The Deputy Bailiff:**

It refers to a large class within society, it is shared with a large class of persons, so it would be in society generally.

**Senator T.A. Le Sueur:**

I am probably being pedantic, but the States is a large employer of public sector workers who have a direct financial interest, so I am not sure whether I ought to declare that as an interest, maybe we should all withdraw.

**The Deputy Bailiff:**

Chief Minister, there is no question of Members having to withdraw because they are employers and I note that the States Employment Board employs numbers of people and that interest has been declared.

**Connétable K.P. Vibert of St. Ouen:**

It may well be that on behalf of the Comité des Connétables that the Connétables should declare a similar interest.

**The Deputy Bailiff:**

Unless we are going to have every Member standing up and saying that probably in one form or another there is an interest, I think we ought to get on with the proposition. Deputy Southern.

**2.1 Deputy G.P. Southern:**

It is almost as bad as doing propositions on rent when you get declarations of interest like that. But I want to start somewhere else, away from the additional costs of providing an extra bank holiday for people on this Island. Undoubtedly there will be extra costs and certainly every employer that I have spoken to has said what a lousy idea this is, and I take that for granted. They have an interest. I want to present to you the prospect of for the first time perhaps ever we are having what people are calling a general election this year. We are going to elect 47 Members of our Assembly, our democratically elected Assembly; does that not make you feel proud? Oh, I received a no and a

shake of the head. Imagine for a minute you are in Egypt and you are saying: “We are having our first general election for 30 years, it is a decent one, where you feel safe and not threatened that we will be shot” and in Libya next door they are saying: “We are having our first general election and we will not be shot and we are going to have democracy for the first time in 45 years.” There would be joy unbounded. What do we have in our democracy that we have become so used to it that we think: “Oh dear, another election”? It is a numbers game, I wonder what the turnout will be like. I will be there at the polling booth come 10.00 a.m.: “What has the first hour been like?” “Oh, 2.5 per cent have come in.” Oh dear, and that is the way we think of it, elections, no reason for celebration. Hang on; we should be proud of it. Why can we not make something of our democracy? Why can we not have an extra public holiday to really focus on the joy of our democracy; Democracy Day? This year, 19th October, Democracy Day. Let us return to the old times, come on, let us get traditional, let us get the horse and cart out, let us get the potato lorry, let us get the bunting out, let us get the flags out, let us get the tea urn out, let us celebrate, let us get the bands out. Let us really enjoy our democracy and let us give people no excuse for not turning out to vote. Yes, there is a cost, but that should not be foremost in our mind, let us celebrate our democracy, let us try our best to raise our absolutely woeful turnout rates, which are the lowest, because I have seen the figures recently, I did not bring them along today, but I can assure you they are the lowest in almost all small democracies in the world, we are looking at places like Fiji and Togo, *et cetera*, they get massive turnouts. Why? We do not. Let us consider the possibility of really this year, because it is our first so-called general election, taking the opportunity to really see if we can get a decent turnout and a decent celebration of our democracy this year. The fact is that, yes, there is an extra cost, additional cost, I do not believe the £1.5 million that the Chief Minister always trots out for the cost to the States of Jersey, I do not think it is anything like that. But nonetheless we can argue about that. Let us celebrate our voting process; let us do that with Democracy Day. I was just looking also at how we compare with other areas, other countries, in terms of the number of public holidays that we have, and, for example, I was looking at France, they have about 14, we have 10. If we look to Germany - the hard-working Germans, the serious Germans - they have something like 17, depending on which area you are in, we have 10, one more than the U.K. We could, if we so choose - and it is a political decision, and not purely an economic one - have another day; not every year, once every 4 years. Democracy Day, focus on the election, let us get a decent turnout and let us breathe some life back into our democracy. That is what I am suggesting by this proposition. I hope Members will give it due consideration and I look forward to your contribution.

### **The Deputy Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak? Senator Perchard.

#### **2.1.1 Senator J.L. Perchard:**

I remember when my children were young and the video of Chitty Chitty Bang Bang used to play repeatedly in our home. I came to know the storyline well. Members may remember when Baron Bomburst employed a child-catcher to round up all the children and lock them in the bowels of the castle. The child-catcher would entice the children out: “Ice creams and lollipops, lemon pies and toffee apples, all free today.” Deputy Southern with this proposition reminds me of the child-catcher in Chitty Chitty Bang Bang who offered ice creams and lollipops, lemon pies and apple tarts, all free today. This proposition is offering an expensive freebie in exchange for popularity and votes.

#### **2.1.2 Deputy T.M. Pitman:**

What a pleasure it is to follow that speech. I thought the Senator was talking about his election campaign last time, and it worked, so there we go. I am a bit concerned because I am wondering if the proposer has been reading my emails, because ...

### **Deputy G.P. Southern:**

I never read your emails.

**Deputy T.M. Pitman:**

Do you not, even when the police send them? Democracy Day: I mean why I thought that this should be given consideration is people may scoff at what the Deputy said but making a celebration and an event out of something as important as an election is surely worthy of consideration, and it is quite a worrying thought that maybe after only 2½ years I am mellowing, but I nearly put in an amendment to Deputy Southern's proposal to make this a Democracy Day, which eventually ... because it was only going to happen every 4 years, it would have become part of the curriculum at school and young people have to learn that this is about celebrating the fact you are free and you can vote for who you want, who you like, against who you do not like. It is not something to be mocked at and it is not something that should be dismissed just because of the real cost. Senator Perchard is quite right, there is a real cost to businesses, *et cetera*, but, with due respect, I have spoken to - and I make no scientific claims for this - I have spoken to 23 different people about the issue with the holiday we are giving with the royal wedding, and most people seem to be like me, they are really happy for the couple, very happy for them, but most, in fact 20 out of those 23, were not going to celebrate the day in any way at all they said. One said that she would watch it on TV and 2 said they would probably catch it on the news, the highlights, and yet we have given a holiday for that, and, with due respect, and no disrespect to the monarchy, I would have to say that something as important as our election is of far greater importance to the life of this Island than having a bank holiday for a royal wedding, because this is something that is going to affect the next 4 years of life and in reality the next decade of life, of our lives and our children's lives. So really I think if people dismiss what Deputy Southern is putting forward it would be very unfair. What he is putting forward is a chance to try and ignite some sense of pride and excitement in elections. As he said, bring out the bunting, bring out the lorries, he stopped at saying bring out the rifles, which I was trying to nudge him, but there we go. Because I mean I can remember when elections were a lot more exciting with lorries going around and the people with loud hailers and things beckoning you to come out to the child-catcher and go and vote for ... it worked once, I think I went. The first person I voted for was Senator Le Main, I mean that shows how bad this idea is. Stop. And I voted for former Senator Dick Shenton. There we go, it cannot always come down to just the issue of money when we are discussing something so fundamentally important, democracy and the functioning of this Island, and if you have a 90 per cent turnout and whoever was elected, whether they be right, left, centre, or a mix or whatever, and those people had a huge mandate from the people, then I would suggest that was well worth the money that Deputy Southern is acknowledging that this will cost. So I do not think it should be dismissed, I have a fear that it will be dismissed, but I would ask Members to consider the bigger picture. Would members of the public just go off for ... I was going to say a day on the beach, but not very likely in October, but it is going to be once every 4 years, he is not asking, I do not think, for this to happen as an event, as a public holiday, when we do not have an election, what he is talking about is something that will become hopefully set in the calendar, tied-in fundamentally with democracy in the Island and I think there are some positives. It may sound a very left-wing dare I say Marxist thing, Democracy Day, but it should be something that all democracies should be celebrating, and some things are more important than money, and some things may lead to better use of money if we get the right people in, and perhaps that is why some people will object, because they do not want the right people in. But I am willing to consider this and of course there is a very viable alternative if you do not like this one, but I think surely it is in our interests to get as many people out to vote as possible. We have taken that big step of a so-called general election, it is not the real deal yet, because it is going to be confusing for people with 3 types of Member, but there we go, we have taken some steps, why not go for another step now and let us see what we can do. Would it not be nice if we could report 95 per cent turnouts or whatever, and then whoever is in - and I will leave it here - whoever is in will have a true mandate to take whatever decisions, and they might be painful ones, but I think it would remove a lot of the arguments, the to-ing and fro-ing, if people had that



mandate, and I think Deputy Southern is offering us one possibility of someone, some group of people, having that mandate. So it is worth consideration.

### **2.1.3 The Connétable of St. Ouen:**

When Deputy Southern made his proposition, he pointed out that we need to bring some life back into elections, and I cannot disagree with him, I think that is vital. But unfortunately this House, or a previous House, did the opposite when they changed the laws to make elections much more sanitised than they used to be in the past, and so, if that is the way the Deputy wants to go, he will have to come back with a number of law changes to allow for a bit of excitement, to allow for the bands and the general atmosphere, because I have been in elections for some long time, and I have seen the change. Certainly in the Parishes, election day time past was a day for the public to come to the Parish Hall and to enjoy, to meet friends that they probably had not seen for years, and people would stay and have a cup of tea and it was a bit of a day out. Whereas today people come, the few that do come, and vote and leave with a long face and they do not even talk to anybody, and so that is the way you will encourage people back to elections.

[11:30]

As far as Democracy Day is concerned, I cannot agree, this is Un-Democracy Day. If you have a public holiday on this day, you are depriving the 250-odd people who volunteer to come to the Parish Halls to man the polls, because they are not going to have the choice, they will not have the bank holiday, they will be asked to work on that day, and not only work on that day, but work maybe 16-20 hours on that day, and I think that is the worst part of this proposition. I took a straw poll of the people that I would normally call on for helpers that do the election, and they were unanimous in saying: "If it is a bank holiday we do not want to know", and I think that is one of the drawbacks with this proposition. I think that also, if we are going to consider this type of proposition, this is not the year to do it. This year is already a step change in elections as far as the Island is concerned, this is going to be the first general election, and I think we should see whether the introduction of one election day across the year does change the way people vote, does bring out more people to vote, and then we can decide whether we should make it a special day or not. I think that we need to run this election, see how it goes, and then maybe this proposition might have some merit later on.

### **The Deputy Bailiff:**

Does any other Member wish to speak? I call on Deputy Southern to reply.

### **2.1.4 Deputy G.P. Southern:**

I expected it to be short, this debate, I did not expect it to be sweet, even with the prospect of the child-catchers delectations from Senator Perchard, and I am glad to see the range of his intellectual pursuits are quite extensive. I think Deputy Pitman for his support, the way he talked about a sense of pride and a sense of celebration in our democracy and in our election, and I am glad to hear from the Constable of St. Ouen that he too would like to bring some life back into elections and would like to see the return of the tea urn and parishioners coming to the Town Hall in order to vote and to enjoy themselves, but he says not yet, and indeed I believe many people in the Chamber, who are just coming back from their tea urn, making their bunting in preparation for the celebration later in the year, or for the royal wedding, I do not know, but "not yet" is the message from the Constable of St. Ouen. I think it is time for the return of the tea urn and the bunting and the bands and the vans, and I do not quite understand, and I think perhaps we ought to spend more time talking to the volunteers who run our elections, that, if they would give up what they normally do on a Wednesday in order to run an election, but not if it is a bank holiday, I wonder what is going on there that their motivation does not appear to be something that I understand. Perhaps we might spend some more time with those volunteers saying: "In what circumstances would you continue to

enjoy running elections in order to make sure that our democracy works to the extent that it does?"  
I maintain the proposition and I call for the appel.

**The Deputy Bailiff:**

The appel is called for. I invite Members to return to their seats and I will ask the Greffier to open the voting.

<b>POUR: 3</b>		<b>CONTRE: 44</b>		<b>ABSTAIN: 0</b>
Deputy G.P. Southern (H)		Senator T.A. Le Sueur		
Deputy M. Tadier (B)		Senator P.F. Routier		
Deputy T.M. Pitman (H)		Senator T.J. Le Main		
		Senator J.L. Perchard		
		Senator A. Breckon		
		Senator S.C. Ferguson		
		Senator A.J.H. Maclean		
		Senator B.I. Le Marquand		
		Senator F. du H. Le Gresley		
		Connétable of St. Ouen		
		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Connétable of St. Saviour		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy of St. Martin		
		Deputy R.G. Le Hérisssier (S)		
		Deputy J.B. Fox (H)		
		Deputy J.A. Martin (H)		
		Deputy of Grouville		
		Deputy J.A. Hilton (H)		
		Deputy P.V.F. Le Claire (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy S. Pitman (H)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy of St. Mary		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		

**3. Draft Amendment (No. 15) of the Standing Orders of the States of Jersey (P.35/2011)**

### **The Deputy Bailiff:**

We now come to P.35, Draft Amendment (No.15) of the Standing Orders, and I will ask the Greffier to read it out.

### **The Deputy Greffier of the States:**

Draft Amendment (No.15) of the Standing Orders of the States of Jersey. The States, in pursuance of Article 48 of the States of Jersey Law 2005, have made the following amendments to Standing Orders.

### **3.1 Connétable J. Gallichan of St. Mary (Chairman, Privileges and Procedures Committee):**

In February, the States adopted the proposition P.194/2010 of Senator Routier as amended by the Deputy of St. Martin, relating to the revision of minimum lodging periods, and these amendments to Standing Orders give effect to this decision. If I might, I will do Standing Orders 1 and 2 together. Standing Order 1 simply deals with the interpretation and Standing Order 2 in this set of amendments amends the minimum lodging periods as set out in Standing Order 26. A new 4-week lodging period is created, which will apply to any propositions in relation to appointments; any draft legislative Acts, normally these are Appointed Day Acts; any draft Standing Orders; and any proposition lodged by a private Member unless it is one to which the 2-week or 6-week lodging period applies. The 2-week lodging period remains but will now apply to what may be described as disciplinary matters, such as votes of no confidence or censure, *et cetera*. The 6-week lodging period will in future apply to all draft legislation to be debated by the States, to any proposition lodged by the Council of Ministers, Ministers or a committee or panel, unless the proposition is one covered by specific matters set out for the 2 or 4-week lodging period. The lodging period for amendments to propositions with a 4-week lodging period is the same as for those with a 2-week lodging period, namely one week with 4 days required for amendments to amendments. During the drafting of these amendments, the opportunity has also been taken to simplify the list of matters set out in the Standing Orders to which the 6-week lodging period applies. I propose Standing Orders 1 and 2.

### **The Deputy Bailiff:**

Standing Orders 1 and 2 are proposed. Are they seconded? **[Seconded]** Does any Member wish to speak? No Member wishes to speak. All Members in favour of adopting these Standing Orders ... The appel is called for, could Members return to their seats? May I ask the Greffier to open the voting?

<b>POUR: 36</b>		<b>CONTRE: 4</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Deputy of St. John		
Senator P.F. Routier		Deputy M. Tadier (B)		
Senator T.J. Le Main		Deputy T.M. Pitman (H)		
Senator J.L. Perchard		Deputy J.M. Maçon (S)		
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Peter				
Connétable of St. Lawrence				

Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				

**[Interruption]**

**The Connétable of St. Mary:**

Standing Order 3 relates to the presentation of comments. The amendment of the Deputy of St. Martin specified that any comments on a proposition should be submitted to the Greffier for printing and distribution no later than noon on the Friday in the week preceding the week in which the debate was due to take place. During the debate though on that proposition in February, concern was expressed by Members of the Assembly that the rules in Standing Orders should not be so restrictive that late comments could not be officially be presented to the States and therefore form part of the public record. P.P.C. initially suggested in its comments that the noon Friday deadline should be a guideline and not a formal requirement of Standing Orders, but this view was not shared by the Assembly, which adopted the amendment. However, P.P.C. has taken careful account of the views that were expressed during the debate and has tried to find a pragmatic solution to this amendment to Standing Orders. The new Standing Order 37A will apply when a draft comment is submitted to the Greffier after noon on a Friday in the week preceding the debate, on the assumption of course that the States will be meeting on the Tuesday and that there are no public holidays intervening. If a late comment is received, the Greffier will still be able to print and circulate it in the normal way, provided that it includes a statement explaining why it has been given later than the normal noon deadline. In this way, any comments that are late for a legitimate reason, for example awaiting legal advice, *et cetera*, will still be able to be presented and become part of the official record, but the requirement for the explanation to be included will hopefully encourage Ministers and other people submitting comments to be timely in so doing. To ensure that the requirement to give an explanation becomes mandatory, new Standing Order 37A(3) provides that the Greffier will not be able to circulate any comment that is submitted to him later than noon on the Friday unless it does include that statement. I propose Standing Order 3.

**The Deputy Bailiff:**

Standing Order 3 is proposed and seconded. **[Seconded]** Does any Member wish to speak?  
Deputy of St. Mary.

**3.2.1 The Deputy of St. Mary:**

Yes, just briefly. I just want to welcome this amendment, I think P.P.C. have done exactly the right job of following up on the debate, and it will hopefully put an end to this strange practice, others

might use stronger words, of comments arriving on the day of the debate time after time, and hopefully that will be the last of that practice and this amendment is wholly to be welcome.

### 3.2.2 Deputy F.J. Hill of St. Martin:

Very much in the same vein as the Deputy of St. Mary. I would like to compliment the P.P.C., not only on their pragmatic approach, but also in the speed in bringing forward the legislation, and also in complimenting them I would also like to compliment the law draftsmen who have obviously done a speedy job, so again, a rehearsal echoing what Deputy of St. Mary said, I hope now that we have put an end to this business where we have the comments produced on Members' desks on the morning of the debate.

### 3.2.3 Deputy T.M. Pitman:

I would just like to congratulate P.P.C., they have certainly upped their game lately, I do not know why, but I am sure there is ... **[Laughter]** I will leave it there.

#### The Deputy Bailiff:

Does any other Member wish to speak? I call on the chairman to reply.

### 3.2.4 The Connétable of St. Mary:

Simply to thank Members for their comments and also of course to echo the thanks of the Deputy of the Deputy of St. Martin to the law draftsmen. I move the Standing Order.

#### The Deputy Bailiff:

Standing Order 3 is proposed, all Members in favour of adopting it kindly show. The appel is called for, I invite Members to return to their seats. I ask the Greffier to open the voting.

<b>POUR: 45</b>		<b>CONTRE: 0</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur				
Senator P.F. Routier				
Senator T.J. Le Main				
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				
Deputy J.A. Martin (H)				
Deputy of Grouville				

Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy of St. John				
Deputy M. Tadier (B)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

### 3.3 The Connétable of St. Mary:

Finally, Standing Order 4 is simply the citation and commencement clause that these Standing Orders will come into force on the day following which they are made. I propose Standing Order 4.

#### The Deputy Bailiff:

Standing Order 4 is proposed and seconded. **[Seconded]** Does any Member wish to speak? All Members in favour of adopting Standing Order 4 ... the appel is called for and I invite Members to return to their seats and ask the Greffier to open the voting.

<b>POUR: 41</b>		<b>CONTRE: 2</b>		<b>ABSTAIN: 0</b>
Senator T.A. Le Sueur		Deputy of St. John		
Senator P.F. Routier		Deputy M. Tadier (B)		
Senator J.L. Perchard				
Senator A. Breckon				
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Connétable of St. Ouen				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Brelade				
Connétable of St. Martin				
Connétable of St. John				
Connétable of St. Saviour				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Lawrence				
Connétable of St. Mary				
Deputy R.C. Duhamel (S)				
Deputy of St. Martin				
Deputy R.G. Le Hérisssier (S)				
Deputy J.B. Fox (H)				

Deputy J.A. Martin (H)				
Deputy J.A. Hilton (H)				
Deputy P.V.F. Le Claire (H)				
Deputy J.A.N. Le Fondré (L)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy S. Pitman (H)				
Deputy K.C. Lewis (S)				
Deputy I.J. Gorst (C)				
Deputy A.E. Jeune (B)				
Deputy of St. Mary				
Deputy T.M. Pitman (H)				
Deputy A.T. Dupré (C)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy M.R. Higgins (H)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				

#### **4. Public elections: voting on Sunday 16th October 2011 (P.40/2011)**

##### **The Deputy Bailiff:**

We now come to P.40 - Public Elections: voting on Sunday 16th October - lodged by Deputy Trevor Pitman, and I will ask the Greffier to read the proposition.

##### **The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion (a) to agree that the ordinary elections for Senators, Connétables and Deputies should be held on Sunday, 16th October 2011 and not on Wednesday, 19th October 2011; (b) to request the Privileges and Procedures Committee to bring forward for approval the necessary regulations under Article 17(2)(a) of the Public Elections (Jersey) Law 2002 to give effect to the decision.

##### **4.1 Deputy T.M. Pitman:**

I do not know if you should be worried, or me, because it I think they might be all ... Members are racing through today because they are really keen to talk about the Bailiff and yourself, but I hope they will linger on this and at least give it the merit that anything put before us deserves.

[11:45]

Obviously Members did not feel they could support Deputy Southern's proposition, which I think is, as he recognised - and Senator Perchard certainly made clear - did have a sizable financial implication to it. Though I am a member of P.P.C. now, I bring this because I do totally believe in having an election day at a weekend. Now personally it does not matter to me whether it is a Saturday or Sunday, although I do think on reflection that the Sunday is the more likely and probably beneficial day. It is important to say at the start that whatever is put forward, it is never going to be acceptable to all and there is certainly no perfect system. As I acknowledge, for some people, having an election on a Sunday, they might find objections on religious grounds, and while I respect that most people that I have spoken to are quite happy to do their religious commitments and then find time during the day to go and vote, because they view it as important. I think the key issue to whether Members feel they can support this is whether they think it is going to increase the turnout, as we talked very briefly with Deputy Southern's proposition, at our general election. It is interesting to note that when the Jurats were spoken to they did concede that there was a high probability, a likelihood that a weekend election, whether it was now or in the future, would increase turnout, and to this regards I would like to thank the Constable of St. Ouen for getting me

some rough figures, I did get in touch with him quite late because, as Members know, my mother has been quite ill, so I was late getting that request in, but I would thank the Constable for giving me some rough estimates from his colleagues, which puts the cost to the Parishes he thought between £15,000 and £20,000. That flags-up a number of thoughts for me. Firstly, I do not believe that those costs should be down to the Parishes to meet, something as fundamental as an election, should that be down to the individual Parishes, which are all very different, as we know. But the figures really jump out at you in as much as should that be a barrier to us not having an election on a Sunday? The Constable has rightly pointed out that some of the people he has spoken to suggest that they would not be available on a Sunday, and I would not criticise those individuals, not in any way, because, as the Constable and others have pointed out, they are volunteers, many of them, and you cannot really criticise people who are doing something out of their public spirit, and I would not criticise them, but it does flag-up the real concern that relying largely on volunteers can dictate when we have an election. That surely cannot be right. I think, with due respect to all involved, the Government has to take elections more seriously than that. We should remove that burden, if that is the present case, and let us find it is fine, it is tradition, but we should not be relying on the goodwill of some very hard-working people, no matter how many years that tradition has built-up over. A Sunday election, again, and it is no scientific basis to it, but from the people I have spoken to, would likely bring out a lot more people to vote, because for many people it is that day when they can choose to do ... it might not be a particular day of rest if they have families, *et cetera*, but it is a day where they have a bit more freedom. Now I know my good colleague here, Deputy Martin, will say: “Well working mum, I do not need that, I want to do it on a work day and get on with my life”, and I understand that and I recognise it. However, if we are to entice those people who moan a lot about what we all do in this Chamber that do not seem able to motivate themselves to find that time, as it is going to be once every 4 years pretty soon, to come out and put a cross next to the least worst of us, then it is a pretty sorry state of affairs. It just seems common sense that we do move eventually to an election where older people are not going to be scared to go out in the dark when it is cold, raining, miserable, and where it is as easy as possible, and we have moved to a general election, which it is not a perfect step, but it is a big step. Moving to a weekend, in my view a Sunday, would be another big step, it is not going to totally solve the problem but when we look at the costs involved, and of course there still will be costs, but you set it against what we could get out of it, a government with a much-increased mandate, I think it is one that is certainly worth considering. Indeed, even when you look at the comments, the criticisms, it is almost saying: “It is a good idea, but we do not want to do it yet”, and I would say: “Why?” We are taking a big plunge of faith with our so-called general election; I am one of those who is quite sceptical of how the results are going to turn out. On a practical level I wonder if people will be given all those 3 papers, I hope they will be, but we are taking that big plunge, and to take that opportunity, to put it on a Sunday when more people will have the opportunity to vote with less demands on their time I think has to be something that is worthy of more than one or 2 people speaking I am sure. Deputy Southern reminded us about places who have not been able to celebrate an election for decades: Egypt, Libya, Trinity ... **[Laughter]** That is 2 votes gone. It is fundamental to this Island’s welfare, so for the sake of a little break with tradition, a step forward into the unknown, I think it is a chance well worth taking and let us see what happens, we are all going to be in the position of, come October, whether it is the 20th or the 17th, looking back and seeing what did this general election... what did it do? Did it have the desired result? I think it is an ideal opportunity to go for the Sunday. I have spoken to a few small business owners who certainly thought it was a better idea than Deputy Southern’s, whether that is enough to convince some other Members to vote for it, I do not know, but I would ask that Members do seriously consider it and I make the proposition. Thank you.

**The Deputy Bailiff:**

**[Seconded]** The proposition is seconded. I call on the Connétable of St. Clement.

**4.1.1 Connétable L Norman of St. Clement:**



Just briefly, because I am one of those that Deputy Pitman identified as being generally supportive of moving the elections to the weekend. **[Laughter]** I appear to have upset the Deputy Bailiff. **[Laughter]** I am one of those who would generally be supportive of moving the general election, or an election, to the weekend, because it is obvious that people do have more time to visit the poll. But I am one of those that will also say not yet, and Deputy Pitman said: “Why?” The reason why, as far as I am concerned, that if we move this year’s election to a Sunday as he proposes, we will never know ... we will never ever know if that makes any difference to the turnout, because this year’s election is going to be so different from the previous ones, the first time we have had something close to a general election. If we move it to a different day we will never know if moving that day has made any difference to the turnout whatsoever, because, in any event, we do get quite significant variations in turnout. In 2008 in St. Clement for example, we had the election on one day for Constables and Senators, along with the referendum, and we had very close to a 50 per cent turnout for that. A few weeks later we had the Deputies election in St. Clement with some excellent candidates, but the turnout was something, I cannot remember exactly, but it was something between 30-40 per cent, a considerable drop, and it was on the same day, weather similar, I have no way of explaining why that was. I do not know if Deputy Gorst might at some time think about why that might have been, or Deputy Dupré, but certainly that is what happened there. So I do think, as I say, I do think a weekend election should be tried at some time, but at a time when it is going to be meaningful and comparisons will be able to be made. The other thing, which sort of slightly bothers me, is that the proposition is silent about weekend elections for, for example, by-elections. What does the Deputy believe that should happen in the case of a by-election or in the case of a Procurer’s election, or in the case of a Centenier’s election? Are the same arrangements to be put in place, because, if it is right that the election for Senators, Constables and Deputies should be at a weekend, the surely for these other positions too should be the same. The other just slight health warning I would give, making comparisons with other jurisdictions on the percentage turnout is a little bit dangerous and can be a little bit flawed, because I think Jersey is one of the few jurisdictions which makes registration for voting compulsory, but not voting compulsory, so therefore you are bound to have a lower turnout in those jurisdictions where only people who think they are going to vote will bother to register.

#### **4.1.2 The Connétable of St. Ouen:**

Like my colleague the Connétable of St. Clement, I believe there is merit in this proposition, but I think it needs a little bit more work on it before it is adopted. A couple of points I would like to raise, and I mentioned about the volunteers when we debated Deputy Southern’s proposition, and I failed to point out that the volunteers that I spoke to said: “If it is going to be a public holiday and the rest of my family are on holiday, why should I be at the poll?” and I think that a similar argument will be used for the Sunday, because the Sunday for many families is the only day that the family get together, and so I think that needs to be addressed. The cost to the Parishes, I would not disagree that maybe it should not be a cost to the Parishes, but at the moment it is, and it will be if we go for a Sunday this year. The one thing that has not been addressed in the report is the fact of course that there will be a serious cut of 2 days in postal voting, because whereas now a postal vote will be accepted up until midday on the day of the election, if we move to a Sunday that will be the Friday collection, there probably will be no Saturday collection by then, and obviously none on a Sunday, so that also is an issue that needs to be addressed. So, although I would ... I think that this needs to be looked at, I think that this year is probably just too early.

#### **4.1.3 Deputy M. Tadier:**

I do have to say that I was on the working party, we did give this consideration, and we all agreed that a weekend election is desirable; it happens in other countries. At that time I have to say I did buy into the idea that we have enough changes coming through and let us just wait and see. However, I have subsequently thought about this in a different light. I did think in the same way as the Constable of Clement. Now, let us take a different analogy, we are saying at the moment that

we do not want to have too many changes because we want to be able to verify whether the changes that we are bringing through at the moment will have an impact, before we bring another variable into the equation, to see whether that will increase voter turnout yet again. That is okay as logic if you are a scientist. If you are doing an experiment on lab rats that is fine, you want to put one variable in, see if that works, and then introduce another variable and see if that works, see if there is any change in the environment or in your subject. The difference is though unfortunately that we are not scientists, the public are not lab rats, they are not some kind of guinea pigs that we can do experiments on. I would give another example. If a mother has a child and her daughter has a cold, she has tried lots of different things, she cannot afford to go to the doctor because in Jersey we do not have free doctor's visits, she is not prepared to pay the £32 or thereabouts to go and see the doctor just to get some medicine prescribed, which may not do anything. So what she does, she gets some advice, perhaps on the internet, by self-diagnosing, or she goes to see some of her friends, one of the friends says: "You should feed your child as much oranges and as much orange juice as possible to try and get rid of the cold", and then someone else says: "What you should be doing is giving her zinc with perhaps vitamin C tablets", which is another effective way of boosting your immune system. So the mother says: "Well what I am going to do, for the first 5 days I am going to give her orange juice and then see if that works, and then no change then so what I am going to do is give her some zinc and see if that works." But I think a sensible mother would try and do both at the same time in order to try and get the maximum results. The point I am making is that there is an analogy to be made that we have a society, which is democratically speaking very poorly, we know this statistically, we have very low turnouts.

[12:00]

Members in here will have been abroad on various States visits, they talked to other parliamentarians from other jurisdictions who lament the fact that they only have 70 per cent turnouts in their elections, and they ask us: "What can we do to get more people out to vote?" and unfortunately we just have to remain silent and say: "Do not look at me, certainly I do not have the answers because I am from Jersey where we have 35-50 per cent turnouts and there are many more people who are not registered to vote." I think this is a very good idea. I think that the argument that we have to wait because there were too many changes happening is a complete nonsense. I think we should just be doing as many things as soon as possible to try and resolve the low voter turnouts. We have already done some very good work I think in the single election day, we have already moved the election forward slightly by a month comparatively to the Deputies' elections; that is going to make a difference I hope. I think the Sunday elections is another thing that we have to do because we have a very serious problem of a democratic deficit in Jersey in particular when it comes to voter turnouts. I think that the issue ... first of all, it has to be said that the Jurats and all the Adjoints and all those who give their time are very professional in the way they act, I was very pleasantly surprised, not that I should have been, when I was standing for election, at the professionalism, the courtesy, the long hours that these individuals work, but I think that Deputy Trevor Pitman has summed it up correctly; that we cannot simply rely on a perceived inflexibility perhaps by some individuals in the system who may not be able to turn out to work on a Wednesday, because it is swings and roundabouts, is it not, some people may not be able to turn up on a Wednesday, but other people, Sunday might suit them a lot better, so I really do not think that is as much of an issue as we are creating for that. But sometimes I just despair and think, do we want an increase in voter turnout? I listen to some States Members speaking perhaps off the record and say: "Well I do not think it is a problem, people vote if they want to, if they do not want to vote that is fine. I was elected in St. Brelade, I was elected, there was a 45 per cent turnout and my colleague Deputy Power was elected with the same turnout, so we are all right, are we not? I prefer a low turnout perhaps because I know, and perhaps it is the same with any sitting States Member, we know that low turnouts militate towards us because under first-past-the-post we just need a small amount, a large minority, to get elected. So of course the States Members, we do not want any increase in voter turnout, and sometimes when I hear arguments, I am not saying it is the case

at the moment, but I just ask people to bear this in mind, because I think we look for arguments where there is none to be had. We need to be a can-do Government, this needs to apply to the elections. I would say, let us give Sunday elections a chance now and we will see an even greater increase in voter turnout, combined with the other positive factors that we have introduced for this general election.

#### **4.1.4 Deputy P.V.F. Le Claire:**

We are moving towards a new system of Government, in elections anyway, and I believe that it would be better to have an election on a Sunday. I did not think it was a good idea to have it during the week as a public holiday because of the costs that would be incurred to the economy. There is an element of cost incurred to the economy at the moment if elections are held on a Wednesday, as people will be off voting or given time to go vote or instructed by the employers to go and vote if they want to keep their jobs, as they were on one past occasion. But I think that this ... we have heard already some of the: "It is a good idea, but not yet." That is the same line of argument as: "Let us not give them the ability to have a single electoral list just yet and let us not give them all the ability to vote for everybody in the Island at once, because it is too complicated." Yet we require them to fill-in a 20-page census form compulsorily and by penalty if they do not comply, with no instructions in their native language on how to fill it in, and expect those people when they have done that to help us formulate some understanding as to what they want for our community. The same line of argument is: "Not yet, not now, it is too much", is the same line of argument that is a smack in the face and an insult to the people of Jersey that are running an international finance industry. So all of these arguments: "Oh, it is too much, too soon, we cannot do this, they cannot run before they can walk", it is treating the people with utter contempt. What it does is play into the hands of people who will not be working, who will be in the country Parishes, who will be the great and the good, who will come along and support the current sitting Members, we will have an advantage if we do not empower people with the opportunity to leave their work and come and vote, and Members can smile and laugh, but they will have to argue with me outside about this if they really believe this is not the case and hold their ground, because it certainly is the case. If you look at the demographics of the people that come to vote and you look at the average person walking through the door, it is not the average working person, it is not the average ordinary person in Jersey, it is not the average age. If we did some demographics on the profile of the people that vote, it would be quite clear. Everybody knows what I am talking about.

#### **4.1.5 The Deputy of St. Mary:**

I think we all agree that increasing voter turnout is really, really important; that it is a goal we have to pursue, and that voting itself is valuable, the size of the mandate that we have in here, as Deputy Tadier pointed out, is also really important. Now, we have heard some comments, for instance issues with the postal vote; that if we move to a Sunday there would be issues around it would have to be in one or 2 days earlier. We have heard about we need to consult with the staff about whether they would turn up on a Saturday, or in this case what the proposition says is Sunday. We have heard about issues with counting the votes. Really, we do have to consider whether those issues, they may be important in themselves, but they are not as important as the goal of this exercise, which is to increase voter involvement with our elections, so we do have to put those things to one side and look at what we are trying to achieve, which is to increase the excitement around the election and to increase turnout. My problem with this proposition really can be summed up on a quote from page 4 in the second paragraph where the proposer says that he believes "that this is a 'trial' well worth undertaking", and that bothers me, a trial well worth undertaking, in other words he does not know whether this move to a Sunday will increase turnout or not. It is an assumption and the working group on public elections came to that conclusion, they said that ... well they said that there was real potential for increasing voter turnout, and apparently the Jurats agreed with that conclusion. Why not ask people whether they would be more likely to vote on Saturday or Sunday than in the middle of the week? The mechanism is there, we have a social survey that goes out

every year, and we could find out quite easily, we could add the qualifications around public transport, which obviously does not function much on a Sunday, is that an issue at all, and I would suggest that the Electoral Commission, if they have any sense, would explore issues such as that as part of their remit: “Would a weekend election, date for an election, be of benefit to you? Do you vote now? Would that change your likelihood of voting if the day was moved to Saturday or Sunday, or either?” And so on. So those issues can be explored, you can go out and ask people, and this is what we do not do enough, we do not say to people ... and that would itself generate interest if you had a whole section in the social survey talking about issues like that and asking people what they would do, what their behaviour would be likely to be in the event of moving the day. So I am troubled by this proposition, I must say, I absolutely agree with the thrust of it and where it is trying to go, but I am not convinced that, to change the date as a trial is a very wise thing to do, when it would be relatively easy to find out if the trial would be successful. Thank you.

#### **4.1.6 The Connétable of St. Mary:**

Just basically to carry on from the Deputy of St. Mary, because I think like him I can see this being possibly a useful exercise, but there needs to be other questions asked first and we need to take a focus on it. There are other areas that could be looked into, for example we have been consistently told in debates over the last few years that it is important to keep the polls open from 8.00 a.m. to 8.00 p.m. because people vote on their way to work, and they vote while they are dropping their children off at school, so this then changes that parameter as well. Would it be possible to focus the poll in a more concentrated way, perhaps that would help with the count, which is going to take longer now, or perhaps still give people their extra hour in the morning on a Sunday. There are other areas that I think need to be considered before we do what the proposer has called a trial of this. This is something in my opinion for a future election, but not for this coming one. Thank you.

#### **4.1.7 Deputy J.A. Martin:**

Yes, I will be brief. I basically ... we have had this conversation around the P.P.C. committee table; and for all the reasons that ... and there is no facts, the Deputy seems to imply that it will increase voter turnout and I am in the same district as Deputy Le Claire and I know voters only passing my polling station will go in on the way to work or on the way back, as the Constable of St. Mary has said. Now you give people the Sunday off and I am a busy working mum and Sunday is the last thing, especially in St. Helier, and I do not have to get my car out, and I live at Havre des Pas and I have to get to the Town Hall, no way. I think it could be detrimental and I do not think there is any evidence, and I totally agree with the Deputy of St. Mary, if people think that: “This is Deputy Martin, she has lost the plot, she definitely does not want more people to come out and vote.” I know voters who would not come out on Sunday, who will not vote, it just happens to be there. The Constable of St. Clement made the issue - and I do think it is an issue - of Deputies’ votes, it has always been 6 weeks after Senatorials, and in not just St. Clement, in most Parishes the turnout is lower, people have been fatigued with elections and they have gone out and it is never given the same coverage. This year ... and I would say there is a different class of voter that votes for Deputies than there is sometimes that votes for Senators, they do not come out. It is obvious they do not come out because the turnout falls. To achieve this, I mean the radical thing to do, which I would fully support, which would be opposed by many sitting States Members, is to make it compulsory. I totally fully agree that it should be compulsory. If you make people register, you should make them vote, and it would get everybody out, and it would extremely change the outcome. Now that is what people may be frightened of, but this is not me taking any side, me personally being a political creature I would go out any day of the week and vote, but I know there are a lot of people who lead busy lives and will not come out on a Sunday, probably would not even do it on a Saturday, so for those reasons, until I have the proof, and until it is compulsory, if it is compulsory on a Sunday, or give them a holiday and it is compulsory, but do not give them a holiday and do not make them vote. Sorry, I cannot support this.

#### **Deputy M. Tadier:**

Can I ask for a clarification: the last speaker mentioned about going to the Town Hall on election day; why would one go to the Town Hall on election day?

**Deputy J.A. Martin:**

Because the Town Hall is my polling station in St. Helier No. 1 as of this year, and to get from Havre des Pas I presume they would get their car out. Would you bother?

**Deputy M. Tadier:**

Thanks for the clarification because now members of the public will know that up until now that has not been the case, so they will be pleased to know.

**The Greffier of the States (in the Chair):**

Does any other Member wishing to speak? I call upon Deputy Trevor Pitman to reply.

**4.1.8 Deputy T.M. Pitman:**

I will wait for the mumblings of excitement to die down and then I will start. I would like to thank everyone who spoke. The Constable of St. Clement whose speech was either so good or so bad that the Deputy Bailiff felt he had to disappear within 30 seconds, I have never seen that before.

[12:15]

It raised some interesting points. The issue of by-elections, well with due respect, I do not think that is something that I have to decide with this proposition, with due respect. But why not? If a Sunday has a beneficial outcome and it is workable, and I believe it is workable, then why should we not have all elections at the weekend? That is surely what we would all want. It is interesting that the Constable did seem to be moving towards support for compulsory voting, which I will come on to later with Deputy Martin. The Constable of St. Ouen, I thank him for his contribution, he talked about Sunday being a day when the family get together and of course he is right in many ways, but I would balance that by saying we are talking about once every 4 years, surely what could be better and more exciting than to go out as a family to vote for your beloved States Member, to ensure they have another 4 years in this fine Chamber. So I think maybe that concern perhaps does not need to be worried about too much. The postal voting, well I was in ... I did have to have a little smile, the sudden concern for postal voting, I think we are moving to pre-votes, so hopefully that will not be too much of an issue. Deputy Tadier talked, the important thing really was that we get people out to vote in increased numbers, it does not really matter how we do it, and I think he is absolutely right, and I do sadly believe he is correct in flagging-up the concern that many members of the public have that they fear that some within this Chamber perhaps do not want more of the public to vote, and I hope that is wrong because high turnouts can only be beneficial, so I thank him for that. Deputy Le Claire made a good point when he said that Sunday was better for the economy, and that is really the message I have had from those few small business owners I have spoken to. The Deputy felt that all this talk of too much too soon was nonsense, and again I do support him. The Deputy of St. Mary is concerned, he said: "Well we are going to have no real knowledge of what works until we do a trial, are we?" We have no evidence that it will not work. We have no evidence that it will work. How are we going to do it? How does he decide that the tap is too hot, does he stick his finger on it or what does he do? You have to take that plunge at some time. He talked about the Electoral Commission and I would just remind him I support the Electoral Commission, but it is only a few weeks ago that suddenly 18 people who were totally for it did not want it all of a sudden. We cannot allow everything to be put off, I do not think, to the Electoral Commission, surely. The Deputy observed that we do not ask people enough, and he is certainly very, very right in that, but I think we have left it a bit late, I am sure we will be told we have left it a bit late for this year, but perhaps he has a good idea there, perhaps there could be a referendum: "Do you want elections to be moved to a weekend?" That is a nice simple one. Deputy Martin, busy working mum, as I know she is, she will not come out on a Sunday and she knows lots of people who will not come out on a Sunday, but sadly I know people who will not

come out on a Saturday, a Friday, a Thursday, a Wednesday, a Tuesday, a Monday. So is that a real reason for not doing this? I mean I recognise her point, but, as I say, you can find an objection for almost everything you do in trying to improve this, and we are not going to learn whether something works unless we try it. I was quite surprised and I am very pleased that she brought up compulsory voting; I know she was saying she was not making the case for either way, but look at the turnouts in places like Australia. Now there are pros and cons to compulsory voting, I think if the Minister for Treasury and Resources was not on holiday but was here he might have jumped on that idea because, if you tie it into fines, it might be a nice little earner for the Minister for Treasury and Resources, so perhaps he would even extend it and say: “Vote this way or you get a bigger fine.” But there are objections and I recognise those; I do think I have remembered who has spoken, the financial implication of accepting this is not a big strain, I would suggest, I do fully support that it should not be the Parishes who have this burden, small as it is, and I do strongly believe that we should not be dependent on a number of voluntary individuals who do a very, very good job; it is not fair on them and it surely does not speak well for democracy that we have to allow that. It is certainly far more beneficial to a business to support this than staying in the middle of the week, and certainly far more beneficial than going down the public bank holiday. So with that I would thank those who spoke and thank the Constable for the information and I would say please give it consideration and I call for the appel. Thank you.

**The Greffier of the States (in the Chair):**

The vote is therefore for or against the proposition of Deputy Trevor Pitman. Members are in their designated seats. I will ask the Greffier to open the voting.

<b>POUR: 6</b>		<b>CONTRE: 41</b>		<b>ABSTAIN: 0</b>
Deputy R.G. Le Hérisier (S)		Senator T.A. Le Sueur		
Deputy G.P. Southern (H)		Senator P.F. Routier		
Deputy P.V.F. Le Claire (H)		Senator T.J. Le Main		
Deputy S. Pitman (H)		Senator J.L. Perchard		
Deputy M. Tadier (B)		Senator A. Breckon		
Deputy J.M. Maçon (S)		Senator S.C. Ferguson		
		Senator A.J.H. Maclean		
		Senator B.I. Le Marquand		
		Senator F. du H. Le Gresley		
		Connétable of St. Ouen		
		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Brelade		
		Connétable of St. Martin		
		Connétable of St. John		
		Connétable of St. Saviour		
		Connétable of St. Clement		
		Connétable of St. Peter		
		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Deputy R.C. Duhamel (S)		
		Deputy J.B. Fox (H)		
		Deputy J.A. Martin (H)		
		Deputy of St. Ouen		
		Deputy of Grouville		
		Deputy of St. Peter		
		Deputy J.A. Hilton (H)		
		Deputy J.A.N. Le Fondré (L)		
		Deputy of Trinity		

		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy I.J. Gorst (C)		
		Deputy of St. John		
		Deputy A.E. Jeune (B)		
		Deputy of St. Mary		
		Deputy A.T. Dupré (C)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy M.R. Higgins (H)		
		Deputy A.K.F. Green (H)		

**5. Public Review of the role of the Crown Officers (“Carswell Review”): ‘in Committee’ debate (R.28/2011)**

**The Greffier of the States (in the Chair):**

Very well. The Assembly now comes to the next item. The Assembly has agreed to sit in Committee to discuss the report presented by the Privileges and Procedures Committee with the agreement of the Council of Ministers, the review of the role of the Crown Officers (“Carswell Review”): ‘In Committee’ Debate. Now Members will be aware, I am not sure there has been an ‘In Committee’ Debate since the Assembly was reconstituted in 2008, but just to remind Members that during this session Members can speak more than once, perhaps I would encourage Members therefore to keep contributions brief on the basis that Members can always come back with a further point, and I will try to call Members as I can. I wish firstly to call the Chief Minister and the Chairman of P.P.C. to briefly introduce what they are hoping to achieve from this session. Chief Minister.

**5.1 Senator T.A. Le Sueur (The Chief Minister):**

I thought I would begin by just setting the scene and reminding Members of how we came to where we are. This I suppose emanated from a proposition from the Deputy of St. Martin, as subsequently amended, which we approved in February 2009, although that proposition itself probably goes back to the days of the Clothier Report and comments made there and probably elsewhere as well. As a result of that debate, we created a review board chaired by a retired Q.C. (Queen’s Counsel) Lord Carswell with 4 independent members. That was created in December 2009. I hope Members have a copy of the outcome of that review, which was published a year later in December 2010, which contains the terms of reference and the findings of the panel. The panel were given fairly wide-ranging remit in respect of the role of the Crown Officers, but I think the catalyst for the investigation probably relates primarily to the role of the Bailiff and the different functions, which the Bailiff carries out. If Members turn to page 70 of the report from Carswell they will be reminded of the terms of reference, the first one of which related to the roles of the Bailiff and the Deputy Bailiff, and it addressed the role of the Bailiff as: “Chief Justice, President of the States, and civic head of the Island.” Now I think it is fairly easy to understand what a Chief Justice is, or Chief Judge, and I think it is probably fairly easy for us in this Chamber to understand what the President of the States or the Speaker in the Assembly is. But how do we regard or define a civic head? I think it is important that we understand what a civic head is meant to do, and I turn to the report from Lord Carswell on page 39 I think it starts, and I just take some comments from that section headed “The Bailiff as Civic Head and Guardian of the Constitution”. “In his role, he carried out a number of ceremonial and public duties. He is a member of various public committees and has a constant round of public engagements.” At paragraph 525: “We consider that it is of great value to the people of Jersey that the Bailiff should continue to carry out these duties which give a focus to the public life of the Island.” I go on to further sections: “It is our opinion it is of considerable importance that the Bailiff should continue to occupy this role as civic head.”

Now where I see a difficulty - and I do not know if Members share it and maybe one of the purposes of today's 'in Committee' debate would be to bring this out - is in trying to separate those 3 functions. So I think the first question Members need to ask themselves is do they also regard the role of a civic head as significant and do they believe that someone who was no longer the President of the States but simply a chief judge could carry out the role of civic head in the same way as the current arrangements properly allow? Conversely, if that role was not to be carried out by the Bailiff, is there any other person who could act as the civic head of the Island and, if there was, would they do the job in a more competent fashion than the current Bailiff and previous Bailiffs have done? I think in order to give some structure to this debate, we tried to keep the debate focused on a couple of issues, and I think the first one we need to look at is to understand the nature of the role of a civic head and I suggest that we might begin with that, but I will first defer to the President of the Privileges and Procedures Committee to get the comments of that committee.

### **5.1.1 The Connétable of St. Mary:**

I am grateful to the Chief Minister for setting the scene for this debate and to you, Sir, for outlining the procedures for an 'in Committee' debate for those Members that have not experienced one previously. Members will have received my letter of last week enclosing some additional material to fuel our discussions and will have seen from page 2 that while it is certainly not the intention to constrain discussion, there are a number of key questions, as the Chief Minister has said, that P.P.C. and the Council of Ministers feel need to be considered at this time. I understand that Members may wish to range between them and I understand that we can deal with them all during this debate. For the sake of efficiency therefore, it may be best to focus attention on one aspect at a time where Members feel able to do so. I would, firstly, like to open the area on whether the civic head role of Jersey should be analysed. Specifically, the question we raise is what does the term "Civic Head of Jersey" mean in practice? Is it important that there is a recognised civic head in Jersey in addition to the roles already undertaken by the Lieutenant Governor and senior political figures, in particular the Chief Minister? Some Members may consider at first glance that that is a relatively unimportant aspect of the bigger picture and I would draw attention to the fifth chapter of the Carswell Report in which the following statements are made: "The several functions of the Bailiff have derived from his position as civic head, which is more than a matter of status but is a reflection of his dominant position in public affairs in Jersey over the centuries. The 3 major functions of the Bailiff are presiding in the Royal Court as chief judge, acting as President of the States and carrying out a variety of duties in his capacity as civic head of Jersey. Allied to this last function, the civic head of Jersey, is his role as guardian of the constitution of Jersey. In our view these functions all stem from the Bailiff's historic pre-eminent position as civic head of Jersey." Therefore, this is an important role. We need to tackle this and get to grips with feelings on this before we know how we are going to treat the other questions, I believe. I look forward to hearing whether Members accept the viewpoint set out in the Carswell Review and to exploring any alternative ideas Members may wish to express during the debate. Thank you.

[12:30]

### **The Greffier of the States (in the Chair):**

Very well. The discussion is now open. Senator Le Main.

### **5.1.2 Senator T.J. Le Main:**

I just do not like these talking shops. Meaningful discussions were able to be held years ago but when broadcasting started in this Assembly, these 'in Committee' debates and discussions have been, in my view, a nightmare and nothing but a forum for some Members to be heard and often to electioneer. I, therefore, would just give my very strong held views that I do not support any further erosion of our traditional way of life and I will strongly be opposing any changes to the



Bailiff's current roles and duties. I am just not going to waste my time in a talking shop like this today and I am going to remove myself from the Chamber and go back home.

### **5.1.3 Deputy M. Tadier:**

Sorry, I have been caught slightly unawares here. The point I wanted to make was just very briefly that I think that the P.P.C. have given us 3 options here. It is not my copy and I did have notes written on it but there is a fourth option I think which needs to be considered. Let me just read through the third one. It says: "The alternative option not considered by the Carswell Panel was the functions of the President of the Royal Court and the President of the States are split with the President of the States being elected by the States under (2) but with the President of the States acting as civic head." There is clearly an issue here to do with the idea of civic head. We may even be debating whether we think we need a civic head. Clearly, it seems that there would be 4 logical candidates for a civic head. We have got the Lieutenant Governor, we have got what is currently the Bailiff but who will be perhaps the Chief Justice, we have got the Chief Minister and then you have got any eventual Speaker of the House. I prefer to use the term "Speaker" rather than "President" because it is a new concept and we have used "President" in the past. I think those are the 4 options but I do not think that the third one is the only alternative because it says that the President of the States or the Speaker of the States should act as the civic head. I am not advocating that one way or the other but that is not the only option. You could have neither the Chief Justice nor the new Speaker acting as the civic head and it could be somebody else. Maybe there is a political argument to be had that it should be the Chief Minister, and I know we will look at those arguments because there is an issue with having the Chief Minister as the civic head because he has not seen to be independent in a truly impartial sense. Whoever the Chief Minister is, he or she will have their own political leanings. That is natural and that is not a bad thing. So it is difficult to know whether it should be the Chief Minister. So it is just really to set the debate in context. I do not think it is fair to start off from a point where there are only 3 options that are being presented. I am not saying those were the only 3 but that is what I am saying now. There are not just the options. There is a whole gamut that could be looked at. I think it is unfortunate that Senator Le Main has left because it is not simply satisfactory to stand up and give a viewpoint without giving any justification. If that was an exam, he would get a big fail. Of course you are entitled to your opinions. That is fine, that is how they work but in these kinds of debates especially you need to give facts and I think that we all have different opinions but, hopefully, if we are going to progress the debate in any meaningful way ... and, clearly, it is a controversial thing that we are dealing with and there is a lot of passion that surrounds it, but it is unfortunate that one of our senior Senators has just pooh-poohed it and said: "I am going home because I do not want to have anything to do with this." It would have been much better if Senator Le Main could have stayed here to try and convince me why his point of view is correct and perhaps why mine is not. Unfortunately, I am not going to have that privilege this afternoon.

### **5.1.4 Deputy P.J. Rondel of St. John:**

Over the last 5 years, probably longer than that, we have seen the mess Ministerial government have got us in one way or another. All of us. We are all part and parcel of it. We have created a lot of it ourselves and we have seen the appointment of Assistant Ministers ... and I am not having a go at the system but the way we have been doing things in these appointments by allowing one person to appoint them without having the rigours of this Chamber even involved in any of these appointments leaves this Chamber weak. Currently, we have a Bailiff who has served his time on the benches and all Bailiffs from the past as S.G. (Solicitor General) and A.G. (Attorney General), Deputy Bailiffs as Chair. Occasionally, they come as A.G. and go through, as one did some years ago in my early days in the House, but if people fall by the wayside because they cannot cope with the pressure or whatever it may be, then at least it can be picked up early enough by the people, i.e. the Crown, who currently appoint our Bailiff and our senior officers which, in my book, are good checks and balances. Those people who sit in the Bailiff's chair have got a good understanding of

how this Island works over a long, long period. It is not just somebody that has come in from the outside who has been interviewed and said: "I can do this job." I am sure they can and I must say: "If the system is not broke, do not fix it." We had a perfectly good government system. All right, it was slow until 2005 but it was not broke and yet we decided to fix it, or some Members decided to fix it. I am not saying that, in the future, things should not change because I believe that some time in the future this Island will go totally independent and that will be the time when we will have a different type of administration and a different type of hierarchy within the Island. We have seen issues over the last 10 or 15 years where the U.K. Government think very little of us. Think very little of us. We have seen it over a simple thing like fulfilment. They are looking after their own ends, which is fair enough, but we, over centuries, have been loyal to the U.K. and they do not seem to want to reciprocate. They seem to want to take but not give. That said, I am not going to get too involved in that side of it. In the future, I do see this Island going totally independent because that is a role that, at that time, the titular head of the Island I believe will be looked at. At this time, the system is not broke and the people coming forward I have got a lot of time for because they are being trained up into the ways of the Island, and given we are still in the midst of trying to get our Ministerial system working properly, I do not think we need to be trying to alter the goalposts of the people we have got in the position of Bailiff or Deputy Bailiff of this Island. I will not say a great deal more than that but I think the membership knows where I am coming from and I am sticking with the *status quo*.

#### **5.1.5 The Connétable of St. Ouen:**

I am glad that the Chief Minister brought up the question of civic head and how we should define the civic head. I have been fortunate during my time in the States to have travelled quite a lot in France and I have met people from Government Ministers, dare I say, down to the petanque players or maybe the other way around, I might add, but I have met a large, cross-section of people. The one thing that has struck me is their respect for the Bailiff of Jersey. They do not necessarily understand exactly what the role is but they do respect the fact that a particular person is the Bailiff of Jersey and undertakes the civic head role as far as Jersey is concerned. I am aware that, even since we moved to Ministerial government, on occasions, when I have suggested a visit from Jersey, yes, they are quite happy to have the Chief Minister come along and visit them but they would like the Bailiff to go as well. This just highlights the esteem which the role carries. I say it is only in France but I suspect it is much further afield than that. In the last few weeks since the Carswell Report was produced, I have to say that no one has come to me and said: "You have got to do this. Carswell has suggested this. You have got to do it." In fact, people have come to me and said: "We wish to retain the *status quo*. We do not want anybody tinkering with our Bailiff." [Laughter] All right, maybe they meant with the role of the Bailiff. But, seriously, there is a fairly strong held support for the role of the Bailiff out in the countryside and I think if we, as an Assembly, are looking to make changes to that role, I think we need to have a much wider consultation with the public before we go down that line.

#### **5.1.6 Deputy P.V.F. Le Claire:**

Just a brief intervention before lunch. There is, in an 'in Committee' debate, an opportunity for Members to speak briefly about issues as they come forward. The principle of this 'in Committee' debate today is to focus our attention on the civic head rather than the actual recommendation, which we will get into later, and whether or not it is the opinion of Members in here that have been elected to continue with the role and whether or not we feel that we do not want the Bailiff's role tinkered with. The legal opinion is quite clear as to what will be happening if we do not advance in our ways. Just to address briefly, before lunch, the in-character - it seems lately anyway - contribution of Senator Le Main which is: "I want to go home. I am not staying here. I do not know what I am doing here." I am certain that if he continues to do that and make those sorts of statements, the public that elected him will be wondering the same thing. I will just read very briefly from *A Brief History of the States of Jersey and the States Chamber* by Raymond Falle first

published in 1966: “The Assembly of the States of Jersey grew out of the Royal Court as a result of the Bailiff and Jurats consulting together with the Rectors and Constables of the Parishes in times of emergency. What started as it is known, probably sometime during the middle of the 15th century, as an occasional practice became established custom and the States eventually had an independent existence of its own. There is some indication that, at one time, the Seigneurs of the principal fiefs were also Members of the Assembly. The Centeniers sat in the absence of the Constables and even *Procureurs du Bien Public* sometimes represented their Parishes. The 17th Century legal historian Laget mentions an Act given under the seal of the Island and dated 27th October 1497 in which ‘the States’ first appears. Going on in this very briefly before lunch, on page 6, it mentions this little piece which I would like to hold up in comparison to Senator Le Main’s contributions or contribution rather: “On 16th June 1784, an Act of the States was passed proposing that the sessions of the Assembly should be open to members of the public. This Act was ratified by Order in Council but was not registered locally owing to 7 Jurats refusing to attend the Assembly. Subsequently, they presented a petition to the Privy Council objecting to the proposed Act as being unconstitutional. Ultimately, the Privy Council withdrew their approval of the Act and the matter was dropped. However, on 30th January 1833, the States passed an Act opening their deliberations to a limited number of members of the public and to the representatives of the local press” and it goes on. The march in time that we are being advised by the Q.C. in his opinion in regards to the review of the role of the Bailiff was not focused, I do not think in any degree, on the civic duties of the Bailiff. I happen to like the current Bailiff extremely but that is neither here nor there. The opinion of the Queen’s Counsel that was brought in by Carswell made it quite clear - and I will refer to that later - as to why we need to change and we need to look at the human rights implications of the dual role. On that, I will just finish by saying I would hope that Members do not get bogged-down on who is going to cut the ribbon as to who is going to deliver democracy in the future.

## **LUNCHEON ADJOURNMENT PROPOSED**

### **Deputy I.J. Gorst:**

I wonder if, before we call for the adjournment, I might express the hope - and I suspect it is inappropriate for you to say, Sir, but I wonder if the Chairman of the P.P.C. might say - while we need to have a full airing of all these views, whether we might consider that we could have an ‘in Committee’ debate by the end of this sitting today. I wonder if the Chairman could give an indication.

[12:45]

### **The Greffier of the States (in the Chair):**

I think that is certainly the intention. Interestingly, Standing Orders give the Chairman the discretion to conclude the debate [**Approbation**]. It is certainly my intention that it should be concluded this afternoon. I am sure the issues can be aired by then. Do Members wish to adjourn and reconvene at 2.15 p.m.?

[12:46]

## **LUNCHEON ADJOURNMENT**

[14:15]

### **The Greffier of the States (in the Chair):**

Very well. The Assembly is quorate. Senator Le Gresley.

### **5.1.7 Senator F. du H. Le Gresley:**

I just wanted to say I reflected on the short time that we have been looking at this matter and it seems to me, with all due respect to the Chief Minister and the Chairman of the Privileges and

Procedures Committee, that we are doing this in the wrong way. For me, the fundamental question is whether the Bailiff or Deputy Bailiff should remain speaker of this House and if we look at that in isolation, then if we come to the conclusion as Members that the *status quo* should remain, the rest all falls into place as far as I am concerned. The civic role, *et cetera*, is all going to stay as we are at the moment, so we really have to focus, in my opinion, our discussions on whether we want to see an elected President of the States. Now, I would say on that point - and I probably will be pulled up by the Chair that I am straying into a different subject - the fact is whenever I hear people talking about the Bailiff, we always look at personalities. We always look at the current Bailiff, historic Bailiffs, *et cetera*, and it seems to me that that is absolutely the wrong thing to be doing when you are looking at a role. You must not look at the person. You have to look at the job. It is the same when you are employing somebody. Do you fill a job with a person or do you advertise a job because you are looking for specific qualities in the job that you are advertising? You should never fill a job just because you like somebody or because there is a history of somebody perhaps in that family being very good for a particular role. So it is about a job description and I think what we are saying is we have to bear in mind the States have spent a lot of money investing in reports by Clothier, Carswell and all the people who were involved on those panels and they have both come to the same conclusion. That is, as we know, that the Speaker of the States of Jersey should either be elected from our own membership or we should appoint somebody to be our Speaker. Now, there is nothing, in my opinion, to stop Members choosing the Bailiff to be our Speaker but, by the same token, if we are not happy with the way the Bailiff runs the Assembly, then we can get rid of him and that is, in a democracy, what we should be able to do. The problem that we have, as I see it, is that the Bailiff is there as of right and we effectively cannot remove him from office as the Speaker of this Assembly. I am sure people have read Carswell but really there is at least 3 points that he makes which really, to me, means that we are behind the times insofar as having an appointed head of this Assembly rather than the States' choosing. Mostly they appear on page 30 and 31 of the Carswell Report. I have highlighted these. It says: "It is universally accepted that those exercising judicial functions should not have been concerned in making the laws which they have to apply and enforce." Of course, we all know that that fundamentally has been why we have involved Carswell and Clothier in the past, because there is concern that that may be challenged. The report goes on to talk about the Latimer House principles, of which I know very little. But it goes on to say: "It is abundantly clear from the content of the principles and also from the benchmarks from democratic Legislature drawn up by the Commonwealth Parliamentary Association [now, I thought we were in the C.P.A.] in 2006 that the framers considered that members of the Judiciary should not also be members of the Legislature." So that is another point. We are in the C.P.A. and we seem to be out of step. They went on to talk about whether Jersey should be different. We know in some respects we are different. We say that we are unaware of any other democratic jurisdiction outside the Channel Islands, no matter how small, in which a judge presides in the Legislature. We are unable to support that modern Jersey falls into such a category. We do not think that the conditions for evoking the exception are fulfilled or that it would be a proper reflection of Jersey's international standing and image for it to seek to do so. So what we are saying really is; we were trying to be bigger players on the international stage and yet we are behind other democracies. It goes on to say in the final paragraph at page 31: "Our current situation fails to present to the wider world the image of a modern democratic state." So, what I am saying is, we may well discuss for the rest of the afternoon whether the Bailiff should be the civic head, but to me the crux of what we should be discussing is should the Bailiff remain Speaker of this House? That is all the point I wish to make. Thank you.

#### **The Greffier of the States (in the Chair):**

Thank you. I just wonder, chairman, would it be helpful to follow Senator Le Gresley's lead and suggest that perhaps it would be time to open up, for example, question 2 more generally rather than Members feeling they are being constrained on your initial opening? Is that something you wish to open?

**The Connétable of St. Mary:**

I think it would be an excellent opportunity to open up to the next point detailed in my letter 24th March.

**The Greffier of the States (in the Chair):**

Do you wish to say anything?

**The Connétable of St. Mary:**

I do not think it is necessary. The question is quite clearly set out in the letter and I think Members are well enough versed to speak straightaway.

**5.1.8 Deputy M. Tadier:**

I have never done an ‘in Committee’ debate before and although I may speak once or twice or 3 times, I will try and keep it short. But presumably people who have not spoken first would get priority over somebody who has. That is what I would like to do anyway. I would like to pick up on a couple of issues. I am glad that Senator Le Gresley has moved it from the argument about civic head, because the crux of this issue is ultimately do we have somebody who is both a High Court judge, essentially, and who is President of a Legislature? This is the crux of the issue. This is the argument which has been going back in modern democracies since about the late 1700s. So in France and in America these are all well-established principles; that you do have a separation of power in a meaningful sense and, in fact, as well as just in appearance or *vice versa*. The Constable of St. Ouen gave a very good speech, I think, about the relations with our French counterparts, and it is true I am sure that French visitors or visitors from any jurisdiction, when coming to visit here or when Jersey is sending a delegation abroad, will of course be very interested in meeting the Bailiff, because he is a very important figure in Jersey. He is seen, to use the vernacular, as our top dog. That is what we have at the moment. Excuse the canine reference there. The point is that we should not necessarily draw too many conclusions from that. Of course the French would be happy to meet the Bailiff. But I think the argument has to be said if we had an elected Speaker, who had some of the functions and some of the prestige which the current Chair of the States has, then quite clearly it would be appropriate for the French delegate ... and I am sure they would also want to meet the Speaker in the same way as they would want to meet the Chief Minister, in the same way as they may wish to meet the Lieutenant Governor. I am sure, by the same token, we can extend the example to Australians. The ones that I met in London during the Commonwealth Seminar ... there some of them went to meet the Queen. I am sure they would be very happy to meet the Queen, as you would expect. But if you turned around and said to them: “Would you like to have a monarch in your country? Instead of having a presidency would you rather have a monarch?” They would tell you in no uncertain terms that: “No, our way of doing things are a lot better.” I am sure the French delegates ...

**The Greffier of the States (in the Chair):**

I was not aware there was a President in Australia.

**Deputy M. Tadier:**

No, true. It is a Prime Minister. That is correct, Sir. That is a bad example. Take the Americans. The Americans have a lot of respect for our royal family, partly because they do not have a royal family of their own. They got rid of them under George III. Is that correct? I think that was the time of independence. They love the royal family, but if you said to them: “Do you want a royal family of your own?” They will tell you quite clearly: “No. We are quite happy. Well, not with our President, but with our own system.” I think the same exists with the French. They certainly can admire our Bailiff from a distance, but I am sure also when you ask them ... and I know this because I have spoken to both French and many international parliamentarians; when you say to them: “So how does it work in your jurisdiction?” You might talk to the Speaker: “How does it

work in Jersey?" You say: "Well, we have this entity, this thing called the Bailiff. It is a strange creature covered in ermine and a red gown - sometimes - and is a very nice gentleman and he presides in our States." "Okay and what else does he do?" "Oh, he is our judge. He is our chief judge." Then you cannot help but see the eyebrows raise or there is a frown there and they say: "Oh, right. Mm, that is a bit of an anomaly. We do not really get that in most jurisdictions; you have a separation of power." So while the French, of course, would be happy to meet any of our good gentlemen or good ladies who represent the Island in different ways, it does not mean that they endorse our system. It does not mean that they have other ideals. I think this is the point. What is very interesting; it is not simply a bunch of lefties, a bunch of progressives, who have been banging on about this since perhaps 1769, about the need for reform, it is coming now from all quarters. I do not think it is fair to say that we are having reform thrust upon us. I think that what we are finding is that history is just catching up with us. We are having pressures from all over the place. Interestingly, internally, we get the likes of our former Chief Minister - whose politics are perhaps, not necessarily diametrically opposed to mine, but probably diametrically opposed to mine - saying the exact points that I have just said. That in a modern democracy, in an Island where we are trying to promote the image of Jersey, not simply in its own sake, but partly because of the vast amount of finance work that the Island does and the image that we are trying to promote on both of those levels, something does not quite sit right about having this feudal vestige who sits as the President in our States. My personal opinion is keep it simple; have an elected Chair of the States by States Members. Similar argument for the Chief Minister; the traditional argument is that the Chief Minister needs to be elected by the House, because he or she needs to command the respect of the House. Exactly the same thing needs to happen with the Speaker in this House. We need to have a Speaker who is elected, first of all to the House by the public in some form, whether that be as a Senator, Deputy or Constable or maybe in the future as a Member of the States of Jersey; that person needs to put themselves forward, as a Speaker. I am sure that States Members will know some or all of the requirements that are desired and the traits that are needed from a good Speaker. We had Constable Norman chairing the States the other day when the Youth Assembly were in the Parliament. He did very good job. This idea that one necessarily needs to be a trained advocate or a trained lawyer simply is not true. First of all the Bailiff precludes himself, even though he has a vast amount of legal expertise from giving legal advice, because we have somebody else, in the form of the Attorney General or the Solicitor General to give us that exact advice. Even though the Bailiff and Deputy Bailiff could easily give that advice, they do not do it, because it is not the place of the Chair to do that. We have also the Greffier, the Deputy Greffier, the Assistant Greffier, who are all very competent and can even Chair themselves. But I would warn against the lure for those who think: "Let us just have the Greffier chairing in the States" because Carswell did warn that the role should not be built around the position. So the Chair, whoever the Speaker is, should not be built around one position, because that is a danger. I think I will leave the arguments there for now. I think it is good that we have moved on to discussing the desirability of the separation of powers. I know this is something which is uncomfortable for many to discuss. But I think this is where the debate is at the moment. I think that we do not always like change, but we have to try and keep up with the times, even if those times are perhaps 100 or 200 years past already.

[14:30]

### **5.1.9 Deputy C.H. Egré of St. Peter:**

I am not at the moment a Frenchman, although I believe my heritage sits in Normandy. I am not English, although I served the Crown in the Royal Air Force for 27 years. I am a Jerseyman and proud to be a Jerseyman. I am concerned that we import always apparently from the U.K. people to come and tell us how to change our constitution. We failed miserably with the Clothier Report. When I say we failed miserably, we failed miserably for one main reason, we never put that report to the people of Jersey. We thought we could do better and by jove have we done better? I think not. We have brought in Carswell, who comes from the United Kingdom. No matter how one says

one is objective, you bring with you your roots. Carswell is rooted in the U.K. Jersey is dynamic in its own right. We have our own culture here. It is different. I am proud to say that it is different. I hear people muttering about democracy. It seems to be muttered around this Chamber willy-nilly, that word. I have to say, having spent a lot of time in the U.K. and voted in the U.K. elections, I find my position in Jersey somewhat unique and I like it. Because in the Parish of St. Peter, as in your own individual Parishes, the parishioners can vote for a Deputy who sits in this Assembly, a Constable who sits in this Assembly and any number of Senators who sit in this Assembly. If anything the U.K. democracy is diluted. We have very, very good representation in this Parliament. I do not want to become a potato republic. I am happy with where we are. Now, that is my opinion. Over lunch I rushed home to the Parish, where we had a Lent Lunch in the Parish Hall. It was very well attended. I took the opportunity there to go to each table in turn and ask them what their view was on this debate. Without exception they said very clearly: "Leave well alone." Some people used other terminology: "If it ain't broke don't fix it." Other people said: "What on earth do you think you are doing in that Chamber?" Other people said: "If anyone is going to make any major constitutional change in our Island, let us be the judge." I have to say I endorse everything that they have said. You may gather from what I have been saying that my view is very clear; the *status quo* rules.

#### **5.1.10 Senator T.A. Le Sueur:**

Clearly there are quite strongly held views in both directions on this one. I acknowledge the arguments that Senator Le Gresley and Deputy Tadier put forward about the separation of powers, but I make no apology for starting the discussion today talking about the civic head. I think one of the difficulties in trying to unravel the situation is that we perhaps underestimate the complexity of it, because there are linkages between those 3 roles of head of the Judiciary, as President of the States and as civic head. It is a bit like a pack of cards; you remove one card and the whole thing collapses. In trying to do what might be a simple arrangement to remove the Bailiff from his role as President of the States, there is a grave danger of collapsing the whole pack of cards. If I give a couple of simple examples without going on too long; if the Bailiff were no longer president of the States would he command status as civic head. He would then simply be the Lord Chief Justice. So that would not normally be the situation where you would have - would not be a lord necessarily - but where that person would be acknowledged as civic head. So would it be the Speaker for the Assembly? Well, it is very rare that a Speaker for the Assembly is the civic head. It would normally be an appointed civic head, probably elected within a party system. I think we have a danger here that you were undermining the role of civic head and you are undermining the role of the Bailiff, because without that role as President of the States, without that role as civic head he would simply become Chief Judge. Is that a role which will attract people of the right calibre, simply to be the Chief Judge? That is a matter I cannot answer, because that would depend on the individual person applying for the job. But there are clear linkages. The present arrangements do mean that the Speaker of the House, President of the States, does have a history of constitutional legal background. We are very likely to dilute the effectiveness of the States, as well as diluting the effectiveness of the role of the Bailiff.

#### **5.1.11 Connétable P.F.M. Hanning of St. Saviour:**

Quite briefly, I would like to correct something Senator Le Gresley said, because he did imply that the Bailiff was in this House because of his position and we did not have the power to do anything about it. He is absolutely wrong. We do have the power to do something about it; that is what we are debating now. We are debating or will presumably come to the debate as to whether the Bailiff should stay as the President of this House. One other point, while we are talking about the civic head; Lord Carswell wanted the Bailiff separated from the Legislature and he suggests that he should remain as the civic head. But nowhere else does the Chief Judge, as far as I am aware, stand as civic head of any jurisdiction. The whole point about being your judge is that you stay clear of the civic and legislative bodies. I know of nowhere else where the Chief Judge goes and opens

things and acts as civic head. It does not seem to happen. If it is considered wrong because we are the only place where we have our Bailiff as civic head and head of our Legislature, I know of nowhere else where he would be head of the Judiciary and civic head as well. If it does not work for one, it does not work for the other. I think we have to admit to the fact, as the Deputy of St. Peter said so eloquently, that we are perhaps a peculiar as we are officially.

#### **5.1.12 Senator S.C. Ferguson:**

I wonder if this move to change, change and change has been influenced by the fact that the Lord Chancellor, in the U.K., has stopped being the head of the Judiciary, in fact as well as position. The Judiciary in the U.K. is now following many of the judgments of the European Courts. Appeals to the European Courts are headed by judges with no experience of English common law. For instance, some of them come from Albania. I am quite sure they do not have English common law. We have the curious case of the U.K. Judiciary following precedents which are completely erratic from the European Court. In actual fact, they are making legislation through that. I just wonder, with this sort of furore about getting rid of the Bailiff, we may get ourselves into the same sort of muddle. I believe the House of Commons is absolutely apoplectic at the Judiciary making legislation and I think there are moves going on to sort it. Anyway, perhaps we can look at the legal argument. In the Guernsey Harwood report, among other things, it says: "In particular the judgment affirmed that there is no legal basis for contending that there should be a separation of the judicial and parliamentary roles of the Bailiff." This was echoed by Lord Justice Pill in the Sark case where he was at pains to stress that: "There is no requirement in law for a slavish adherence to an abstract notion of separation of powers." The Carswell Report, as to the legal opinion, was making a case that at some stage in the future this subject may crop up again. Well, that is in the future, 10 years down the line. Frankly, the world can change a lot before then. I think to do something on a precautionary principle is not good for the Island. As the Deputy of St. Peter said, the public have extremely strong views about this and would take it very much amiss for us to mess around with such a crucial part of our constitution without any proper consultation. I think that enough is enough. If there is no requirement in law for a "slavish adherence to an abstract notion of a separation of powers" then I see no problem with this.

#### **5.1.13 Deputy P.V.F. Le Claire:**

Interesting things Lent Lunches. As a Catholic I have been to a few. No doubt if I went to one today and asked all of the people that were there if they would like me to sing Ave Maria, they would all say yes, whether or not the rest of the Island would like that is another matter altogether. **[Laughter]** Democracy does not begin and end with Lent Lunch, I am afraid, nor does our need to change things immediately. But what we did ... and I did have a proposition to put this, as the Deputy of St. Peter said, to the people, whether or not the Bailiff or the reduction of numbers of Senators and Constables should go to a referendum to the people. I brought that proposition. It was defeated heavily. I was told that was not the way to do it. So, bludgeoned to death over the issue over several years and having taken account of the business prowess of Senator Shenton and his analysis, I moved my position. I thought I was moving it forwards, much as I am doing with the upcoming debate on immigration, because over time you just cannot keep arguing the same argument over and over and over, especially if the majority of people in the public do not carry that argument. There is no doubt whatsoever the vast majority of people that attend Lent Lunches if approached by their Parish Deputy or their Parish Constable are going to give them their opinion. Their opinion may very well be: "What on earth are you doing in the States?" But that does not change from day-to-day. I have an opinion here from a member of the public which I agree with, in relation to this debate, which I think has not been the best approach, in my view, to tackle this issue. I think that it has been ... best if I read it out really: "The issues that are highlighted by the questions seem almost to miss the point that many were concerned about; namely having judges acting in the States and also appointed by the Crown. It is not a matter for form, but fundamental. Instead we are meant to be worrying about who meets the Queen. In any event, if we are to have a



figure representing the Island, why should it not be the Chief Minister, rather than an unelected Crown appointee? As a good Jerseyman, why should such a suggestion not happen, albeit perhaps in time? Why is it to be assumed that Jersey can only have credibility if its head is a lawyer? Perhaps a position of Bailiff and Deputy Bailiff as President represents the ultimate lawyers' monopoly. My concern is that we might end up rejecting the Carswell proposals, because there is an ending-up at a particular position, but we have yet to have that ultimate debate. The one does not necessarily follow the other. As to having someone acting as Speaker who knows what they are doing, either by experience or training, why is it assumed that no one but the Bailiff or Deputy Bailiff can be trained to do the role?" I note, you are sitting in the States Chamber today and I note that Lord Carswell said that the Greffier should not sit necessarily in the role, but you were there when it came to deciding the compulsory purchase issues in regard to Plémont and if you cannot get more controversial than that, I do not know what you can do. Yet you managed that, Sir. As to the Bailiff being President, I personally would not have a problem with the Bailiff remaining President in name only; a bit like the Queen ruling in Parliament, but the actual Speaker role being performed by another, as I have just said.

[14:45]

The Queen still has a role in the U.K. despite there being a Prime Minister and people still want to meet her. The Queen has an important formal and ceremonial relationship with Parliament. The phrase "Crown in Parliament" is used to describe the British Legislature, which consists of the sovereign, the House of Lords and the House of Commons. Of these 3 different elements, the Commons, the majority of whom normally supports the elective government of the day, has a dominant political power. The role of the sovereign in the enactment of legislation is today purely formal, although the Queen has the right to be consulted to encourage and to warn through regular audiences with her ministers. As a constitutional monarch, the sovereign is required to assent to all bills passed by Parliament on the advice of Government Ministers. The Royal Assent concerning to a measure becoming law has not been refused since 1707. The Queen also plays an important role in ceremonial opening and dissolving of Parliament. Ceremonial positions and civic heads of society, we have many, many civic heads of society. In this Assembly we have 12 Constables who can open a supermarket or they can attend at other functions. We have the Lieutenant Governor. We have the Bailiff. We have the Deputy Bailiff. But one of the interesting strands that I think moves forwards. This is what is so important about the Rabinder Singh Q.C., who was the person that gave the legal opinion in Carswell. He was not somebody that was foisted upon us. It was somebody who we brought in after having democratically adopting the proposition of the Deputy of St. Martin. We asked him to come and do the body of work and they spent hundreds of thousands of pounds and interviewed lots of people to do it, along the same lines as Clothier did. If I can just quickly go through who this man is, Members might take a bit more cognisance as to why his opinion should hold some relevance. Rabinder Singh Q.C. is one of the United Kingdom's leading human rights barristers. He has appeared in many cases in which the foundation principles of the Human Rights Act 1998 U.K. were established and has written extensively in the fields of public law, human rights and equality law. He is a Deputy High Court Judge, a visiting professor at the London School of Economics and Political Science and a Fellow of the Royal Society of the Arts. He holds a Bachelor of Law with first class honours from the University of Cambridge and a Master of Law from the University of California, Berkeley. Members have the opinion in front of them ... or maybe they do not, but I do. I am sure Members have read it anyway. Just taking from page 11 of his opinion and Her Majesty's Attorney General is here, so I am not going to try and be a lawyer, I would be certainly outclassed in that regard. He does say, in his opinion: "In the light of the above authorities, it is clear, in my view, that the present state of the law does not require a fundamental alteration to the roles of the Bailiff in Jersey. On the present state of the authorities, the broad basis for the conclusion in *McGonnell*, which found favour with the Commission, did not find favour with the courts." He goes on to talk about how in those cases that he mentioned it was not found to contravene the Human Rights Law. He went on to say: "The Human Rights Law ...",

which we have signed up to, the U.K.'s acceptance of the Human Rights Law through into the European Union. We have adopted that. We have made that political decision, because we wanted to be big political players on the big political international finance field. We agreed to that. I was party to that debate. The Human Rights Law is a living piece of legislation. It is a living instrument. He sets out that if things were to be reviewed in the future there may be certainly, in his view, a trend to suggest that the tide of history is not in favour with keeping everything as it is and that it is in favour of reform. He also makes the point it would be possibly far wiser for us to make that change of our own in recognition of change in the lie of the land that is approaching us, rather than having to be told by a Royal Commission that we need to change. Because at the moment the people who are coming to speak to us and to give us their opinion, the late Sir Cecil Clothier and the not so late Lord Carswell, who is from Northern Island, I understand, not from the United Kingdom, they gave us their opinion because we requested them to do so. They did not come and tell us what they thought: "I will just waltz into the Channel Islands, right up into the arms of the States Assembly, write a report and tell them how to do it." No, they did not do that at all. They consulted with everybody in the Island. At least they made the offer to. Many, many, many Members and many members of society took the opportunity to contribute to their arguments. In sitting down in this contribution ... which I am going to do now, Members will be glad to know. I will just finalise this intervention by saying the Chief Minister makes the point, and I think this has been a bit of a ruse to derail the whole change, but there will need to be, even if I am wrong, even if other Members are wrong, there will need to be a debate and a proposition and a vote on this ahead of the elections. There will be a need, in my view, to consider a referendum. But to finalise this nonsense that we need to fall over ourselves in trying to disentangle the civic head. It is a pathetic argument, in my view. It is a slap in the face for those people that have got any kind of intelligence that you remove one card and the whole thing collapses. It did not collapse in the United Kingdom. To say, as was quite rightly mentioned by, I think, the Constable of St. Saviour, no other civic head that he knows - and there may be some, but I think the principle is right - has a role inside the Legislature, because of the human rights implications nor do they have a right in the civic ... it is very nice to have the Bailiff come along and be a patron on your society. But what if that society ends up in court? That is the moving object of the Human Rights Law. That is the moving object of the Human Rights Legislation, in my view. My interpretation is that there needs to be separation of the Judiciary and the Legislature. If you need patrons to endorse your societies and your clubs and your charities then, in my view, it needs to be done by people that are outside of the Judiciary, because we need to have clear lines of separation. If we do not want to have them, fine. We can say no. Then later we can be told.

**The Connétable of St. Saviour:**

Can I just correct something that the Deputy has just said? I believe he said that I said ... you know where the head of the Legislature was ... could be head of the Judiciary. That is not true, because it happens in Guernsey as well. What I said was that I knew of nowhere where the head of the Judiciary was civic head.

**Deputy P.V.F. Le Claire:**

I think the Constable will see that is exactly what I said.

**Deputy R.G. Le Hérissier:**

Just on a point of correction, I do not think Albania is in the European Union, if I recall. Neither is the European Court of Human Rights part of the European Union.

**The Greffier of the States (in the Chair):**

I thought you were going to perhaps say, Deputy, that Northern Ireland was part of the United Kingdom, but ... [Laughter]

**5.1.14 The Connétable of St. Mary:**

I would just like to set the record straight on something that Deputy Le Claire has just said. There is no way bringing this ‘in Committee’ debate to the States today is any kind of ruse to derail this whole process. I am sorry that the Deputy thinks that. It is uncharacteristically cynical of him, if I might say. The whole point of bringing this is because, as we have set out quite clearly in the letters that I have written and in the report that P.P.C. lodged, that the Carswell Review, if you look at the recommendations it makes some of them can be adopted quite easily in isolation, others have a knock-on effect. It is very important that we decide what we want the knock-on effect to be and that we understand what we want the result to be. So that when a proposition comes back to the States for debate, we have the right proposition and that we have taken on board the views of the people in this Assembly of who the civic head should be, what they consider of the other recommendations of Carswell that we are looking at and what they will lead to. As has been said, this is not a house of cards that will tumble, but it is the house of cards where a little nudge has a bigger nudge on the next card. We need to know what we are doing. That is entirely the reason that this ‘in Committee’ debate has been requested. It is in order that we can tease out these nuances. Before I wanted to speak the Chief Minister said most of the things that I wanted to say, but a simple remark that Deputy Tadier made, for example, about dignitaries from other countries would be quite happy to meet the President of the Assembly as long as he had the same sort of privileges or the same sort of aura that the Bailiff does in his current role. That maybe is a valid point, but what I need to know is how do we give the President of the Assembly that extra aura? Because we already know from Carswell, what Carswell says is that it is the Bailiff’s personality in other areas that gives him the authority in the Assembly. Now, that has to transfer the other way round if we are going to have someone who is not the Bailiff as President. Then we have to decide, is that person the civic head or is somebody else the civic head? Deputy Le Claire has quite rightly said we already have the Lieutenant Governor acting in some roles, the current Bailiff acting in some roles. We need to decide where the partitions will lie. Unless we have this kind of open, free and frank discussion, how on earth am I or is the Chief Minister or anybody else going to bring to this Assembly the right kind of proposition? So, I utterly, utterly refute what Deputy Le Claire said; there is no ruse intended in this whatsoever.

**Deputy P.V.F. Le Claire:**

Can we get that assurance from the Chief Minister as well then I will withdraw it?

**Senator T.A. Le Sueur:**

Certainly.

**Deputy P.V.F. Le Claire:**

Well I withdraw that.

#### **5.1.15 The Connétable of St. Brelade:**

Perhaps we are right and others are wrong, I might say. I suggest that much is made regarding the change to our constitution and the role of the Bailiff by those who seem to have been personally aggrieved by particular decisions and, by consequence, those who sympathise with their plight. I support the way we presently operate. I think it is the envy of many other jurisdictions and just cannot see any reasonable justification for changing it. Jersey is a small, independently-minded jurisdiction, which works well. My impression is that there is absolutely no appetite for change from the vast majority of the general public. We are quite candidly giving a disproportionate amount of our time here in the States to a vociferous minority. We do not need to erode our way of life. We do not need to overturn 800 years of tradition. I ask has democracy not been delivered, as was suggested earlier? We guard jealously our connections with the Queen through the Bailiff and the Governor, and long may the present system remain. It has taken a long time to evolve and I suggest that we tamper with it at our peril. The consequences of tampering with it will be significant. Members will be quite clear, my opinion is that we retain with the *status quo*.

### **5.1.16 Senator P.F. Routier:**

A couple of Members have spoken about the implications with regard to human rights and perhaps when I sit down I will perhaps like to seek the view of the Attorney General about his view of whether there is a problem with continuing with the way we currently are, whether there are any challenges that could come from outside of the Island or from wherever. Because I have read various things and I think it was Senator Ferguson who read various opinions which give a view. I would perhaps just like to have the Attorney General's position on that, because he advises us on these matters. I think it would be a useful thing to have. In saying that, I think that we have had the Bailiff in the Chair for many, many years and when he is sitting in the Chamber I have always felt that he has made rulings on our Standing Orders ... because that is all he is doing, is just making rulings on our Standing Orders. I believe that whoever has been in the Chair has been doing that exceptionally well. I think what probably is causing a bit of concern for some people is they do not understand what the Bailiff does when he is sitting in the Chair. It needs to be a lot clearer about what the role is, because I think people are getting confused that he would have some political influence over what has been decided by the elected politicians. I think if there is that concern from some Members we should make it very, very clear in perhaps giving the person who is sitting in the Chair a clear job description of what they can and cannot do and make that publicly known.

[15:00]

So that everybody can be assured that there is no political influence from the person who is sitting in the Chair. I would like to celebrate our differences, because I think we have a tremendous system of the way we operate in this Chamber. I think we should, as I say, welcome our system and celebrate it. I cannot sense any appetite for change outside of this Chamber. I think there are some Members who would like to see some change, but my feeling is they are in the minority. I know we will not get to a vote today, but I think a lot of the speeches we have heard today do indicate that. I hope that the P.P.C. and the Chief Minister will be noting those comments.

### **5.1.17 Mr. T.J. Le Cocq Q.C., H.M. Attorney General:**

I have been asked for my opinion and I am happy, for what it is worth, as there will not, I think be any vote taken today, to offer it. It seems to me that it is entirely clear from current European Law that the European Court of Justice does not look at things from a structural point of view. They look at whether an injustice is done in a particular case in particular circumstances and they look at the detail of that. My present understanding of all of the jurisprudence in Europe is that because it does not look at things from a structural point of view and in any event there is nothing at all wrong with the system as it currently is, from a purely legal point of view. To the extent that Mr. Singh expresses the view that there is nothing in the current arrangements that is legally wrong, I agree with that view. It is the view that I expressed in my evidence and discussions with Lord Carswell, while I gave evidence. It is there on the record for people to see. Mr. Singh goes on to speculate as to what the position might be in 10 years time; that I do find a difficult point. The reason I find it a difficult point is sometimes I find it hard enough to work out what the law is now let alone to work out what it might be in 10 years' time. It would be, in my view, a brave lawyer to suggest that they could predict with any confidence what the law would be at the present time. As the jurisprudence in the European Court currently stands, I personally can detect no trend. So, I respectfully do not agree with the second point given by Mr. Singh in his opinion, but I do stand to be corrected, of course, on that point. A concern has been expressed, I think, that in some manner one might see the Island subject to challenge in the Human Rights Courts. The reality is that the United Kingdom is subject to challenge for human rights reasons all the time. It has a number of cases that are going on. The fact that a jurisdiction is challenged for infringing human rights is not at all untypical. If it is found that that challenge is ultimately successful then it is at that point that the jurisdiction does things to alter the position. So, the idea that in some way the United Kingdom might be challenged on human rights terms on account of the arrangements in Jersey that would be something that, it seems to me, on normal principles would be addressed if and when such a challenge were

successful. I do not think I can assist at any point. What I have said I believe to be consistent with the evidence I gave to Lord Carswell and it is available to be read.

#### **5.1.18 Deputy J.B. Fox of St. Helier:**

As part of my previous life - I will get that one out of the way before someone brings it up - and being a crime prevention officer for 16 years, it is interesting sometimes to look back at the history. At the moment we talk about change, well we have been doing that for 11 years with Mr. Clothier and all the ancillary things and, yes, as a vice-chairman of P.P.C. it is right that when we are asked to do it that we keep an open mind and we look at all the options that are laid before us before bringing things back to the States or having sessions like we are today. But, in the past this Island was not as relaxed a place as it is now, and we know all about the history from 800 years ago when we were attacked and we had been robbed and plundered and everything else. But we also used to have corn riots and bread riots which was not that many centuries ago, and we do not have that today. Why do people come to this Island? We have heard from the Deputy of St. Peter about being a good and loyal and proud Jerseyman. Well I am a good, loyal citizen of Jersey, I came here 42 years ago and I think that I have contributed much to this Island and have enjoyed what the Island has been able to give to me, my family, and friends. But they have also given it to an awful lot of other people and if you go around the world there are a lot of people that have gone to live in islands and moved to other islands, *et cetera*. This Island we should be very proud of and certainly, again, as vice-chairman of the Jersey Branch of the Commonwealth Parliamentary Association, I have had the privilege of meeting people from all over the world, from big Commonwealth parliamentary countries to the smallest of islands, smaller than ours. We play a very important and prominent part in the larger Commonwealth, we are asked and have been represented at the highest level, we participate in telling other Commonwealth countries of how we live and we have legislative things from this Island. Much of it is picked up by other countries because of our lead and the request for us to lead. We recognise that we have to look at change as the world changes and becomes a smaller and smaller place, but we do not have to change for the sake of changing. Personally I am very happy with the way that Jersey is at the moment and there are people, obviously, that are not. But I see that in the current system that we do not have a quality of life where we are fearful of going out of our front door or that the economy of the Island is about to collapse or anything else like that. Yes, we have got to be looking to the future and, yes, we are going through a hard time at the moment compared with other periods. But there are always peaks and troughs and, yes, they are things to look at. I am going to conclude because this is a discussion point, is that let us celebrate what we have; yes, look at the future and make sure that we are prepared for when changes are required of us, *et cetera*, and that we monitor what other people think about us, especially when it could affect us. But I do not think we have to rush into the thing for the sake of rushing into it. The *status quo* feels comfortable to me at this present time, it might not be for the future but there is an awful lot of people in this Island that live here and are happy to live here, and there is an awful lot of people that would love to come and live here but our rules and regulations prevent them from doing so. But some people stay here for 20 years without having the quality of life, i.e. the option of housing, *et cetera*. But it goes to show you there is still a quality of life that says this is better than where I came from or where I could end up going to. Can we just bear that in mind, thank you.

#### **5.1.19 Senator S.C. Ferguson:**

Deputy Le Hérissier queried whether I was talking about the European Court or the European Court of Human Rights, I was of course talking about the European Court of Human Rights. I was in fact quoting from Mr. Singh's opinion which is attached to the Carswell Report and the European Court of Human Rights is not tied to European Union judges. I am fairly certain that there is an Albanian judge and of course, as people know, the European-led Judiciary work on a Roman system as opposed to the law of precedent in our English common law, which is quite a different way of

thinking, so the European Court of Human Rights does not have a strict doctrine of precedent, so it can be very erratic. Thank you.

### **5.1.20 Deputy J.M. Maçon of St. Saviour:**

I have read the Carswell Report and some have said that there are strong views on either side. However, just to be different, may I offer another one and that is of indifference. I think that if the Island chose to remove the Bailiff as President of the States Assembly the process of Government would continue and that the judicial processes would continue. Granted they would have to be restructured but they would still find a way, things would carry on. At the same time, if the people of the Island chose to keep the Bailiff as the President of the States Assembly, the process of Government would continue and the judicial processes would continue. But I believe we need to get that point, we need to know what the Island - and by that I mean the people of the Island - think. I agree with what Senator Le Gresley has said. We need to address the question of, do the people of this Island think that the Bailiff should carry on as President of the States and if they do then it is for us to work out a system about what follows. But I think it is very meaningless and pointless for us to say: "How would it work this way, how would it work that way, how would it work this way?" Because one of the worst things this Assembly does is make a change, get everyone upset in the Island about something because we have not consulted with them first and, therefore, I think with the fact that we have had an independent review done which is fresh, which is not as dated as Clothier, mind that it came up with the same conclusions as Clothier, that is a good point to have a referendum on something we have had, something independent, something recent, which people can relate to. It makes fairly easy reading, it is not difficult to comprehend. I think that would be a good way to go forward. I think also it is different because during our elections in some way we would have had to comment on Ministerial government, on the electoral process and things like that. I do not know if when Members were door knocking people were pulling them inside and the first thing that they were spoken to was the role of the Bailiff within the States Assembly. I do not know, I cannot speak on behalf Members. Personally, although I have got one constituent who is very passionate about the subject, the vast majority of people it really was not an issue. Now, one has to temper that with how many people when they are going around their day-to-day lives do they come across things that the Bailiff is involved with? Not many. So, in which case you have to balance both those sides. But it is not something which I can say I stood on an election platform about, which brings me back to the point of I do not feel that I can give a steer on this and I feel that a referendum is, therefore, the way to go. I do not know how other Members feel but that is my thought. But at the same time I think Members have got to ask themselves, as the Bailiff is the President of the Assembly, do they feel restrained, do they feel that when they are standing up to speak, because of who is in the Chair they cannot talk about certain subjects when they are putting questions forward because the Bailiff can knock them back if perhaps they are already in the public domain or something. Do they feel that they are restricted in the type of questions that they can put? Personally I do not, but perhaps other Members feel a different way. Or do they feel that they cannot lodge a particular proposition on a certain matter because, again, the Bailiff can rule them out of order. Again, I have not had that problem but then I am not one of those Members who feels that they need to lodge propositions regularly. I know that is some people's forte and stronghold, fair enough, it is not mine, I work in different ways. I keep an open mind on this, I am not one of those who will hunker down and say tradition, tradition, you must keep tradition because traditions usually are built-up for a reason, but sometimes the reason for building-up that tradition goes away and you do have to question, do we still need to carry on this process? So I keep an open mind but at the same time I think you have got to challenge, you have got to question everything, you cannot just say it is tradition, I am not going to do anything about, but that does not necessarily mean to say it is a tradition we have to get rid of it. Of course many Members will know that in this Assembly I have stood up and said many times that no system is perfect and no system - no matter what anyone comes up with - will please everybody.

[15:15]

There will always be a problem, there will always be a gripe. But I really do feel that if anyone really wants to have a meaningful way forward on this matter I feel that a referendum on whether the Bailiff should remain as President of the States Assembly, I think that is really the starting point before we do anything else.

**5.1.21 Deputy J.G. Reed of St. Ouen:**

First of all I would like to confirm that presently I see no reason why we should change the *status quo*. However, I am equally pleased that the review of the role of the Crown Officers has been undertaken, and I am also pleased that Privileges and Procedures have brought this matter to our attention because there are issues that we need to further understand. There are concerns raised in the review that flag-up inconsistencies with regards to the dual role of the Bailiff. I am equally concerned about the 2 key recommendations, namely that the Bailiff should cease to act as President of the States and that the States should elect their own President, but also that the Bailiff should continue to act and be recognised as a civic head of Jersey. We have already seen evidence from the Bailiff and others of their concerns that because of the links between those 2 it is not quite as easy as it first seems. Also there is a concern as to whether in the long term the ability for the Bailiff, if we should choose to maintain a Bailiff in the Island, would be able to satisfactorily carry out the civic head role over the longer term. Perhaps as importantly - and maybe this is something perhaps we take for granted - is that we are, as an Island, extremely fortunate to have very learned men and women, although not present in the Assembly at the moment, who have come forward to take up Crown Appointments. The question is raised as to whether or not those individuals would put themselves forward for the Crown Appointments, such as Solicitor General, Attorney General, Deputy Bailiff and Bailiff, if the traditional role changed. There could be a major implication to this because - and we know for a fact - that the remuneration, although some might consider generous for Crown Officers, does not perhaps necessarily reflect the experience and the calibre of the individuals if they were employed or operated within the private sector. So as soon as you start to dig deep - and I think I pick up Senator Le Gresley's point, which I am pleased he raised - that once you start to dig deeper than the key recommendations you do start to understand and think about some of the implications. Why am I pleased that the review of the role of Crown Officers took place? Well it is because it has highlighted these issues. Should we further explore and consider some of those implications as we move forward? Absolutely. Do we need to rush it in? No, that is great, because it does allow us time to make a considered view. But I come back to the point and I am thankful for the Attorney General's ...

**The Greffier of the States (in the Chair):**

Sorry to stop you, Deputy, but even 'in Committee' we need to be quorate and we are not quorate so I will ask the usher to summon at least one Member into the Assembly. Very well, we are now quorate, Deputy.

**The Deputy of St. Ouen:**

Thank you. I am thankful and grateful for the Attorney General's view regarding the issue of human rights. However, we cannot ignore - as even the Attorney General said - that we do not know what may or may not happen in 5 or 10 years' time. I am of the view that we are better to continue looking at the implications, considering the issues, so that we are able to make a reasoned decision on the role of the Crown Officers, that we can properly justify. Not only as an Island but to the international countries and others that may question our current situation that we have on the Island. Thank you.

**5.1.22 Deputy S. Power:**

I am also of the view that we should not and we cannot at the moment change what we have got at the moment. I do thank P.P.C. and indeed all of those for producing this interesting report, and I think from time to time in this Assembly we do need to reflect and review how this Assembly

operates and indeed how it interacts with the role of the Bailiff. So, therefore, this 'in Committee' session today is probably necessary and it is probably going to be necessary to hold it again at some time in the future, and I do not think the principle of doing this is wrong today. I do find it odd that in a debate of this significance that we are bouncing along at a margin just above being quorate and I find that disappointing because there are those outside the Assembly who criticise us for not considering these weighty matters and there are those outside the Assembly that do want change, and obviously there are those outside the Assembly that do not want change. But I think it is a poor reflection that you have had to stop a couple of minutes ago with 26 people here, I do not know how many we have now but I have been counting and it seems to be averaging 29 and 30 since 2.15 p.m. Moving on swiftly I do find it good that we did pick somebody like Lord Carswell from outside the Island, indeed from Northern Ireland, to tell us... to chair the review and as he did, he did it objectively, he did it in a disciplined way and he has made these recommendations and options for change. But I must say, and I think at the risk of repeating some of what I said this morning, we do bring people from the U.K. and from other places and we do bring in ideas from the U.K. and from other places, but they do not easily sometimes convert and work here as best we would expect them to be. I think all of us in the Chamber - those of us who are here now and those of us who predate us in the Chamber, who served in this Chamber before we were here - will have personal experiences of experts or consultants or chief officers or other people who were brought in, and at times they did not work. So what sometimes we do on this Island is we bring people in because of a perceived need but it does not always work. Likewise with this particular proposal, with the whole of the Lord Carswell Report, I am personally of the view that - like the role of the Bailiff and the Assembly - there is a Jersey uniqueness, there is a Jersey - I suppose if I am allowed to use the word - idiosyncrasy to the way we run the Island and at times we run the Island well and in spite of all of the bashing that goes on, it is not a bad place to live and it is not a bad place at all. There are people that would say that we are on a perpetual path of doom and gloom and self-destruction but I do not see that, we do have problems but we do have to change. But this particular change is not one that I would say ranks in the hierarchy of must do in the next 5 to 10 years. I have to say, I do not know about Deputy Tadier's phone calls or emails, but in my 5 years plus out representing those good people of Quennevais and La Moye I have not had one email or phone call about this particular issue. In actual fact if I were to indulge in a little silliness, I have had more phone calls about the mortality rate of squirrels on La Route Orange than I have had about this and that is down, way down in the hierarchy of things in St. Brelade. Getting back to this debate and the subject of this debate, the job description of the Bailiff - as the Chief Minister has eloquently said - is that he is the Chief Justice, he is the President of the States and he or she does have many, many ceremonial duties to carry out, and that is important. But I think what we have done in this Assembly is that with the introduction of Ministerial government it has become a little more occluded and a little more crowded at the top. Where traditionally we had 800 years of the role of the Bailiff evolving, we have also the role of the Lieutenant Governor and now, because of the change from a committee system to Ministerial system, we have a Chief Minister who sits up there in a sort of uneasy balancing act between what the ceremonial duties are and who is head of state and questions of that nature. So where we are at the moment is that this Assembly has changed the balance and that is really what we are dealing with. I am not quite sure what is going to happen in the immediate future, I guess and I hope very little will happen. I am very happy to maintain the *status quo* and it is for, I think, future Assemblies long after we are gone to decide if it is politically correct, if it needs changing. Are there forces from outside the Island that we cannot resist? Are there forces from outside the Island that we can resist? But for the moment, I very much am very comfortable with maintaining the *status quo*.

### **5.1.23 Senator F. du H. Le Gresley:**

Could I just clarify, or perhaps it is a point of order, I do not know what is appropriate in this sort of debate. But some Members keep referring to Lord Carswell as though this was all his work. But this was a review panel of 5 people which he chaired and the other 4 members were all Jersey



residents. So I think it is incorrect for Members to keep referring to Lord Carswell and the fact that he is from the U.K. This was a panel and 4 of those members were Jersey people and I am happy to read them out if people do not know who they are.

#### **5.1.24 Deputy S. Pitman of St. Helier:**

I just wanted to clarify, and I think it is a clarification, of what the Attorney General said about the human rights aspect, that in 10 years he was not sure if it would be an issue for the States or not. It was the council that the Carswell Panel went to, and Mr. Singh said that: "Within the next 10 years my view is that the present arrangements will come to be regarded as incompatible with the concept of judicial independence as embodied in Article 6. In particular because the Bailiff and his Deputy are both judges and presiding members of the Legislature." So I think that is a clarification. Also, and I have said it in the debate, that we had on my proposition on the referendum a few weeks, that there are conventions and international guidelines that we should and have to follow.

[15:30]

One of these is the C.P.A., which I will just read out a few lines from the Carswell Report: "These principles called the Latimer House principles and they are guidelines for Commonwealth jurisdictions adopted and agreed at a meeting of Commonwealth heads of government in Nigeria in 2003. They were based on a set of guidelines drawn up at a conference of the Commonwealth parliamentarians and lawyers at Latimer House in 1998. It is abundantly clear from the content of the principles and also from the benchmarks for democratic Legislatures drawn up by the Commonwealth Parliamentary Association in 2006, that the frame is considered that members of the Judiciary should not also be members of the Legislature." It also goes on about the U.N. (United Nations) Commission on Human Rights and their principles and guidelines. It says: "We should mention also the Bangalore Principles of Judicial Conduct 2002, which were adopted by a group of senior Commonwealth judges after wide consultation with common law and civil law judges and improved in 2003 by the U.N. Commission on Human Rights. They require that a judge should uphold and exemplify judicial independence." They go on to state that: "A judge shall not only be free from inappropriate connections with an influence by the Executive and Legislative branches of the Government, but must also appear to a reasonable observer to be free therefrom." So we have all this work that has gone on internationally and we are part of the C.P.A. and are we really going to ignore that? So I do not really know why we are having this debate without a vote, because it is going to happen. We are at some point in the future going to have to adopt the separation of the dual role of the Bailiff. I do not think we can afford to go against the C.P.A. principles and the U.N. Commission on Human Rights. Also we have the evidence in Clothier as well. So all this work internationally, locally done, and I hear Members still saying: "No, let us celebrate our individualism or tradition." Also the U.K. Government has obligations to ensure that the States of Jersey sign up to such principles, conventions and international laws on human rights. So I see it inevitable and it is an issue where democracy should come before tradition. Thank you.

#### **5.1.25 The Deputy of St. Martin:**

Members may recall that it was my proposition P.5 I think in 2009 that I brought to the House, and I think it was fairly unanimous support there was that they should have this review. One of my reasons for asking for the review was the fact that, as a States, we had not really ever debated the findings that Clothier had brought forward 10 years earlier. It is interesting I shall be following Deputy Shona Pitman because I think Deputy Pitman was one of the few States Members that brought a proposition trying to discuss the matter of the role of the Bailiff. In fairness to her, she tried, it did not get very far but I think it was good to talk. Again, I think today it is an opportunity because I do not think the matter will go away. One of my other concerns also about bringing it forward was the fact I had been concerned about accountability, and I think it is very important that we all have a role to play and we all are accountable to somebody. I know I have been one, and I think the Deputy of St. John and others have asked the Chief Minister about the role and the

position of the Magistrate. We were told, in fairness to the Chief Minister, he was asked several times, he said: "I cannot do anything about it, I am Chairman of the S.E.B. but he is not accountable to me." Who is he accountable to? So I do think it is a matter for Members to address. My submission to Lord Carswell, I was one of the first 2 along with Deputy Le Hérissier, and very much my theme really was about the issue of accountability, and one of the disappointments I find in the report really is that there is hardly any mention about accountability, and I am a little bit disappointed about it. Where we are now really, I think we are looking to see how we can bring about a change maybe to an ancient role into a modern society and how we can bring that. It is very important, I think, that we should be masters of our change rather than people from outside telling us how to change. I go back many, many years ago to my time as a police officer in Brixton and there were things that were going wrong there and we were told if we do not change it will change for us. Lo and behold we had all those riots and then Lord Scarman made the change and some of the changes were not what the police wanted, however had they been party to making those changes earlier no doubt they may have got a better deal out of it. That is one of the concerns I have about us in this Island. While we are in an Island, we are not just an Island on our own, we have other people looking at us. So I am concerned that unless we look to see how we can make a change, change may be brought into us or on to us. I am grateful for the Attorney General's opinion and he will say, quite rightly, this is his view, and we have also had a view from Mr. Singh - we have 2 experts - who is right? I think the important thing - and I think something that Deputy Shona Pitman alluded to - is the fact that change is going to come about. What Mr. Singh is saying, if we do not do it today it is going to happen in 10 years, so basically what we have got to do, we have not got to make a decision today, but I think what is important is we are talking about it and seeing if we need to change and if we do need to change, how we are going to change. We have talked about Lord Carswell, and I am grateful for Senator Le Gresley for reminding Members that Lord Carswell, like Mr. Clothier... they were just the Chairman. They were party to a number of people, many of whom were local residents. So the report was in his name but really the evidence was based on what he received and how it was shared out by his panel. With that it is not surprising really that the Carswell findings came up to be what they were, because in my own report of 2009 I made reference to the Clothier Report, and I would just like to share a few paragraphs with Members, and this is what the late Sir Cecil Clothier was saying when commenting on the role of the Bailiff. The report stated: "It seemed to us that of all the historic titles in Jersey protected over centuries by the Island's autonomy, that of the Bailiff is the most ancient and respected and is one which is most worthy to be preserved no matter what rearrangements the passage of time may require." Now, I agree with that, and he goes on: "But while the title must remain, the function needs to be modified." I think, again, it is down to us to see how we modify it, and Senator Routier was alluding to it. He said if there are issues that maybe we ought to talk about it and unfortunately one of things we do, we do not talk about it. If there are issues why do we not be big enough or proud enough, or maybe we are too polite to say: "Well, Sir, I think you are wrong there." Probably that is one of the reasons we get ourselves in a bit of a pickle, maybe we are too polite. So, again, we are here to talk and let us see how we can put it right. Now, the report gave 3 reasons or principles for saying that the Bailiff should not have the role both in the States and as Chief Judge in the Royal Court. So Lord Carswell is only echoing what had been said 10 years previously by Sir Cecil Clothier and the first says: "No one should hold or exercise the political power or influence unless elected by the people so to do. It is impossible for the Bailiff to be entirely non-political so long as he remains also the Speaker of the States. A Speaker is the servant of the Assembly, not its master, and can be removed from office if unsatisfactory. The Bailiff appointed by the Queen's Letters Patent to the high in ancient office should not hold the post subservient to the States." Again, I agree with it, but if the Bailiff is such a high position, how can he be subservient to us. This is the dilemma we have and I think it is good that we are talking about it because if there is a problem how do we resolve it, because the second reason was that: "The principle of separation of powers rightly holds that no one who is involved with making laws should be involved in the ..." we have heard that one before, and third one again is that: "The

Bailiff, in his role as Speaker of the States, make decisions in the States about who may or may not be allowed to speak or put questions in the States or the propriety of the Members' conduct. Such decisions may well be challenged in the Royal Court on the grounds of illegality but, of course, the Bailiff can not sit and hear to determine the outcomes of his own actions." So, again, all Lord Carswell is doing is echoing what Sir Cecil Clothier had to say. The report also drew Members' attention to the human rights issues and whatever we want to think about it, it is an issue, and again I am grateful to the Attorney General because he reminded us that there is a process, and I think we are still a little bit away from that process. But it is important and it is also worth remembering, I think, that Deputy Shona Pitman, the Constable of St. Mary and the Constable of St. Lawrence, we were all party to a review and we did ask for an eminent lawyer to give an opinion on the dual role of the Magistrate. It was called the Cooper Opinion. The Cooper Opinion was of the view that the dual role was not human rights compliant. Now, there was no debate in the House of that but interestingly that transition happened overnight. The dual role of the Magistrate has now ended. Now, it may well be that we have got to have someone tell us that our particular role with the Bailiff is not correct. I think we have still got time. We are marking time but I think it is important that we talk and it has been mentioned about consultation. In fairness, we are 53 Members elected to take the lead, I think if we are going to ask the members of the public to consult we ought to know what they want to be consulted about and the framework. It is not fair for us to throw it on P.P.C. and say: "Well, you get on with it." When they do get on with it we all criticise what they are doing and, again, this is quite a unique occasion today, I think this is the second one in all the years I have been a member of the States that we have had an in House 'in Committee' debate and I think it is useful. But I think what we have got to look at today is this is the start of the process, not the end. I would be most disappointed if we just kicked this into touch and said: "We are quite happy with the *status quo*." Because while we may be happy with the *status quo* today this issue will not go away. So I think what we have got to do is to talk about it; it is good to talk. It is just the beginning of the process and if P.P.C. have got a job to do I think the least we can do is try to put ideas across the board today, across the Chamber, to help P.P.C. to know where we go to from here, because I cannot believe that we can let this go again for another 10 years. If we do not look to change people will change it for us, thank you.

### **The Greffier of the States (in the Chair):**

If I could just mention, Members are wondering why they are waiting so long to speak, I do have 6 Members waiting to speak who have not spoken before and 2 who wish to speak again, but I do have Members names down, so I will call Senator Le Marquand who is next on the list.

#### **5.1.26 Senator B.I. Le Marquand:**

The roles of the Bailiff arose originally from the Bailiff being the leading citizen of the Island on the civil side and not the other way around. In other words, it was not because he was the Chief Judge and the speaker of the States of Jersey that he was viewed as being the leading citizen. Furthermore, so central was the role viewed that the area over which he had responsibility became known as a Bailiwick and still is today, and I have proof of that from the judgment in a recent case in the Privy Council where the highest court in the land refers to Her Majesty's Attorney General of the Bailiwick of Jersey. That surprised me, I would have thought they would have said Island, but there we are, they are the highest court in the land. The Governor was the military governor in those days and he had control and command of the armed forces, and so you had this division between the chief man on the civil side and a chief man on the military side. Because the Bailiff was the leading citizen it was natural for him to be the person who presided in the court. We are going back to a period, of course, when even Centeniers had their own courts and were judges in their own Centenerial courts and the King had his own courts and so on. That was the way that things were, the senior man presided in the court.

[15:45]

As the States of Jersey came to exist as a separate entity to the Royal Court, or the other way around, I cannot remember which was which, it became naturally that he also be the President, the person who presided over that body. It is interesting to note that for a very long period of time Bailiffs were not lawyers. Indeed, at times, the Greffier was the only lawyer apart from the Attorney General and it was the Greffier who wrote judgments. Now, of course, when I refer to the Greffier in this context I am referring to what has become known as the Judicial Greffier, because the role of Greffiers was split. The Greffe was split in 2, as it were, in 1931. Because the Bailiff was not a lawyer in those days he in fact would appoint very often a Lieutenant Bailiff, who was a lawyer who would sit and preside over the court. Curiously, as time has gone on, that practice has gone the other way. So those who are now appointed as Lieutenant Bailiffs are senior Jurats and very often not qualified lawyers at all. But all this flowed from the concept of him being the leading citizen, and that is why things developed the way they have developed. Against all that practicality, all that history, all that constitutional development, we have essentially the theory of separation of powers. In its purest form the theory of separation of powers says that you should have separation between 3 things, not 2, between Executive, Legislature and Judiciary. Now, in practice, the separation between Executive and Legislature has always been more than somewhat iffy. In particular in the U.K. model, of course, where a Prime Minister who sits in the Parliament and also might command a large majority which he would enforce, with a 3-line whip, in reality controls the Legislature. So, as I say, the pure theory ... I see we are teetering here so I will try and make my speech more interesting. The pure theory of the 3-way divide has never really worked in a purely purist way. In practice there is a fudging of the roles of Executive and of the Legislature. However, the way in which things have developed constitutionally and been reaffirmed by things like the European Convention on Human Rights, has been to seek to create a clear distinction between the Legislative role and the Judicial role. Now, because of this theory, for many years I had concerns, I had grave concerns as to the sustainability of the dual role of the Bailiff and I think if anybody had asked me the question 5 years ago or 10 years ago I would have said: "Well it is not ultimately sustainable." However, there have been changes which have in a sense improved the situation. Firstly the coming into existence of the role of Chief Minister and the transfer to the Chief Minister of such roles as Chairman of the Emergencies Council has, as it were, further removed the Bailiff from the political arena. Secondly, I think that having come into this Assembly and becoming a Member of it and seen how it operates, I can see that there is a clear distinction between the roles. In a sense it is still arguable the Bailiff has 2 roles, the judicial role being very clearly separated from his role as President and I think it is, in a sense, only when one comes into this Assembly and sees how it operates in practice that one sees how clearly those roles have been separated. Indeed, if there is an embarrassment from the 2 roles, in my experience the embarrassment is that suffered regularly by the Bailiff or the Deputy Bailiff sitting as Chairman when they find the Judiciary being criticised or some particular judicial decision being criticised. In many occasions where that happens, that happens only because Members of this Assembly themselves do not understand the importance of the separation between the Judiciary and the Legislature and we have Members of the Legislature seeking - quite wrongly from a constitutional point of view - to overstep the mark in that direction. I have to say that the Bailiffs are very patient in that area and they may be probably too patient, and perhaps if they did not have another role elsewhere they would not be quite so patient and would point out that principle more regularly. In my experience the Bailiffs have been very wise in deciding when to sit and when not to sit and knowing when there is a potential or a perceived conflict, and so on, and so I do not think that there is any real difficulty that arises by virtue of their role within this Chamber. The question of there being a difficulty would arise the other way around and that is - this was highlighted by Deputy Shona Pitman - but the question of difficulty would arise in a sense of does it compromise their role and their independence as judges? That, I think, is the fundamental issue. Now, the advice of the Attorney General today has, of course, confirmed the opinion of the Q.C. that in fact there is nothing in the present situation which strictly speaking contravenes the European Convention of Human Rights. The Q.C. expresses a view that perhaps things might change in the future, perhaps

they might be viewed slightly more differently, but they are not at the moment. My position, I think, has changed on this and curiously enough I think that the detail of the report and the consideration of this has changed my position. I have now moved from a position where I was probably leaning in favour of change to a position where I am now clearly leaning against change. In a sense, the Australian model is quite interesting in this regard. Deputy Tadier mentioned Australia and then discovered he had slightly got his constitutional facts wrong. But what was significant about Australia was this, in Australia they decided that they did not want to have links with the Crown, they wanted to end the links with the Crown. Then embarrassingly they found they could not agree how to do it. They found that although they could agree on the theory they could not work out a practical system of this. So I think we, in this Assembly, need to be very cautious about this. Even if we can agree on the theory, on the way discussions have gone today I think probably the majority is against change, but if we can, are we going to come up with a workable alternative. How are we going to overcome some of the practical difficulties, which undoubtedly would exist? Issues like the advantage of a Bailiff or Deputy Bailiff, or indeed a Greffier, has of having sat in the Chamber and got the feel of it, got the spirit of it, learnt their trade, as it were, in terms of Attorney Generals and Solicitor Generals and so on. Issues like the succession planning and the concerns which have been expressed, not so much about the difficulty of finding future Bailiffs, but about the difficulty of finding future Attorney Generals who might then find themselves having to compete for the role of Bailiff with people who were coming in straight from private practice at a senior level, and so on. There are all sorts of practical difficulties. Once we start looking at the detail, even if we can agree the theory, then I think we are going to run into all sorts of problems. So, as I say, I have moved over the last few years and, in fact, paradoxically, the results of the report have been to move me from favouring change now to not favouring change.

**Senator F. du H. Le Gresley:**

Could I just have a point of clarification from the last speaker? He gave a very good history lesson to us all about the role of the Bailiff, but he did mention that the role of the Greffier was split in 1931 and I wondered if he knew why it was split?

**Senator B.I. Le Marquand:**

That is a very excellent question and one I jolly well should know the answer to. [Laughter] Why was the role of the Greffier split in 1931; I think it was purely administrative. It is interesting of course in Guernsey that the role has not been split, the Greffier in Guernsey also fulfils both roles still. I think it was probably organisational, you needed a different kind of person, particularly you needed a lawyer as Judicial Greffier ideally, we do not have one now but we have other people doing the role. But I do not think there was any constitutional reason.

**5.1.27 Deputy J.A.N. Le Fondré of St. Lawrence:**

I was toying between just standing up and doing exactly what Senator Le Main said and *status quo* and sitting down again, and then I thought it might be more helpful to P.P.C. to give some extra spiel I am afraid. In essence, yes, in respect of the Bailiff it is cemented, my position is to maintain the *status quo*. I have not been through all the public submissions but I have read a fair few and all I can say, as I have heard a number of speakers, I do not think there is a huge ground swell of opinion to change matters to the degree recommended by Carswell. Really I am just going to mainly cover their second recommendation about ceasing to act as President of the States. But equally I am in the, I think, nice position of having stood on it; one of my election promises was that I supported the continued roles of the Bailiff, the Dean and the Governor within the States and I am sticking to that position, and that is a position I have stood on for the last 2 times. What I would like to do is just talk about a quote from some of the submissions that have been made, because I think they are relevant, and what I have found very interesting is how much I did not know about our constitutional history, and I think as States Members that is one of the issues. We

come in for 3 or 6 or 9 or longer years. We never get particularly, I do not think at this stage, an understanding of our history and what has brought us to where we are today. What struck me, for example, in the submission by the Bailiff, a Bailiff has existed since before 1277 and every day we come into this building we are reminded about that because it is on the board at the bottom of the stairs. What particularly struck a chord, again from the Bailiff's submission, was that he is the 87th Bailiff. You think about that, 87 Bailiffs that span well over 700 years of our history and that, to me, is important. It goes to the root of what defines us, of what makes a small Island of 9 miles by 5 miles that extra bit special to those who inhabit it and it is our culture and our soul and even to an accountant I think that is quite important. Occasionally, it depends what you pay for us to have an opinion on the matter. What I have found is that - and particularly within the Carswell Report - some of the arguments are quite theoretical over the separation of functions, and much is made about a chief judge being in the position of effectively making or approving legislation. Again I am going to go back to the Bailiff, because I will quote from one or 2 of them, but I think that confirms my understanding, what he says is: "The Bailiff's role is completely different. He has no vote and he expresses no opinion on any matter before the States, therefore it is difficult to see why he should notionally be attributed of having some opinion and, therefore, not having the requisite impartiality when sitting as a judge." Now, the quote I think was made, I cannot remember if it was quoting from Carswell or just within this Assembly, about a speaker being a subservient to, I think in this example, the Assembly. It depends where you look, but briefly I had to look up Speakers in, for example, the U.K. Parliament. Now, I do not think our President, as such, who is sometimes referred to as a Speaker, has the direct power to suspend an M.P., but the U.K. Speaker apparently does, according to the U.K. Parliamentary website. Interestingly enough that particular position has been in place since around 1377, our Bailiff position is from 100 years at least earlier. The U.S. (United States) speaker and the House of Representatives is second in line for the Presidency of the U.S.A. and apparently it is the leadership position in the majority party and works to set the legislative agenda. I do not think that is one of the roles of our present Bailiff. One thing I found very interesting, which I am going to quote because, again, it comes back to this whole theory about separation of functions, again from a further submission. It says: "The removal of the Bailiff from the States Assembly is thought by some to be desirable on the grounds of principle. A person should not, it is said, hold office simultaneously in the parliament and the court. Without understanding the principle, people referred to the notion of the separation of powers enunciated by a gentlemen called Montesquieu, as if it was an obvious consequence that something is wrong with the current role of the Bailiff. In fact, what Montesquieu so admired about the British constitution in the 18th century" which is how long this argument has been going on, if not longer "was the division of governmental power between the Legislature, the Executive and the Judiciary, which he thought to be the foundation of liberty."

[16:00]

So in other words this is where this argument has been coming from. "It was the power of the Judiciary to keep the Executive in check that appealed to him. However, Montesquieu understood very well that an overlap between some of these divisions existed in Britain." So in other words, again, it is not a clear and absolutely a 100 per cent divide. There is an overlap, I think somebody regarded it as a little bit of an intermingling or a fudging of the issue. There has also been talk about human rights and I will refer to a further submission, the summary is: "It does seem likely that absent special facts there would not be an Article 6 problem for the Bailiff generally unless [and I think it is the European Court of Human Rights] were to depart from the principle that the question should not be decided by reference to theoretical constitutional concepts." What my understanding of that particular submission is there on this issue, is that there is a huge difference between theory, which is what a lot of people are quoting to promote the separation of duties, and the actual practice of the position. So in other words one cannot stand up and say: "It is not human rights compliant." One would have to say, that is what the European Court is going to say, it is going to be: "It will depend on the particular and practical circumstances of whatever the issue is

that is brought in front of the European Court.” So it is not a given, and that collates back to the point of now versus theory of 10 years’ time and all the rest of it. So for all those sorts of reasons I do not support the theory that is going on at the moment or the recommendation that we should be separating the functions. Equally there has been talk within about electing a speaker and certain Members have again covered this. But if the whole point is to take so-called perceived politics out of this, why on earth would we even consider electing a President who might be a politician or even a former politician? That is one of the recommendations within Carswell. That to me seems completely contradictory. Another submission in relation to the power of the Bailiff states: “In particular they are to be exercised in the context of the constitutional convention which has evolved over the past 100 years, which has crystallised since 1948. The Bailiff does not usurp political responsibilities, which are properly the functions of the elected Members of the States. The Bailiff’s duties are to advise and to warn but not to take political decisions. The Bailiff does not have a political role in that function.” A further one, which I thought is a fairly reasonable, balanced view, which states: “In my opinion, the Members of the States and the people of Jersey expect a Speaker to act impartially, to fulfil the role fairly, to chair debates so as to allow each Member to have his or her say, and to ensure that Back-Benchers are given as fair a hearing as Ministers. They expect the speaker to have sound judgment and the reputation for even-handedness. In short, they expect the Speaker of their Assembly to have reposed in him or her all the qualities that we expect and in Jersey we are accustomed to find in a presiding judge.” I am nearly at the end of it. What I will say is - to touch on a few other issues - Guernsey: I do not think we can consider the role of the Bailiff of Jersey separate in terms of function to Guernsey. In other words I think we have to have some consistency there with our sister island. Civic head, again, I agree with submissions that splitting the role but retaining the Bailiff as a civic head is not a good way forward, that ultimately that role will wither on the vine over a period of time. No one, I do not think, has particularly touched on constitutional matters affecting the Island. Things may be changing here obviously with the role of the Chief Minister and his department, but I think it has got to be absolutely crucial for the role of the Bailiff to be maintained in that area. Again, as I said, we as States Members do not have that knowledge, that is a very legalistic knowledge that requires more than a month’s worth of training, it is inherent in the absorption of the information you have in the job, if you like, that you do, and that will come across from a legal point of view. I think hopefully it will be fairly clear then to the members of P.P.C. that they asked us to give some thoughts as to various questions. Number one is, is it important that there is a recognised civic head in Jersey? Yes. Two, is it feasible that the long-term options separate this role from the Presidency? The short answer in my view is no. The next bullet point, no. Should the *status quo* continue with no changes? Yes. I will stop there on that point. Two more quotes and then I am done. One issue, over the reference made to C.P.A. Rules, Commonwealth Parliamentary suggestions for how all this should be set up. My recollection - and I could not find the quote - is that there is a rider to the quote that was given to this Assembly for smaller jurisdictions that it was acceptable for small jurisdictions to have a different process in place. Two final bits; one was again a final submission from someone who has had a long time in Jersey but, again, is not Jersey-born: “No system of legislation and justice will ever be perfect but I believe we must support the system that has, down many generations, evolved in Jersey. It may in some respects be unfamiliar to those coming from outside either to work in the Island or simply to observe and report but the fact of the matter is it is a system that works. There can be few jurisdictions in the world where those occupying positions of authority are so approachable or readily available to their communities.” Just to round off, the Carswell Report quotes Thomas Jefferson, I think. It is in relation to institutions and change and just out of curiosity I had a quick look at Thomas Jefferson quotes and there is one which says: “In matters of style, swim with the current. In matters of principle, stand like a rock.” I am going to stick with my principles in this one and I maintain the *status quo*.

#### **5.1.28 Deputy T.M. Pitman:**

The good news is I am only going to speak for a few minutes; the bad news is this is the first of 23 speeches I am going to make before 5.30 p.m. I have got various thoughts that I have been writing down as people have been speaking and I do think it says an awful lot that we are indeed teetering on the brink. Twenty-seven of us, I think, have had the willpower to stay here and it really has got, for me, the feel of one of those awful House of Lords debates where you see people who have either nodded off or they have gone home to bed; the House of Commons, maybe, but certainly the House of Lords. I just want to pick up on a few points really that ... there are some things which, let us be honest, P.P.C. are going to get criticised for bringing this and I suppose, as a new member of P.P.C. I could do that but I think what P.P.C. have tried to do is, as the chairman said really, try and gauge some feelings from Members as to what should be done. Now, people could argue that that is fudging it and they should have just come back with a proposition. Maybe they should, at least I think that would have guaranteed that more people stayed. But hopefully the chairman will tell us later whether any of these opinions among the morass of irrelevancies have been helpful. Hopefully they have. I just find it disappointing that some things that really should not be in here get given such false importance, and I think that tradition is a big one. The fact that something is a tradition is no justification whatsoever for keeping it. Lots of things are traditions. We used to burn witches, you know, it was a tradition. I do not think we would want to do it now. Maybe some would. I remember sitting and listening to the debate 2 or 3 years back on, I think for a vote of no confidence in the Bailiff, entirely justified yet sadly all that could be spoken by some Members was about tradition and how important the role was. The actual issue of why the vote of no confidence was there was totally overlooked by many, and that cannot be good if we are going to get a good decision on this. The other, tied into that, is personality. I cannot remember which Member said it now but personalities involved should be completely irrelevant. Whether you like the present Bailiff or a past Bailiff; I quite like the present Bailiff. He quite wrongly highlighted me as the person who gets told off most and because I have got such a sad and empty life I went right through Hansard and, of course, I was not the person who gets told off the most but am I going to cry about it? I might name the person who is but no, it is okay. You will have to drag it out of me, Deputy. [Aside] No, he is not here. Personality is irrelevant. In this role it does not matter whether the man or woman is a very nice man or woman. It is irrelevant. It makes an impact on us in our day-to-day working to this Chamber but it is irrelevant to this debate surely. I think the fundamentals of all of this come down to - and a couple of speakers touched on it with the quotes, and the Deputy of St. Martin - I suppose it comes down to whether you do believe in the separation of powers and how important that is. Because if you do then ultimately - and there are some problems and I was the first to acknowledge as the chairman will say when I came on to P.P.C. - you look at it closely and there are some difficulties. Are they insurmountable? I do not think they are but they certainly need some working on so maybe the chairman might say that is why we did not come charging-in with a proposition. I do totally believe and adhere to the view that there must be complete separation of powers. I think something that has not been talked about a lot, but appearances to the public are very important and that certainly should have a lot more weight than the tradition angle and the personality angle. It has been said by one or 2 Members but I think, like it or not, eventually we will be forced to change, but the issue really is when and how we deal with that. Is it going to be now or is it going to be in 10 years? I suppose for a lot of Members we could say: "Well, it is not going to be our problem so let us just carry on with the *status quo*." I have listened to some very scary conversations when I went out for a cup of tea about we are going to have to go for independence and all that. I am sorry but I would find that absolutely terrifying, independence, because I think Jersey would be an absolute nightmare to live in for ordinary working people if we ever became independent. [Aside] I am sorry, I could not hear the comments but I am sure the Member will tell me later. I enjoyed listening to what the Bailiff had to say when he came and saw P.P.C. I did feel that he was a bit disingenuous when he said that: "Well, Mr. Singh would say what he has" because I think the Bailiff was making the point that Mr. Singh was probably the most outspoken and probably radical of the advocates for human rights. Nevertheless, the Bailiff was quite right when he highlighted there was a number of



issues that need to be considered here. It is not as simple as wiping out the role and starting again tomorrow. Could it be filled with someone else? I think you are probably lucky that you are probably one of the few people in this Chamber who has got the respect of everyone. Perhaps it would not last long if you became a President **[Laughter]** so quit while the going is good, I would say. I do not like the fact how we always seem to want to put things off. Only a few weeks ago we were hearing this awfully manufactured thing about cutting a few Senators, which we did democratically, and we heard: “No, no, Electoral Commission. Electoral Commission is the way to do it all.” Then suddenly we saw 18 voting against the Electoral Commission, including the Chief Minister who had spoken for it. I do think if we do not start getting to grips with this now then it will never happen until our hand is forced and I do think that would be a negative for the Island. Many people, I am afraid... and, again, it seems that we all talk to different people, but there are strong opinions on both sides. There are people who tell me, absolutely we have got to hang on to the Bailiff, and they do cite tradition. There are other people who say, no, absolutely, we have got to get rid of the Bailiff, the dual role. It just springs to my mind, and I know there must be a few other Members because a certain lady from St. Saviour was busy phoning people last week about a land issue, and one of those persons she spoke to said: “I never would have thought I would come to say it but I am glad we have got rid of a couple of Senators and I now cannot wait to get rid of the Bailiff.” She linked that because she thought that the system had become totally all biased in favour of the rich and an elite and the powerful, and she seemed to be a very ordinary lady. I could name her but it would not be fair but I know she contacted Senator Perchard because she was telling me that. Deputy Le Hérisier I think she was contacting and several others between whom she has thought there was some kind of unholy alliance within this Assembly, the way she had picked us out, but there we go. So my view is that change is going to have to come and I would rather we did something positive and set that in motion ourselves. How much comes out of today? I do not know but I think it is the Deputy of St. Martin who rightly said: “This is not going to go away.” So I think really it is up to us to try and finish at a reasonable hour, give it to P.P.C., hopefully we can come up with something which is palatable, workable - a tall order - and then we can bring it back and most of the Members can reject it. **[Laughter]**

[16:15]

Then it will come back again and again, so that is where I want to leave it. The most sensible thing I have heard today is: “Let us put it to the people” but we do not seem to like putting things to the people, do we? Why that makes me quite angry is because a place which is also very special to my heart - having got married over there - is Sark and if anyone has followed the shenanigans over there with democracy ... and I am afraid the Barclay brothers who want democracy but only if they get the result they want. Well, democracy does not or should not work that way. Democracy is as democracy should be and it should not be just there to serve certain individuals. The last thing I want to say is what absolutely drives me crazy is these reports that we have and then - and I have to say it - if the establishment likes it, the report is great, we endorse it, it is perfect; but if they do not like the outcome and how often have we seen it? Napier: torn to shreds. Clothier: torn to shreds. Carswell is not just down to Mr. Carswell; that is being rubbished. What is the point of spending money on these things if we are never going to listen to them? We have not got all the answers and I do think people are losing faith in the fact that we can ever act and come to a decision on difficult issues. I will leave it there. I just hope people can separate the personalities and the current people in those roles.

### **5.1.29 Senator J.L. Perchard:**

It is a long time ago I pushed my red button. I was off in another place, particularly after Deputy Le Fondré’s speech. If ever he looks for another profession I suggest he becomes the voice of meditation CDs. **[Laughter]** But I thank Deputy Trevor Pitman for waking me up and, Sir, you for calling my name. The Bailiff has presided over this Legislature since it developed out of the Royal Court, over 800 years ago. In essence we have a piece of history here which we are

discussing; a piece of fantastic Jersey history and any reform of the Bailiff's role has to be taken very seriously, and I think we all agree on one thing, and I think it was my good friend, Senator Le Gresley who started this off - and Deputy Maçon and Deputy Trevor Pitman subsequently - we all agree that any recommendation should be put to the people of Jersey for their decision. This is not an easy decision; we have established that this afternoon. There are many strongly-held views and I have one. It is important that however we conclude the final recommendation from P.P.C., a referendum be held on this matter. I suspect over times of our long history the Bailiff who, as we know, has never been elected, may have politicised his role. I have no examples of such but over 800 years I suspect there are many. Until 1947 many of us were unelected and so until quite recently in the 800 year history we had unelected people acting in a political fashion; Jurats and Rectors of course. The Bailiff and the A.G. and the Dean have survived any transition and I suspect they have survived under scrutiny over the decades, more recently since certainly the 1950s, under scrutiny and they have reformed their role. The Bailiff, for example, no longer has a casting vote. The 3 positions have developed a position of neutrality and impartiality and that is why they have survived. I challenge any Member in recent times to give an example of where the Bailiff when presiding over this Assembly has displayed anything but neutrality and impartiality. If any Member can give an example - a real example; not a blog site example - a real example, let him stand up today and tell us about it. I think the proposal to remove the Bailiff from this Legislature is a proposal for change for nothing more than change for the sake of change. Change promoted by the same people who would have the Constables removed from the Assembly because they are the symbolic head of their Parish police force. The same people who would probably have the Dean removed from the Assembly. The malcontents who want to change Jersey for the better. Change for change's sake. I am sorry, I call it malcontent and I mean it. It is people who are constantly dragging Jersey down and criticising the wonderful democracy we have. Jersey is a great example of democracy; a beacon of democracy that we should hold up high for the world to look at. Members made reference to the E.U. (European Union) and the Court of Human Rights. Well, let us look at the E.U.; an institution which allows its M.E.P.s (Members of the European Parliament) to speak for a maximum of 10 minutes and who has a group of unelected commissioners who run the European Union. What has the E.C.H.R. (European Court of Human Rights) got to say about that with the 260 million people that those unelected commissioners represent. Let us look at the House of Lords in the U.K. Members involved in U.K.'s legislative process. The House of Lords is full of unelected members. What has the E.C.H.R. got to say about that? These people are making legislation. Our Bailiff presides with immaculate neutrality and impartiality over the sittings of this States and nobody in this room will be able to get up and give an example of him doing otherwise. As I have said, Members seem to have fixed views on this subject. I suggest the only way forward is for a reasonable, well-considered question to be put to the people of Jersey on this matter. I will leave it at that, except I will throw a little side-winder into the mix for Members to ponder. Just diverting slightly; I am surprised that Carswell focused only really on the dual roles of the Bailiff and, as I look across at my good friend the Attorney General, I wonder why Lord Carswell and his eminent group of advisers and committee did not look at the role of the Attorney General and perhaps the conflict of the role of Attorney General. I know he did but did not make recommendations that perhaps the role of the Attorney General should be split into a role where we had a Chief Prosecution Service who was independent of the Legislature. I am not sure I would have supported it even if he had, but I think it is quite reasonable that he would have made a recommendation of that type. Without wanting to repeat myself, this is a change for change's sake and I urge Members to recognise that it will not be this Assembly that agrees the way forward and it must be the people of Jersey that do it.

#### **5.1.30 Connétable D.W. Mezbourian of St. Lawrence:**

Thank you. I would like to take up the theme that Senator Perchard finished on; that any decisions must be made by the people of Jersey. I think P.P.C., when they did not take the recent States reforms to the people in the referendum, made a mistake. Since 2006 my recollection is that they

had promised, or had certainly indicated, that any reform debate would be an in principle debate and reform would be taken to the public by way of a referendum for a final decision. I hope they learn from that and take the steer today that Members feel that the public should be involved in these important changes, and I am sure the chairman of P.P.C. is going to respond but I find this report quite interesting. No one has mentioned at all that it is not only P.P.C. that is going to be listening very closely to our comments today. It is quite clear that this is a joint effort with P.P.C. and the Council of Ministers. I wonder why that is the case and I ask the P.P.C. chairman to respond to me later on it as she is able to do. It is interesting that we are debating today only 2 recommendations that were made by the Carswell Review. Those are the 2 recommendations that P.P.C. and the Council of Ministers want us to discuss today, although we are told somewhere in their report that if we touch on others they will take notice and of the recommendations that were made. We have got the initial views of P.P.C. and the Council of Ministers in here and it just seems to me strange that the Council of Ministers as a body are taking such an active lead on this with P.P.C., and I see no mention of any other area of the House. Why were not the views of the Chairmen's Committee asked for? I say I find it difficult to understand and no one has explained this at all. I am not saying this is wrong, I am just saying that it strikes me as being somewhat strange. P.P.C. obviously were charged to engage the services of, as it turned out, Lord Carswell, to have the review undertaken and I would expect them to be the committee that would bring any potential changes to the House but they are working very closely with, as I say, the Council of Ministers, because we are told in the opening remarks that P.P.C. and the Council of Ministers have both given initial consideration to the recommendation of the review of the role of the Crown Officers. The committee and the Council consider that it is important to bring a proposition to the States in the near future and I wonder ... I want the chairman of P.P.C. to explain the process because P.P.C. and the Council of Ministers are going to go away and discuss what proposition, if any, should be brought to the House, and I have some concerns about that because half the Council is missing - it has just been pointed out to me. My concerns are, if there are deep-rooted dissensions between the views of P.P.C. and the Council of Ministers, whose view is going to be brought forward to us for debate? There is nothing to say that because they are working together they will agree at all on what should be brought forward to us. I wonder why we are not being asked to discuss the wider recommendations made by the Carswell Report and I think perhaps it might be worth P.P.C. submitting a form such as this to Members so that we can give our initial views on the recommendations made. Members will notice I have not made any comment on whether I think recommendations 2 and 3 should be brought forward for debate or discussion.

[16:30]

It is interesting to me that they are working together on this and I hope that the chairman of P.P.C. will address my concerns as to if the Council thinks one thing following the steer that is being given today and P.P.C. thinks something else, who is going to make the decision which we are told here? The P.P.C. and the Council are conscious that the main recommendations on making a fundamental change to the historic role of the Bailiff of Jersey are far-reaching and care needs to be taken to plan any changes carefully and be sure that the overall impact of any reform is beneficial to the Island as a whole. I want to know who is going to make that decision. Is it going to be P.P.C. or the Council of Ministers? I am being told it will be the States but obviously P.P.C. will bring a proposal based on the comments of the Council of Ministers. I will just finish there because I think it is an interesting, as I have said, report by P.P.C. working closely with the Council of Ministers but no mention of any other part of the House being consulted before today's debate. That does not seem to me to be inclusive government, but nevertheless I am sure the chairman will address that. She may or she may not when she sums up. Who is going to sum up? Is it presumably going to be the Chief Minister or the chairman of P.P.C.? There is no formal summing up but I am sure the Chief Minister and the chairman will come back when they have heard the comments. If the chairman does come back, I would like to know from her what discussion P.P.C. ... we know P.P.C. has had discussion but what were their views on the Carswell Report before

they have heard the comments today? I think I will probably sit down. Suffice it to say it seems peculiar to me that they are working so closely together. What struck me earlier was that they are working closely together on this but they did not do so on the composition of the States reforms.

**The Greffier of the States (in the Chair):**

I wonder if it would be helpful just to hear the chairman to explain why the terms of reference of P.P.C. would not enable that committee to look at everything together and why you needed to work jointly, chairman.

**5.1.31 The Connétable of St. Mary:**

Thank you. That is what I was hoping to clarify if the Constable had given way. Of course P.P.C. is bound by its terms and conditions. Not everything that Carswell recommends falls within P.P.C.'s jurisdiction. The whole point of working with the Council of Ministers was in order to bring a holistic report to the States for debate for the purposes of hearing what Members wanted to say. This is the first stage of consultation. I was going to ask for a point of clarification from the Connétable because although she has asked me lots of questions about why we work together, I do not believe she gave me anything from a consultation point of view to take away from her speech to add in to the consultation process, which I think is a great shame.

**The Greffier of the States (in the Chair):**

In the interests of fairness we should hear from the Chief Minister.

**5.1.32 Senator T.A. Le Sueur:**

Just briefly, there is nothing sinister about this. When the Carswell Report was first produced in December I made a statement to States Members to the effect that I would consider the findings of the report in conjunction with P.P.C. There are some aspects which relate to the activities of the States Assembly and some activities which relate to the States generally and it was only reasonable, I thought, that I shared those aspects relating to the States Assembly with the chairman of the committee responsible for that. There is not a question in front to exclude other people as so much as looking at those primarily involved in those 2 functions.

**5.1.33 Deputy A.K.F. Green of St. Helier:**

I am not going to keep people very long but just pick up on a few points. Interestingly enough quite a lot of the points that I have written down here have just been mentioned by Senator Perchard but I would like to just pick up on a couple of other things as well. We hear a lot about tradition and history and everything else. I find that quite important that we do not throw the baby out with the bath water, so to speak. But we talk about our culture here today. When we talk about culture, I see that in 2 contexts. I have not checked it up in the dictionary, but I see culture: our traditions; our history. Also when I talk about culture as a very experienced manager, I talk about the organisational culture, if you like, the way we do things in the organisation. So it goes both ways. One of the things I think most organisations that are mature and organised and advanced in their thinking do, is that time to time we review what we are doing and why we do things - that is only right - and that is where we are today. I have seen some recommendations in the Carswell Panel report. What I find it very light on is very good reasons why we should change it, other than perception. I have seen no evidence that says: "You must change because of this." I have seen comments about perception and about ideas but no evidence. So I am of the mind, at the moment anyway, that I will stay with the *status quo*. Now when we talk about change and the role may need to change, Senator Perchard made the comment earlier, and others may have done as well - I may have dropped off to sleep a couple of times - that we have had change in the Bailiff's role. Now it was before my time but the casting vote, for example, was removed. One of the things that Deputy Maçon referred to, if it is considered that there needs to be other change, there are some Members that are uncomfortable - not many; I do not have a problem with it - with having to get permission, if you like, or clearance, with their questions through the Bailiff or their propositions

through the Bailiff. I have found the Bailiff and the Deputy Bailiff to be absolutely impartial and their advice to be sound when they have given it. But if people are unhappy about that, then that is tweaking that one can do. That is about developing and changing the role. But do we really want to throw out 800 years of history for the sake of perception? Now, a point was made earlier about the C.P.A. Well I attended the Commonwealth Parliamentary Association conferences on 2 occasions in a slightly different role: one in Jersey at the Pomme d'Or Hotel and one in Toronto in my role as lay magistrate, if you like, or as a member of the Youth Court Panel. Over dinner with some of the Justices there were discussions about separation of roles but nobody seemed to be too uptight about it. The one thing that I found very strange - and no one has mentioned - is that same organisation, I was sat with people that still sentenced people to stoning who still carried that out and nobody seems to be too upset about that in terms of the Commonwealth Parliamentary Association. So there are things that are not right. I do not think we have very much wrong here and I have seen no evidence to convince me whatsoever to change this today.

#### **5.1.34 Deputy M.R. Higgins:**

Although this in-house debate may be useful to go over some of the arguments whether the Bailiff, Deputy Bailiff or Law Officers should be able to sit or preside in this House, I do not think it is going to change the minds of States Members who I believe have, by and large, fixed views on the issue. They either support the *status quo* or want to see a separation of powers between the Legislature and the Judiciary. Now I personally fall in the latter camp. I happen to believe in the separation of the powers. I do not believe that judges should preside over this Assembly or that the Law Officers should necessarily sit in this House. Now this view is not based on personality, it is not that I dislike the present incumbents because I do like them. **[Interruption]** I do not dislike them; I do like them. I have a great deal of respect and time for the Bailiff and the Attorney General, for example. But I cannot say that I have always had the same respect for all previous Bailiffs, Deputy Bailiffs, Attorney Generals or Solicitor Generals. Now I have no intention of going through all the arguments as to why I have arrived at my position on this matter but I do want to make one comment and one observation. I disagree with Lord Carswell on one point and that relates to who should be the Speaker of this House and the development of the role as Speaker. I personally would not like to see a Member appointed from within this House, nor do I want to see the Speaker drawn from previous Members of this House. I believe that we have been well-served by the Greffier of the States and the Deputy Greffier of the States when they chair the Assembly and giving independent and non-political advice to States Members in their other capacities. I do not think there is a Member of this House who does not have respect for them and their office. I personally believe that there should be a progression from Greffier of the States to President of the States. Now, it has been said that you must have a lawyer in this role. Now I disagree. Tell me who has more knowledge of Standing Orders and the workings of other parliamentary democracies than our Greffiers? Who better to liaise with other parliamentarians? So, after ingratiating myself with the Greffier and his staff, I shall sit down but I just wanted to make the point.

#### **5.1.35 Connétable S.A. Yates of St. Martin:**

I stand up for consultation purposes only. I am not going to talk about tradition or history. I want to talk about the way this House conducts itself, the way this House has conducted itself in past years, the way it does it now and the way it will do it in future. I believe that this House needs stability and respect. Do I think that we would achieve extra stability with an elected Speaker or an appointed Speaker? No, I do not think we would get extra stability. Do I think we would have extra respect with an elected Speaker or an appointed Speaker? I think not. I think it would be a poisoned chalice and I am definitely stating my feeling for the *status quo*. I am quite happy with the current President's impartiality and neutrality in his 3 roles and I would think he is the best man for the job. Thank you.

#### **5.1.36 Deputy R.G. Le Hérisier:**

I suspect Deputy Higgins in another context may rue the day when he talks about separation because, as he knows, there is an interesting debate to be had, but I essentially agree with his views. As I said, they may come back to bite in another context. All I would say, as ever divided, I have put forward the view that there should be a separation of powers. It is not an issue that exercises the public tremendously at the moment. There is, as one Speaker said, an over-crowdedness, it could be argued, at the top, although I am told that our 3 chiefs in their different contexts are very busy people. But there is no doubt other states generally have, as we heard in the case of Australia, or of the President in the Republic of Ireland, for example, they have a person who is symbolically the head of state and another person who is the Executive head of state and they share out the roles depending on time and the political nature of the roles; the kind of events that have to occur. I would go for this. I have no problem with what the Constable of St. Lawrence said that this matter should be subject to referendum. We have agreed that with the Electoral Commission. I think we realise that perhaps we should have gone much faster with that move in order to give credibility and legitimacy to our decisions. But as far as I am concerned I do not want to end up in a Sark situation where you have this unbelievably bizarre situation where 2 exceedingly powerful businessmen who had no apparent interest in democracy, are driving the whole situation because of the kind of resources they have and because of this bizarre notion that one of their daughters could not inherit under the Sark system. It then led to this credible explosion of activity. I do not wish us to land into that situation. It would be so nice to think - as ever fence-sitting - we could come to a compromise where the respect given to the Bailiff's office could be retained but that yet we could follow proper constitutional advice. I have to give full marks to the Bailiff because I know, for example, he is patron of an enormous number of bodies and is virtually out every evening at social events and charity events and so forth, and it puts an enormous burden on him, which I doubt very few of us would want to carry, and he does it with considerable aplomb. But in a way that is not the issue. I think there should be the separation. I do not think there is an appetite out there for it and I think it should be done, if it is going to be done, through a referendum.

[16:45]

**5.1.37 Deputy R.C. Duhamel:**

I think it was in 2006 or thereabouts when the U.K. Government and the Secretary of State for Foreign and Commonwealth Affairs - and I think it was Jack Straw at the time - was writing to Crown Peculiars and independent territories on behalf of the British Government to get their Houses in order that coincided with a visit I made with other Members to Gibraltar. Coincidentally, at that time the Gibraltar Government had decided to go for a publication of their own Bill of Rights and to address all the questions that we are indeed beginning to address now. In fact, my submission to the Carswell Report, albeit it was late and it was fairly short, was to the effect that this important piece of information, I felt, by way of example had been ignored perhaps by the review body and that some of the outcomes of the Gibraltar Government should perhaps be looked at alongside the work that was being undertaken for the Jersey authorities to see whether or not any important lessons could be applied in parallel so that we were not re-inventing the wheel, so to speak, bearing in mind that all jurisdictions that fell under Crown Peculiars, independent territories or dependent territories were being asked to do similar things. Now I was told by the Carswell Panel that indeed the documentation had been looked at, albeit briefly, by the Carswell Report, and I think there is a minute to that effect. I must admit I am a little bit surprised that perhaps the outcomes of those reports have not been played upon a little bit more deeply in the results from Lord Carswell and others. Because indeed what Gibraltar has managed to do is to address the issue of an elected Member of their House to be Speaker and they have managed to separate the Judiciary and the Legislature. They have managed to do that within the historical context that not only defies them but to which they are all signed-up to say it is absolutely vital to their sense of being and how they perceive themselves in the modern world. So, in effect, what I am saying is that perhaps States Members and, if indeed they have not done it - I will perhaps send round some of the documentation this evening by way of internet - I think Members would benefit

from reading some of the documents that I have had privy of. Maybe in doing so they would perhaps reach a slightly different conclusion to the conclusion that is being put forward in this House this afternoon in that, from a historical point of perspective, nothing should change and we should continue to go forward with the anomalies that are causing the overseeing jurisdiction's problems. There is no doubt in my mind that the Judiciary and the Legislature will be separated at some point in the future and I think I take it on the chin, along with some of the comments made by the Members, that it would be better for this House, this Government and the States of Jersey to begin to do these things of their own volition rather than to find ourselves further down the road having to do them, or being told to do them, by the British Government or others.

### **5.1.38 Deputy P.V.F. Le Claire:**

The Constable of St. Lawrence has highlighted a query which no doubt will be clarified. In the proposition that is before us today where we are asked by P.P.C. and the Council of Ministers to focus on mainly a conflict in regards to a civic role, we have on page 5, Appendix 1, the recommendations of the Carswell Report which did indeed go on to talk about the issues of whether or not Scrutiny should have access to legal advice and the Attorney General, *et cetera*, and other matters, and we have the initial views of P.P.C. and the Council of Ministers. It expresses in those views that this recommendation is accepted on a number of issues. Well I would hope that that recommendation that is accepted by P.P.C. and the Council of Ministers also makes part of this proposition that is coming back because we may not collectively accept some of those recommendations but we certainly might have a view of them. In my view, the position is quite clear. The role of the Bailiff is a relic of the past. Historically, the Bailiff and the Jurats who formed the Royal Court were a Legislature as well as a Judicial body. In 1771 the Royal Court was deprived of its ancient right to legislate and became merely a court of justice. The power to enact laws was solely entrusted to the States which consisted of the Rectors, the Constables and the Jurats. This was not ideal because the Jurats were also part of the Royal Court. Although there was pressure to remove the Rectors and the Jurats from the States as early as 1773, it did not happen until 1948. That is where we are at: history repeats itself. If you look at Roman history, Rome was at war with itself for hundreds of years until it developed a written constitution, and then it got its act together and started taking over the rest of the world. We need to be cognisant, not only of the splitting of the roles, but also the cost of the function. In a modern, progressive jurisdiction we need to be cognisant of the cost of keeping the Bailiff and the Deputy Bailiff in the Chair, highly experienced; highly trained people. In my submission to Carswell I pointed out that had they have been there in the case where the U.K. lawyer was brought in, there would not have been so many recommendations found against that U.K. Q.C. because of the comments he made in respect to the Michel case. The case is back on the front page of the *J.E.P. (Jersey Evening Post)* today and that was because there was not a Jersey judge in there at the time. I made a submission to the Carswell Review and it was not published immediately. In fact, I had difficulty getting it published, even though it said that it would publish all matters, because I criticised the former Bailiff. I criticised him, not because of the activity inside the Chambers elucidated to by Senator Routier and others, I criticised him because of his activity as deciding upon the appropriateness or otherwise of propositions that were decided upon him in his former role outside of this Chamber before they were approved to the Assembly. I was asked to change it and we finally got it through the publication side of things and managed to get it published, although there was significant resistance in doing so, because I highlighted the fact that the Bailiff did not want me criticising the courts over a serious child case incident which was later vindicated by the Serious Case Review because it criticised the court. The findings of the court process itself which I was using in my arguments for the proposition that I brought criticised the courts, and the Bailiff did not want me criticising the courts. It was put that I should not be doing that or qualify that. In order to expedite the matter because there were severely damaged children - Members may recall the proposition - I decided just to progress without the reference to the court which found them in a damning sense to be at fault. When we talk about whether or not anybody can stand up and say whether or not this Bailiff

or a previous Bailiff was good or bad, we have to bear in mind that people are people, they have personalities, they have issues, and they have conflicts of interest in relation to the roles that they operate under. That is no personal criticism of them as individuals; that is just identifying weaknesses in the system. I will give a good example as to why we should take cognisance of the former Bailiff's experience because in 1998, in my submission, he attended a joint colloquium on parliamentary supremacy in judicial independence. He chaired a working group on the parliamentary law-making process. One of the recommendations of his working group was that generally there should be no contact in the law-making process or otherwise between the Executive of parliamentarians with the Judiciary unless for the approval of the head of the jurisdiction. As head of the jurisdiction to ensure Jersey's position as a democratic state with an open and transparent Judiciary and Executive protecting the rights of its citizens, should not the Bailiff be ensuring the very best practice? I went on to talk about the role of the Attorney General and the Solicitor General and the issues in relation to conflicts and whether or not people can bring prosecutions and such. Somebody said that there was no evidence. Deputy Green said: "There is no evidence; it is just a report." Well there is reams of evidence within the written submissions to Carswell from people of learned profession and experience that have commented upon to Carswell their views in relation to the matter, many of which are lawyers practising in Jersey that have an opinion. Now they may not be our lawyer but they are practising legal professionals who have a legal opinion. So to suggest the report just came up with some conclusions to seal off the knots and disappear, I think, is totally wrong. My submission is on the website, along with everybody else's, and they can see in full what was being said. I do not need to read it out. It is still there; I checked the other day. There certainly does need to be in the future a proposition that looks at the code of conduct of members of the Chair, the Presidents of the States. They have a code of conduct for members of the Judiciary. I know there is an issue about that at the moment because they are not meant to be commenting politically about matters and I know that there is a complaint in. Somebody spoke about accountability. Members will recall, I recently asked the Chief Minister in this Assembly whether he would join with me in condemning the attacks made by Colonel Gaddafi upon the civilians in Libya and whether or not anybody in the J.F.S.C. (Jersey Financial Services Commission) was undertaking an evaluation as to whether or not funds were in Jersey. I was half allowed the question because the Deputy Bailiff pointed out, quite rightly under these circumstances, foreign policy is a matter for the U.K. Government expressed through them on our behalf by the Lieutenant Governor. The Chief Minister was able to point out that certain funds were being investigated in relation to money extracted from Libya and there was an announcement a couple of days after that that asked the Jersey Financial Services Commission and all of the entities in Jersey to look at a list of people on their list. The second thing I said was, during the compost debate, I wrote a note and I did not want to raise it. The Constable of St. Lawrence, a very wise lady, advised I should not just ask whether or not we are going to see if anybody is going to mention anything about Japan, I should write a little note. I must thank the Deputy Bailiff because he did credit me for having been the one that was concerned. I am sure everybody else was as well. But the situation there was that here we have the President, bar one, the Deputy Bailiff of the Assembly, being in a position where I say to him in a note: "Sir, are you going to mention something today? This is the second day that we have been sitting, and we are into green waste now, are you going to mention anything today about Tokyo and Japan and all of the people and the tidal wave or is the Bailiff coming out later to do it? Or is the Chief Minister doing it?" Members will recall that the Deputy Bailiff said: "We have got to get together and discuss this issue because it is a bit of a difficult one at the moment. We have got to sit down with P.P.C. and the Chief Minister and the Bailiff and decide, because this is outside of the usual boundary of international dialogue." Then the Deputy Bailiff did extend his sympathy to the people of Japan, as did the Bailiff, subsequently, in written communication. But then I spoke to the Chief Minister in the Royal Square on the way to lunch and said: "Well, what is happening then? Are you going to get on with this now? Are you going to go and meet with the P.P.C. and make sure when such ..." and the Chief Minister said: "Oh, normally it has been confined historically to Commonwealth



countries.” But that is so narrow-minded. Here we have a catastrophe of huge proportions on a global sphere with thousands of people being affected and we are not even able to stand up in our own Assembly and look toward somebody to speak on our behalf and on our electors’ behalf. It is absolutely juvenile. The future in part is identified by the Crown Officers themselves. This is in completion. Thank you for letting me speak 3 times; I do appreciate that. It is probably why they did away with the committee system. This is what I say: “The Island is moving to adopt an international identity and with that will come the necessity to safeguard the rights and privileges of the citizens of Jersey through the office of an elected and accountable office holder. There is now a need for an elected head of the Island, either as a maturing Chief Minister’s role or that of a President within a republic.” I was not allowed to bring a proposition on there being a republic and a directly-elected President because the former Bailiff disallowed that proposition. Even though he is unelected, I could not bring that proposition, so there we are. Anyway, continuing: “For us to have equal standing among nations, these privileges cannot be safeguarded by an appointed office holder. This is fundamental in any future rights to self-determination. The historical officers appointed by the Crown can no longer guarantee that the rights and privileges Islanders have enjoyed can be safeguarded. This is highlighted on bullet point 76 of the *Second Interim Report of the Constitution Review Group’s* report presented to the States of Jersey on 27th June 2008 by the Council of Ministers, the membership of which was chaired by the then Bailiff, Sir Philip Bailhache and the then Her Majesty’s Attorney General, William Bailhache.”

[17:00]

Who concluded: “In those circumstances it would arguably be of greater importance to avoid any perceptions, however misconceived, that the independence of the Judiciary might be compromised by making provision for an elected or appointed Speaker other than the Bailiff.” In finale, we still have half an hour for anybody else to speak. The days of the Bailiff having a representational role and at the same time being guardian of the Island’s constitutional privilege should end, in my view. They must make way for a written constitution guaranteeing rights that an appointee who can be replaced or dismissed can no longer guarantee.

### **5.1.39 Deputy M. Tadier:**

**[Aside]** I did like that interjection from Senator Perchard about the meditation. I thought that was particularly amusing. Similarly, I would like all of States Members to relax for a moment and I am just going to take you on a very short reverie out into the Royal Square but I will not be speaking in that voice all the time. I thought it might break the monotony. **[Laughter]** I had this little daydream at lunchtime when, instead of going to the Scrutiny meeting that I went to, I was coming back, walking around the Royal Square and I stepped back in time and I saw the Constable of St. Brelade there riding his horse through the Square. He was just coming into work, coming back from his lunch break. He tied his horse up, gave it a little bit of hay, and then he was on his way to the States Chamber. I saw another States Member who had been to the post office to send a telegram because he had a very urgent communication which he needed to relay across the Atlantic. Then another States Member, yet again, he was coming back from the doctor’s because he had been suffering from gout and he had just undergone a course of leeches. Tradition is so important in Jersey and we must always hold on to tradition because these things are very important. Of course, the reality of it was quite different. I am sure that the Constable of St. Brelade did get here today with some form of horsepower but I am sure it was not of the equine variety. It is probably more likely that the person visiting the hospital was going to receive some kind of laser treatment or high-tech medication, and the other States Member was simply sending a message on his BlackBerry. That is the way things move on. It is not always nice. Sometimes things are quaint; sometimes we all like to sit down with our quill or with our fountain pen and write a nice letter and send that off. But in reality we use emails because things have moved on and they are more practical, they are more pragmatic and that is the way things work. So the question we have been asking a lot of the time: “Is it traditional?” what we should be asking is: “Is it good? Is it right?” I

think once we start to move into these kinds of questions, rather than saying: “We have 800 years of history and tradition ...” what I would say to Deputy Green who was the last person to talk about history, after today we are still going to have history being made. So in 10 years’ time we will have 810 years of history. Our history does not disappear from the books. It is interesting that Hansard is recording all this. I thought that it is going to be interesting for historians and satirists alike to look back on this particular session and, again, I commend Senator Perchard. That was a piece of pure satire, his speech, and that is going to go straight up on my blog unedited because it was genius: “Jersey is a shining beacon of democracy.” What are the levels of turnouts we have for voting in Jersey? It is 45 per cent. We should be preaching that to other countries within the Commonwealth, telling them: “You could be getting levels of turnout for your elections as low as we have.” I think what the Senator meant is that I got elected, so we must have a very good system of democracy that they even elected me. **[Laughter] [Interruption]** I have a rabbit at home. He is a very nice rabbit; he has a lovely fur coat. I recently have been doing my garden up. We have to contend for space because even though he is only about 9 or 10 months old he thinks he rules the roost and to all intents and purposes he does. He does not pay any rent there, he has the free range of the lounge, the living room and the garden and he places himself strategically. But when I had to do the gardening because I was digging my vegetable patch, he did not like the change at all. He was quite moody; you could tell. Even a rabbit has a personality at 10 months old. So even rabbits do not like change but he will get over it because when I have my vegetable patch which is fenced-off with chicken wire, I will be growing some vegetables which he will be able to benefit from. In the long term I think he will get used to that change, although change was not initially easy for him to undergo. I feel like I am rabbiting here. To answer Deputy Green’s point, and other Members’ points, we are being told that change is not necessary; it is just aesthetic. Well that is clearly not true. Senator Perchard, again, was quite right, as other Members were - particularly the Constable of St. Lawrence - to draw attention to the fact that the Carswell Review and the report do touch on the role of the Attorney General. There are massive issues to do with the Attorney General’s role who is both giving advice - political advice as well as legal advice - to the Council of Ministers and giving advice to Scrutiny. The Attorney General then becomes the Deputy Bailiff under the current promotional system. We have somebody in the Chair who has been, for all intents and purposes, political. There is also, of course, the arguments of human rights. It is not simply the case that we can say because not all legal advice and legal opinions say that there is a human rights issue there, it will not ever be the case that it gets challenged. We have had the legal advice from the Attorney General saying that the U.K. get legal challenges all the time on human rights grounds. Of course they do; they are a jurisdiction with a population of 60 million plus. The difference is when someone takes a test case to Europe on human rights grounds on the basis that they have not been able to receive a fair trial, it will make headlines. It will give ammunition to the critics of Jersey for whatever reason who like to say Jersey is just a tax haven; Jersey is doing this and doing that: “Look, it is a tin-pot regime again. Look, the President of their States is their Chief Justice. What is all that about? It does not look right.” So appearances and reality meet in that instance and I think the business community... I think the previous Chief Minister knows exactly what I am talking about here, because it is something that does not look right in a modern jurisdiction. The Chief Minister was quite right to talk about the House of Cards, but not in the particular example that he gave. Quite clearly, it is simple, I said it in the initial debate when we were deciding whether or not to have Carswell that we know what the outcome is going to be. You could get a 15 year-old G.C.S.E. (General Certificate of Secondary Education) or - let us be a bit more respectful - maybe a 17 year-old A-level political studies’ student to write the review for you on the whole area of the Crown Officers. They would come back with the same results in largely the same terms. It is not right; it should not be done and we could have had a local person to do it. Interestingly, the xenophobic undertones are coming out again to do with Carswell. I am sure that if he had come back with a report which said: “Your system is fine, guys. You can carry on as you are” everyone would be saying: “Oh, what a great Irish guy that is. What a great guy and a great report he has done.” There were 4 Jersey people on there who made him see sense. Getting back to the

ammunition for critics. We do already have an issue, whether we like it or not. We have a former Senator who is contesting issues on the grounds that he cannot get a fair trial in Jersey. There are various reasons for that but it is partly linked to the facts of these separation of powers. Now whether that is true or not is neither here nor there. We, as the States, are giving people like the former Senator ammunition, and he is using it. If we had a more clear-cut system, then that possibility would never arise. But the House of Cards, let me get back to that point. The House of Cards is not to do with the separation of the role of the Bailiff as judge and of Speaker of the House. That is quite clearly very easy. What one does, you have a High Court judge and that is it; you have a Speaker of the House and that is it. The problem is that the House of Cards comes when people start asking questions about other parts of the system. They will say: "What other dual roles do we have in the Assembly?" We have the dual role of the Attorney General which we know about with giving legal advice to the States; giving legal advice to the Council of Ministers and to Scrutiny, but not at the same time. It is a bit of a guessing game there. We have Constables who are notionally the head of the Parish police. Some of them still have warrant cards, fascinatingly enough. Questions will be asked about that. But other questions can be asked about, for example, why is it that States Members and Advocates are the only ones who can vote for Jurats? Why do States Members have any business in appointing Jurats who are ultimately serving in the Royal Court? I am not comfortable with that. I have not had anybody phone me up about that but that does not mean it is the correct thing to do. I am very uncomfortable that the only people that can vote for Jurats or Advocates are particularly States Members. It is a very strange Electoral College. It is only something I have really thought about today during this debate. To answer Deputy Power's point, no, I have not had anybody from St. Brelade phoning me up and saying that they want the Bailiff to remain as the President of the States. I simply have not had them saying that but I cannot surmise anything from that, either. The issue of referendum is problematic because whenever the issue of the election of Chief Minister is raised, we are told traditionally that the Chief Minister has to be somebody who commands the whole respect of the House. So by extension I think even more so the Chair has to have the respect of the House. That is why I think, and I would favour quite simply, to follow a model of having an elected Speaker. It would not be universal necessarily, but I think the House should be able to choose their Speaker perhaps for a one-year term, perhaps for a 2-year, or a 4-year, or whatever. My personal preference is that it should be somebody who comes from a multi-seat constituency so that particular constituency is not left without political representation. But that whole area can be looked at during the Electoral Reform Commission; they can look at those areas. History just does not stop, as I have said. What it simply means is that we are gradually going from a feudal state to a greater level of democracy, and who knows whatever will come after that. Presumably, there was something before the first Bailiff all those 87 Bailiffs ago, society still ran itself. Why do we not find out what was going on during the Dark Ages? Perhaps Senator Perchard could tell us because he might have more of an inkling. That must be even better because that is older, so it is more traditional. Maybe we could, rather than having a States building, all go back to being Troglodytes and debating things around a camp fire because that surely must be the purist form of democracy; that is traditional because it is really old. I think we get hung up about the idea of civic head. Do we need a civic head? I do not know that we do. Perhaps one answer for that is to have a Chief Minister who is elected directly by the people. If I do support the referendum idea for putting this idea to the people for constitutional change, we must certainly in that case have a referendum on how the Chief Minister is elected and whether he could be elected directly by the people. I know I am straying here slightly **[Interruption]** but I am only straying insofar as I think that would be the solution to the civic head issue. Because we could have a Chief Minister who ultimately only has to head-up the Council of Ministers; he does not have to take charge of any particular department. So that could be the answer: you have a presidential-style Chief Minister who is the civic head, who heads-up the Council of Ministers, you have your elected Speaker of the House, and you have a High Court justice. Just one last point, I know time is going on, but this idea that the Chief Minister was saying that it would be really difficult to attract the Chief Justice to the role of a High

Court judge if it was not a Bailiff's position, must be complete nonsense. Other jurisdictions have Chief Justices and they do not also have other roles. You have a job description which says: "We want you to be the High Court judge in Jersey and these are all the roles you are expected to fulfil" and someone applies for the job on that basis. So the final point I will leave Members with is that I think we are looking at this from the wrong perspective. Certainly, the more conservative Members in the Chamber and in wider society have been blinded by the *status quo*. So rather than thinking about what could be right for Jersey, which is the better option, which is a progressive way forward, they are simply saying: "This is what we have now; it works." But if we were deciding something from scratch, it would be complete madness for somebody to say: "Right. We need a judge, we need a chief of police and we need someone in the Legislature to chair meetings."

[17:15]

Someone says: "I know. We will have a police officer who is the Chief of Police but then we will have a judge and somebody who chairs the States Chamber." We would say: "That is complete nonsense. Where on earth did you get that idea from?" That is exactly what we should be doing today. We need to think outside the box. We need to assume that we are starting from a *tabula rasa* - I think is the expression - and just make history. If we are so keen on history and tradition, let us make some new history and let us make some new traditions.

#### **The Greffier of the States (in the Chair):**

I think we have about 10 minutes left and I have 3 Members waiting to speak again. The Constable of St. Saviour.

#### **5.1.40 The Connétable of St. Saviour:**

I will not keep Members long. If I can just go back to something that was said by Deputy Higgins where he suggested that it would be eminently suitable for the Greffier to become the President of the States. While we all know from experience that you, Sir, are quite capable of doing that, I am surprised that Deputy Higgins brought this up because you did explain to us in some detail in P.P.C. that there was a clear conflict in the 2 roles and that the Greffier could not preside other than temporarily. So therefore if the Greffier was "moved up", to use that expression, to become the President of the States, we would automatically need a new Greffier. It then gets worse because the one thing that nobody has mentioned today is the fact that in submissions it is quite clear that not only do we need a President of the States, if we do not use the existing Bailiff, we would also need a Deputy. Therefore, if the Greffier moved up, we would also need a new Assistant Greffier. I am sure the Greffier and the Assistant Greffier would be quite capable of presiding in the Chamber but we then would require instantly a new Greffier and a Deputy Greffier. I am sure everyone can move up but it seems an incredible shuffle and I do not think this is a very good system.

#### **5.1.41 Deputy T.M. Pitman:**

I just wonder if our ratings will have shot through the roof for future if anyone tuned in when Deputy Tadier was telling us about his rabbit because it just brought to mind a book - a very interesting book - on all the assassination attempts on Fidel Castro by the F.B.I. (Federal Bureau of Investigation). **[Laughter]** It was not *Watership Down*. But one of the assassination attempts was to pump drugs into a studio while he was making a speech and have him completely freak out. I did wonder if my good colleague was going to completely lose the plot telling us about his rabbit. But rabbits have rights too. I am all for rabbits and they are vegetarian so ... I am losing the plot now as well. But I think it is time that we realise that we should wind this up because the BBC correspondent is either dancing up there or doing aerobics. I do not think she is listening to us because ...

#### **The Greffier of the States (in the Chair):**

Well, let us make your points, Deputy. We have had rabbits, we have had BBC, let us have your points. **[Laughter]**

### **Deputy T.M. Pitman:**

My point is that I think the only way this can be put to bed is with a proposition and then it will be voted on, then I think it will be rejected and I think it will come back. The one point I want to make is we have seen this ridiculous situation in recent weeks with the Senator's scenario when talking about running off to the Privy Council. Well I think if we do not make this move, that is what will happen, and it just will not go to bed, rightly or wrongly. That is where I want to leave it, other than to say, we have had questions about whether any Bailiffs have been political. Well, I am sorry, but the previous Bailiff was most definitely political. The 1996 incident with former Senator Syvret was a great example of this. Issues raised such as the speech he made on Lichtenstein absolutely was political and should not have been made. Blocking questions on how a Chief Minister might be elected. Absolutely political. So let us not kid ourselves just because the present Bailiff may be doing a very good job, that Bailiffs are never political because, I am sorry, they are. That is something which I think has got to be borne in mind when we are talking about whether we stick with this just on traditional value. I am with Deputy Le Claire, Deputy Higgins and others; I do think it has to change. But I do acknowledge that there has got to be a considered process about ironing out the little anomalies and that. That is what I think: we now have to put it to P.P.C. whether you trust us to do it or not and get on with it and come back to the House because it is going to come back. It is going to come back and come back. It is one of those issues which will not go away as people become more and more aware of human rights. There is about 6 minutes, so I think if someone can come up with a better solution, but that is what I think we need to do. We are not going to vote on this today, so let us just move on.

#### **5.1.42 The Deputy of St. Mary:**

I just want to say one little thing about the difference between change and staying where you are. The first is to quote from Carswell just to show how extraordinary our position is... from page 31: "We are, however, unaware of any other democratic jurisdiction outside the Channel Islands, no matter how small, in which a judge presides in the Legislature." So, if we are to continue with our present system, we have to justify being unique in the whole world, apart from Guernsey. **[Laughter]** So I will just leave that thought in Members' minds and proceed to a little parable. Once upon a time we did not publish or know about the remuneration of our senior officers. As the C.A.G. put in his recent report - published yesterday, I think - he talks about the pros and cons of providing the information, which he does in his report: "While providing this information may be in the public interest, against this must be set the right of individuals to an appropriate degree of privacy for their private circumstances." So that is the conflict: do you publish; do you not publish? There is the public interest and there is the interest of privacy for the individuals. Then he goes on in his paragraph 12: "As it happens, the question of the balance between the need for appropriate public disclosure and the right of individuals to appropriate privacy was considered at some length last year. As a result of that consideration, it was agreed that more information than previously would be included in the 2010 and subsequent years' accounts. This change was agreed in order to reflect best practice in the public sector in England and to reflect best practice in the private sector generally." In other words, we changed because the world had moved on. Because England, the private sector, everywhere was saying disclosure is the way to go and so we will go in that direction. I just leave those thoughts in Members' minds.

#### **The Greffier of the States (in the Chair):**

Then, finally, Deputy Shona Pitman.

#### **5.1.43 Deputy S. Pitman:**

I would just like to respond to Senator Perchard, what he said regarding he would like anyone to stand up and say that the former Bailiff did not demonstrate a conflict. A few years ago I remember I asked a question, as Deputy Pitman has just said, regarding the former Bailiff giving a speech on the finance industry in favour of it at Lichtenstein. I asked the Chief Minister should the

Bailiff be allowed to do this and he said: "Yes." This was a planned question; it was an oral question, and the Bailiff presided over that question. Now I understand that the former Bailiff gave more speeches on the finance industry along with the former Attorney General. Members may say this is only one question in all the years of his public service and I am being pedantic. But then the question has to be asked: why did the former Chief Minister say "yes"? The Bailiff can preside over questions that he knows are coming because, clearly, we would not agree with that now. So there is a possibility that the Bailiff could have been friends with that Chief Minister and, if so, there could have been a possibility, and there is still now - and I would not like to tar the current Bailiff - that that Bailiff could have presided over a court case if the Chief Minister had a court case going on. So, it can clearly happen. It could have happened then; it can happen now. Thank you.

**The Greffier of the States (in the Chair):**

Although the Bailiff is not here to defend himself, I am sure he would make it absolutely clear that if any Member of the States were involved in a court case, both the Bailiff and Deputy Bailiff have made it very clear they would excuse themselves and a Commissioner would sit then.

**Deputy S. Pitman:**

Yes, but there are Jurats which have connections.

**The Greffier of the States (in the Chair):**

Chairman, do you wish to make any concluding remarks before we close the ...?

**5.1.44 The Connétable of St. Mary:**

I would just like to thank all Members who have contributed. There are some Members who have given me little glimmers of extra information perhaps of what they see. There are some Members who have just expanded their own position, which is valid, but obviously does not advance what I was looking for, but is still very valid. From this, I am sure there will be discussions with the Chief Minister to see how best to take this forward and just to reassure Members, of course - I think it was the Constable of St. Lawrence wanted to know - that any of the recommendations of Carswell, even if we have said that they meet P.P.C.'s initial approval, everything will be brought to the States Assembly. That is for the States Assembly to make the decision. On that, I would like just again to thank everybody, Sir, and thank you for presiding so ably.

**ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS**

**The Greffier of the States (in the Chair):**

Very well, that concludes the 'in Committee' session. We now return to normal session to conclude finally the arrangement of public business for future meetings. I call, yet again, on the Chairman.

**6. The Connétable of St. Mary (Chairman, Privileges and Procedures Committee):**

Very few changes this time from the Consolidated Order Paper. The ones I have are as follows: on 5th April we take off P.46, the last listed for that one, which was incorrectly listed for that date and move it to 3rd May sitting. We also have P.50 - Planning Applications Panel: appointment of Members - lodged in the name of the Minister for Planning and Environment, that is for debate on 3rd May. Moving down to 7th June we add in P.32 - States of Jersey Development Company: appointment of Chairman and Non-Executive Members - which we know has been referred to Scrutiny. I believe those are all the changes that I have.

**The Greffier of the States (in the Chair):**

Very well, are there any issues to raise? Senator Routier.

**6.1 Senator P.F. Routier:**

I have recently met with the Scrutiny Sub-Panel which is scrutinising the Control of Housing and Work Law and the Register of Names and Addresses Law which is down for 7th June, and they have asked for some more time to scrutinise the legislation. I agreed with the chairman that I would seek to delay that debate until 5th July to allow them some more time for their scrutiny.

## **6.2 Senator A.J.H. Maclean:**

Just one point. I am intending at the next sitting to make a statement in relation to P.150 the J.F.S.C. and fines. I have had discussions with Senator Breckon who has presented P.150 on the basis of the statement that I intend to make, which I have shared the contents with him. I believe he is intending to withdraw that - perhaps he might like to confirm it - but I just wanted Members to be aware that on the basis of the statement it is likely that P.150 will be withdrawn.

### **The Greffier of the States (in the Chair):**

I will hear from Senator Breckon on that.

## **6.3 Senator A. Breckon:**

It will have been lodged 6 months on 19th April so the last day it could be debated is 5th April and the Minister said he will make the statement. When the Minister makes his statement then it is most likely that that will be withdrawn. When the statement is made. **[Laughter]**

### **The Greffier of the States (in the Chair):**

Are there any further matters to raise? Deputy Le Claire.

## **6.4 Deputy P.V.F. Le Claire:**

I do not know if it has been decided or not, but I sent an email yesterday to the Minister for Planning and Environment, having discussed with the town Constable, the Constable of St. Helier - my Constable - the need really to send the Island Plan in its final form for a Parish Assembly and I asked if he would consider delaying it. So I would like to ask, to give us a little bit more time for us to go back to the Parishes on the final draft, that we delay the Island Plan debate until 5th July from 21st June.

### **The Greffier of the States (in the Chair):**

Are one of the Assistant Ministers able to say if that would be acceptable or not?

## **6.5 The Deputy of St. Peter:**

I do not think that would be acceptable. The Island Plan has been in fruition for an awful long time and there has been lots of time available for consultation as it has been developed. It is the final Island Plan and it needs to be put in place as soon as possible.

## **6.6 Deputy P.V.F. Le Claire:**

Can I make a formal proposal, and I will do it very briefly, just to say the 3 issues are these: one it is a final draft, so it is changed. It needs to be considered in the round; it is a large document. It has been a long, long, long time coming. That is the first point. The second point is it is lodged au Greffe so the Constables can go back - and they should go back in my view on such an important matter - and let their parishioners have sight of this.

[17:30]

The third matter is, as a member of the Planning Applications Panel, I do not see anything coming towards the Planning and Applications Panel that even remotely resembles something of this nature and size in this kind of timeframe. It does not give us time to make amendments, in my view, given the breaks that are involved and just a short delay of this nature would enable us to do so. If we are going to rush this through, then how can you justify the delays that people see at the moment for having 2-bedroom extensions? So I make the proposition that we do defer it until 5th July.

**The Greffier of the States (in the Chair):**

Is that seconded? [Seconded]

**6.7 Senator J.L. Perchard:**

Can I just say something on this? We have a sitting next week and an opportunity to make this decision. Could I suggest before next week that the Minister for Planning and Environment produces a document that highlights the difference between the new document that we received yesterday and the document that has been in our possession for several months? We can make an informed decision as to whether to delay the debate once we realise the changes made to the document that was lodged, I think, just yesterday. [Approbation]

**The Connétable of St. Helier:**

Could I just reassure the Deputy that there is still time for any Parish Constable to take any of the details in the plan to a Parish Assembly before the date that we are currently looking at lodging amendments by?

**The Greffier of the States (in the Chair):**

If I could say from the Chair, I think the most important thing is that a decision is taken no later than the Easter recess because otherwise the amendment deadline will come during that recess. Do you wish to pursue it today, Deputy, or are you happy to pursue it next week?

**Deputy P.V.F. Le Claire:**

As long as we are not cementing in stone this date. I would like to thank the Constable of St. Helier for his support in my move to get the amendments of the ... That is very nice of him. I should ask him to nominate me for something next time.

**The Greffier of the States (in the Chair):**

If you are happy to proceed in that way, then it must be addressed at the next meeting. Are there any other matters to raise ...?

**The Connétable of St. Peter:**

I would endorse the views of Senator Perchard. I will talk to the Minister for Planning and Environment when he comes back. It may well be possible to highlight the differences between what the original Plan was and the new Plan. All I can say is the changes that have been made have been as a result of consultation.

**6.8 Senator A. Breckon:**

I wonder if I may mention this. I am looking at the Deputy of St. John, because the matter that is down for 5th April is Speed limits and tomorrow the Scrutiny report for which he is chairman of the panel will be lodged. I would ask if perhaps Members could read the report recommendations and key findings and maybe consider whether that item is taken on that.

**6.9 The Deputy of St. John:**

As the Speaker rightly says, it has been lodged for tomorrow and it will be down obviously to the Minister for Transport and Technical Services to decide whether or not, because it is the Minister's proposition; it is not the Scrutiny panel's proposition.

**The Greffier of the States (in the Chair):**

Very well, and I would urge Members to collect that report which I understand is in pigeon-holes outside the Chamber to save postage.

**The Deputy of St. Mary:**



Could I just ask then whether technically that means it has been lodged today? Because someone behind me said: “Oh, that means it is lodged today” and my understanding was that it was lodged tomorrow. The report. So could you please clarify that issue?

**The Greffier of the States (in the Chair):**

It is a slight technicality, Deputy, but I think technically it could be taken as today because it has been distributed here in the Chamber, although I notice the date on the front cover is tomorrow. I do not think it really matters too much. It is not an issue of lodging deadlines, *et cetera*.

**The Deputy of St. John:**

Yes, because Members who are not present will not have received it and I think tomorrow is the ... it is technical and we do not want to be falling foul of the new regulations.

**The Greffier of the States (in the Chair):**

Very well.

**The Connétable of St. Brelade:**

If I may, just to assist Members, it is not my intention to withdraw the proposition at all.

**The Greffier of the States (in the Chair):**

Very well. If there are no other matters to raise, that concludes the meeting. The Assembly will reconvene next week, 5th April.

**ADJOURNMENT**

[17:34]