

Deputy D.J.A. Wimberley of St. Mary of the Attorney General regarding the influence of the prosecution process by members

Following cases of politicians attempting to influence the prosecution process, could Her Majesty's Attorney General explain why it is considered inappropriate for Members to attempt to influence the decision whether or not to prosecute given that the normal process of politics is to try to influence events, policies and outcomes.

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

I thank the Deputy for deferring this question so that I could answer it. I will start by quoting from the leading text on the subject, the book *The Law Officers of the Crown* by J. Edwards which itself quotes the following statement by the then Prime Minister, Harold Macmillan, made to the House of Commons in 1959. He said: "It is an established principle of government in this country and a tradition long supported by all political parties that the decision as to whether any citizen should be prosecuted should be a matter for the prosecution authorities to decide on the merits of the case without political or other pressure. It will be a most dangerous deviation from this sound principle if a prosecution were to be instituted or abandoned as a result of political pressure or popular clamour." The decision whether or not to prosecute or continue a prosecution is a matter for the Attorney General or those acting on his authority and the Attorney General alone. It is not unlawful for any person, including a politician, to bring to the Attorney General's attention any material relevant to the prosecution decision but it may be inappropriate to take steps which have an impact on the prosecution, especially where there has been a contact with a defendant directly by a politician with political responsibility for the law which provides the basis for the prosecution or which goes beyond a statement to the Attorney General of factors which the politician thinks the Attorney ought to take into account in exercising the discretion, he alone has, as to whether there is a prosecution. Of course, any attempt to influence or interfere with my decision for political or personal ends would, obviously, be wrong.

The Deputy of St. Mary:

I thank the Attorney General for that clarification. That made matters a lot clearer and the Attorney General made a distinction between it being lawful for a citizen or any of us, indeed, to bring material that is relevant to a prosecution which the A.G. (Attorney General) might have missed or whatever to the A.G.'s attention. That seems to be the position but if we are to try and influence the decision directly then that is wrong. I hope that is more ... and so my supplementary question would be that in this Chamber we often debate questions surrounding prosecutions, for instance the Haut de la Garenne affair and I just wanted to be clear where that is legitimate and, obviously, what is in my mind with this question, the whole questioning, is Senator Le Main's approach. What was wrong with that? Because it seems to me that if I knew that there was some daft thing that the A.G. seemed to be doing, it would be right for me to say: "Look, this does not seem to make sense." So I just want a sort of re-statement, a clarification, of where the boundary lies because it is not quite clear to me.

The Attorney General:

There is no bright line boundary where I can say to the Deputy: "On one side there is an improper interference, on the other side there is not", in terms of a simple definition. It will all entirely depend upon the facts of the individual situation. Any

observations made in the Assembly about general prosecution matters, it seems to me, are perfectly all right and I take them into account or I ignore them as I see fit in making any individual prosecution decision. Any statement in the Assembly which seeks to put pressure or persuade me to exercise an individual decision in one direction or another would, in my view, have quite firmly crossed the line and would be wrong. In terms of the position of the former Minister for Housing, I do not wish to be drawn into the specifics of that case. It seems to me that factors that can bear upon whether or not any kind of intervention is proper or not can relate to the relationship an individual politician has to the laws that are being dealt with in the prosecution, the connection between an individual politician to the person who may be prosecuted or may not be prosecuted depending upon my decision and various other factors. In identifying those general factors, I make no specific reference to the situation involving the former Minister for Housing.

Senator B.I. Le Marquand:

I wanted to ask a question of the Attorney General as to whether he thinks that Members of this House could benefit by some training or some guidance notes, particularly new Members who have not had experience in this kind of area, and whether he might consider producing some guidance notes for the assistance, particularly, of new Members.

The Attorney General:

I am most grateful to the Senator for that suggestion which I am very happy to take on board. It seems to me that from time to time these kind of questions do come about and people do touch on these issues and questions in the Assembly, and the fact that there may be some form of generalised guidance, but I would emphasise it would not be capable of drawing a bright line, but generalised guidance might well be of assistance and I will certainly give that my attention.

Deputy P.V.F. Le Claire of St. Helier:

In that guidance, I wish to ask if Her Majesty's Attorney General could provide us with a clear understanding as to what areas *sub judice* relate to when we are talking about debates in general. We are always told that we cannot enter into discussions upon matters because they are before the courts and, in some instances, that is quite clear and it is quite obvious but there certainly have been circumstances where *sub judice* has been raised as a bit of a red herring in some debates, I would put to Her Majesty's Attorney General, and I would appreciate some clear guidance on that if it is possible, please.

The Deputy Bailiff:

Before the Attorney General replies to you, I disallow the question. The question must relate to the original subject matter of the first question and this is about prosecution decisions.