

## **2.14 Senator S. Syvret of the Attorney General regarding the recent prosecution of Deputies S. Pitman and G.P. Southern of St. Helier:**

In making the case for the £12,000 fines going to Deputy Shona Pitman and Deputy Southern, the prosecuting Crown Advocate stated that: "No one is above the law." Given the quality of application of the law, would the Attorney General clarify to the Assembly why an independent candidate whose alleged offence was initially to be charged against Deputy Southern was not also prosecuted and in the Royal Court.

### **The Attorney General:**

It is not generally appropriate for the Attorney General to comment on individual prosecution decisions and I am only doing so because it has been suggested that the decision to prosecute Deputies Southern and Shona Pitman was unfair in that it singled them out from others and amounted to an attack on the Jersey Democratic Alliance or on them personally. Neither of those is the case and there is a public interest in my explaining why the decision was taken. The approach which is to be taken in deciding whether or not to prosecute, as I have said to the Assembly already, is set out in the Code on Decision to Prosecute which is published on the Law Officers' Department website. Turning to the specific question, when my office received the prosecution file relating to Deputy Shona Pitman and Deputy Southern, we were informed by the police in an accompanying report of 2 other possible infractions of Article 39A of the Public Elections (Jersey) Law 2002. One of those involved an independent candidate; the other involved a J.D.A. (Jersey Democratic Alliance) candidate. Each was a single alleged infraction. The police had not conducted a full investigation into either of those 2 matters. On the basis of the information which I was given, I was satisfied with the approach the police had taken. The police reasons included these. Neither of those individuals were States Members who had participated in the debate and voted when Article 39A was introduced. Their familiarity with the provision was, accordingly, entirely uncertain. Both incidents had apparently occurred prior to 6th November 2008 when the Judicial Greffier wrote to all candidates, among other things, reminding them of the rules in relation to postal voting. Finally, there was no suggestion that either individual concerned had committed any further alleged offence after 6th November 2008, i.e. when the Greffier's letter would have been received. There is a very clear distinction between those cases, which seem to the police and to the lawyers and to me, to be consistent with a single, honest mistake and the cases of Deputies Southern and Shona Pitman. In the latter cases, the accused persons were sitting States Members well aware of the statutory provision who knowingly and intentionally broke the law on more than one occasion and after being reminded expressly by the Judicial Greffier of the legal position and in the knowledge they would be prosecuted, a knowledge indeed confirmed by the warning which I gave in this Assembly in July last year. I welcome the opportunity to explain in general terms how the prosecution decisions were taken in this case.

### **2.14.1 Senator S. Syvret:**

Does the Attorney General not recognise just how astonishing the answer is he has just given because in the space of a couple of moments, he has stated that ignorance of the law is an excuse for breaking it which is against every legal application of the law, as far as I understand it and he is suggesting that perhaps somehow only States Members who may have approved the law can be expected to understand it and,

therefore, be held accountable under it? Really, it is quite astonishing what the Attorney General has just said and does he not see that fact?

**The Attorney General:**

No, I do not. I find the question to be quite astonishing. The reality is that people do sometimes break the law by making an honest mistake and the public interest has never required that people who make honest mistakes are brought before the courts and prosecuted. Ignorance of the law is, indeed as the Senator says, no excuse but that is quite a different test from whether or not it is right to prosecute somebody criminally before the courts of the Island. I find the Senator's question to be truly astonishing.

**2.14.2 Deputy M. Tadier:**

Does the Attorney General see any anomaly with certain Members being fined thousands of pounds for helping needy people to fill in postal votes while a local businessman who, presumably, is not a Member of the J.D.A. imported more than £20,000 worth of cocaine which I understand to be the choice drug of the wealthy in the Island by yacht and he only received 270 hours community service?

**Deputy T.M. Pitman:**

Sorry to interrupt, but on a point of order, could the Deputy just clarify it is applications to get registered for a postal vote and not postal votes? No one has been charged with that.

**Deputy M. Tadier:**

Yes, I am happy to clarify that. It is not postal voting which they were helping to fill in. I believe it was the application form for postal votes.

**The Attorney General:**

I am not able to comment on decisions which have been made by the courts, all of which, in every case, are treated on their own facts and what seems to be appropriate on the facts of that case and I just decline to get into that discussion.

**2.14.3 Senator S. Syvret:**

Given the decisions as to whether to prosecute, does the Attorney General not see that his position as a Member of this Assembly and as a *de facto* politician and as somebody who is conflicted in being involved in giving legal advice to the Executive, is rendered simply unsustainable. He is involved closely in political matters and it is impossible to see how that role can be split from the role of deciding prosecutions.

**The Attorney General:**

I am not quite sure that I see the relevance of that question to the one I was first asked, but the answer is no. I do not think that that is a conflict which is, in any sense, unmanageable. I am not accountable to Members of this Assembly for the prosecution decisions which I take.