

STATES OF JERSEY



ARREST AND DETENTION OF SENATOR STUART SYVRET AND ASSOCIATED MATTERS

**Lodged au Greffe on 16th April 2009
by Deputy G.P. Southern of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to express their concern in respect of the apparent interference in the communications between elected representatives and their constituents which arises from the arrest and detention of Senator Stuart Syvret on 6th April 2009;
- (b) to further express their concern in respect of the suppressing effect of such actions upon other elected representatives, and members of the public;
- (c) to further express their concern in respect of the searching of premises, without a search warrant, and the consequent taking of communications between members of the public and their elected representatives;
- (d) to request the Minister for Home Affairs to make an urgent statement concerning the decisions, whether operational or political, taken by the States of Jersey Police and the Minister in relation to the arrest and detention of Senator Stuart Syvret;
- (e) to request the Privileges and Procedures Committee to make an urgent statement explaining the extent of the protection offered to States members, and their constituents, by parliamentary privilege.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

Emergency States Sitting

This is an urgent proposition, dealing as it does with matters of immense gravity that go to the very heart of free, functioning democracy in Jersey.

This proposition most certainly amounts to, as standing order 26 (7) says, “a matter of such urgency and importance that it would be prejudicial to Jersey to delay its debate.”

The States Assembly will, therefore, be asked at the beginning of the requisitioned meeting, to agree – as described in standing order 26(7) – to set aside the minimum lodging period in respect of this proposition.

The facts

At approximately 9.00 a.m., on Monday 6th April 2009, Senator Stuart Syvret, the senior Senator of the States Assembly, was arrested by the States of Jersey Police as he stepped from the door of his home. The arrest took place in the presence of approximately 8 police officers who were on the scene in 4 police vehicles.

Senator Syvret was told he was under arrest for alleged breaches of the Data Protection Law, and was, more specifically, later told that the alleged offences related to material published on his Internet blog.

The Senator’s home was then searched, although no search warrant was issued for the alleged offence under Schedule 9, Article 50, [Data Protection \(Jersey\) Law 2005](#).

Schedule 9 of the Law states –

“1 Interpretation

In this Part –

“occupier” of premises includes a person in charge of a vessel, vehicle, aircraft or hovercraft;

“premises” includes a vessel, vehicle, aircraft or hovercraft;

“warrant” means warrant issued under this Schedule.

2 Entry and search

(1) If the Bailiff or a Jurat is satisfied by information on oath supplied by the Commissioner that there are reasonable grounds for suspecting –

(a) that a data controller has contravened or is contravening any of the data protection principles; or

(b) that an offence under this Law has been or is being committed,

and that evidence of the contravention or of the commission of the offence is to be found on any premises specified in the information, the Bailiff or Jurat may issue a warrant to the Commissioner.

- (2) The Bailiff or a Jurat shall not issue a warrant in respect of any personal data processed for the special purposes unless a determination by the Commissioner under Article 45 with respect to those data has taken effect.
- (3) A warrant may authorize the Commissioner or any of the Commissioner's staff at any time within 7 days of the date of the warrant to enter the premises, to search them, to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize any documents or other material found there which may be such evidence as is mentioned in sub-paragraph (1).

3 Additional conditions for issue of warrant

- (1) The Bailiff or a Jurat shall not issue a warrant unless satisfied –
 - (a) that the Commissioner has given 7 days' notice in writing to the occupier of the premises in question demanding access to the premises;
 - (b) that either access was demanded at a reasonable hour and was unreasonably refused or although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Commissioner or any of the Commissioner's staff to permit the Commissioner or the member of staff to do any of the things referred to in paragraph 2(3); and
 - (c) that the occupier, has, after the refusal, been notified by the Commissioner of the application for the warrant and has had an opportunity of being heard by the Bailiff or Jurat on the question whether or not it should be issued.
- (2) Sub-paragraph (1) shall not apply if the Bailiff or Jurat is satisfied that the case is one of urgency or that compliance with that sub-paragraph would defeat the object of the entry.”

The police instead used powers under Article 29 of the [Police Procedures and Criminal Evidence \(Jersey\) Law 2003](#).

Article 29 of the Law states –

“29 Search upon arrest

- (1) A police officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the police officer has reasonable grounds for believing that the arrested person may present a danger to himself or herself or others.
- (2) Subject to paragraphs (3) to (5), a police officer shall also have power in that case –
 - (a) to search the arrested person for anything which the person might use to assist him or her to escape from lawful custody or which might be evidence relating to an offence; and

- (b) to enter and search any premises in which the person was when arrested or immediately before the person was arrested for evidence relating to the offence for which he or she has been arrested.
- (3) The power to search conferred by paragraph (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.
- (4) The powers conferred by this Article to search a person shall not be construed as authorizing a police officer to require a person to remove any of his or her clothing in public other than an outer coat, jacket, gloves or headgear, but shall authorize a search of a person's mouth.
- (5) A police officer may not search a person in the exercise of the powers conferred by paragraph (2)(a) unless the officer has reasonable grounds for believing that the person to be searched may have concealed on him or her anything for which a search is permitted under that sub-paragraph.
- (6) A police officer may not search premises in the exercise of the power conferred by paragraph (2)(b) unless the officer has reasonable grounds for believing that there is evidence on the premises for which a search is permitted under that sub-paragraph.
- (7) In so far as the power of search conferred by paragraph (2)(b) relates to premises consisting of 2 or more separate dwellings, it shall be limited to a power to search –
 - (a) any dwelling in which the arrest took place or in which the person arrested was immediately before his or her arrest; and
 - (b) any parts of the premises which the occupier of that dwelling uses in common with the occupiers of any other dwellings comprised in the premises.
- (8) A police officer searching a person in the exercise of the power conferred by paragraph (1) may seize and retain anything the officer finds, if the officer has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to any other person.
- (9) A police officer searching a person in the exercise of the powers conferred by paragraph (2)(a) may seize and retain anything the officer finds, other than items subject to legal privilege, if the officer has reasonable grounds for believing –
 - (a) that that person might use it to assist him or her to escape from lawful custody; or
 - (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.
- (10) Nothing in this Article shall be taken to affect the power conferred by Article 39 of the Terrorism (Jersey) Law 2002.”

The implications

The manner of Senator Syvret's arrest, the search of his home without a warrant, and the taking away of some of his possessions and the possessions of others residing in the premises raises serious concerns for democracy in Jersey, Jersey's external reputation, Parliamentary Privilege, the Rule of Law, and the accountability, control, and judgement of the police and judicial authorities.

For the avoidance of doubt, this proposition is not about –

1. Senator Syvret as an individual;
2. the merits or otherwise of any allegations or charges being made or brought against him by the police; or
3. the content of his blog.

The proposition, however, is about –

1. The reputation of Jersey as a democracy

It is difficult to describe the damage to Jersey's reputation – even its very appearance as a functioning democracy – if Laws are used against members of the legislature and their constituents, in ways that appear to be disproportionate and of dubious validity.

The arrest and detention of a member of the legislature, and the searching of his home – without a search warrant – can only make Jersey appear as some kind of democratically bankrupt republic like Zimbabwe.

2. Parliamentary Privilege

The rights and privileges of parliamentarians have been the subject of a long and protracted battle over the last 400 years and should not be discarded lightly.

What is of profound concern is that any members of the Jersey parliament can be arrested in a patently excessive manner – and their home be searched by a large number of police officers – merely for publishing information which they believe to be in the public interest.

Of grave concern is that some of the material seized at Senator Syvret's home not only concerned privileged communications between him and his constituents, but also similar privileged communications between another States Member and their constituents.

The information and equipment seized by the police included documents and computers owned by the Senator, as well as his Security ID fob for access to the States network, thereby giving the police access to communications between other States Members on a wide variety of issues, including the suspension of the Chief of Police and other allegations of police misconduct. In addition, computer equipment belonging to other family members not connected with the police enquiries was also removed for examination.

The police action can only be viewed as a direct threat to the people of Jersey and the democratic right of the public to communicate with their political representatives and for those representatives to fearlessly fight for their constituents.

A number of other States members now feel threatened and constrained in their work as elected representatives of the people of Jersey, as a direct consequence of the actions against the Senator.

If States members can have their communications interfered with and can be arrested and detained in a police cell for 7 hours, whilst their home is searched – without a search warrant – then Jersey is not a functioning democracy; instead members will always feel threatened by the prospect of such excessive and abusive actions against them.

The anger from all sides of the House of Commons in the United Kingdom at the arrest of Damien Green M.P., and the searching of his office, illustrates just how diligently members of a legislature guard their right to be free from persecutions and trivial harassments so they may speak and act for their constituents without fear.

If members of the States of Jersey fail to express similar concerns, the damage to our reputation will be colossal.

3. The misuse of the Police Procedures and Criminal Evidence (Jersey) Law 2003

Senator Syvret was told he was under arrest for alleged breaches of the Data Protection Law, and was, more specifically, later told that the alleged offences related to material published on his Internet blog. Information which the Senator believes is in the public interest.

If the Senator was allegedly in breach of the Data Protection (Jersey) Law 2005, which has specific provision in Article 50, Schedule 9, for the search of premises and the seizure of material, why were these provisions not used instead of Article 29 of the Police Procedures and Criminal Evidence (Jersey) Law 2003? Especially as the raid was obviously a pre-planned operation on Senator Syvret's home. Why was Senator Syvret not merely invited to attend the Police Station?

4. Double standards

Why have the police gone to such extraordinary measures in this case when there have been other well-documented breaches of the Data Protection Law by other States Members – breaches of no public interest merit – which have not merited such action?

5. Role of elected and unelected Members of the States and Honorary System

A further consideration arises which directly affects the credibility of the Assembly as presently constituted. What was the role of the Bailiff, Deputy Bailiff, Attorney General or Solicitor General or Minister for Home Affairs in this affair?

Did the Connétable of the relevant parish know anything of the action against Senator Syvret? Did the States police undertake such a dramatic action without any prior consultation or notice to the honorary police in the parish?

Were any of the Connétable's honorary officers actually involved in the action?

What role, if any, did the Connétable himself play in the planning or execution of this policing action in his parish?

Those supporting this proposition believe it to be absolutely vital to Jersey's standing as a respectable democracy that the legislature meet as a matter of great urgency in order to debate the implications of the arrest and detention of Senator Stuart Syvret.

The Assembly must debate these issues in order to restore the public's confidence in their ability to communicate freely and in confidence with their elected representatives.

The Minister for Home Affairs must be asked for an urgent statement concerning the decisions, whether operational or political, taken by the States of Jersey Police and the Minister in relation to the arrest and detention of Senator Stuart Syvret.

The Chairman of the Privileges and Procedures Committee must also be asked for an urgent statement outlining the extent of the protection offered to States members and their constituents by their parliamentary privilege.

Both democracy and the rule of law have been shaken by recent events.

The Assembly must exhibit the appropriate leadership.

Financial and manpower statement

No financial or manpower issues arise from this proposition.