

NOTES FOR THE SCRUTINY PANEL ON 19TH SEPTEMBER, 2006

1. GENERAL COMMENTS ON THE RUTHERFORD REPORT

(A) Professor Rutherford was an unfortunate choice for an independent review of criminal justice matters. From 1984 – 1999 he was the Chair of the Howard League on Penal Reform which is the most liberal (in criminal justice terms) of the criminal justice pressure groups. He was hardly likely to have an objective and impartial view. In my opinion he came with his own agenda and proceeded to deliver it.

(B) The report contained serious factual inaccuracies. An example is the last Paragraph on P.49 of the Report which is simply untrue. I wrote to him with figures proving that this was wrong and requesting an amendment and he ignored me. In fact, the new system which I introduced in 2001, at the request of the Bailiff, has proved to be and is generally accepted as being much better than the old system.

(C) The report lacked credibility with the judiciary generally. I have never treated it as an authority on anything other than Professor Rutherford's own very liberal (in criminal justice terms) opinions.

(D) There was a specific problem in relation to recommendations 4 and 5. He wanted an increased role for the Parish Hall enquiry and yet wanted to remove the Centeniers from appearing in the lower Courts. These two goals are incompatible and inconsistent. The basis of the Parish Hall enquiry and of the Centenier's authority there is the Centenier's role as a prosecutor and he makes decisions there on that basis. How can he be a prosecutor if he does not appear in Court?

2) GENERAL COMMENTS ON THE ROLE OF THE CENTENIER IN THE MAGISTRATE'S AND YOUTH COURTS

(A) The main issue before you has to be looked at as part of the wider picture of the role of the Parishes/Honorary System within the Island. This is particularly important at this time because of current proposals to centralise the welfare system. There is a need to decide the proper and useful functions of the Parishes/ Honorary System.

(B) Any proposal to reduce the role of the Centenier would be politically highly sensitive, controversial and difficult. There are many other areas of the criminal justice system which are urgently in need of reform and in relation to which there is a general consensus of opinion.

(C) Associated with (A) above is the question as to the effect upon the lower ranks of the Honorary Police of the loss of authority of the Centeniers. If the Centeniers were to lose their function then can the lower ranks (which are currently very much under strength) survive that blow.

(D) In relation to Recommendation 5, to increase the role of the Parish Hall enquiry, it is not a question of a greater use for its own sake but a question of the appropriate use of the Parish Hall enquiry. An increased use in relation to low level speeding offences is desirable but clearer guidelines to Centeniers would be required before additional powers could be given in relation to public order offences.

(E) The important function of the honorary system dealing with or screening the very numerous parking offences should not be overlooked. Unfortunately, the Transport and Technical Services Department is not very flexible in dealing with matters and it requires the Centeniers to exercise some commonsense in screening matters or else the Court would be overrun with such matters.

(F) The value of local knowledge, particularly in dealing with youths and families,

should not be overlooked. This is so in all the parishes outside of St. Helier and this local knowledge is a powerful asset.

3) THE DEGREE OF EFFICIENCY OF CENTENIERS AS PROSECUTORS

(A) There is a need for the recommendations of police officers to be scrutinised at an early stage. Sometimes these recommendations are too harsh, sometimes they are too soft and sometimes they are just plainly wrong. If Centeniers were no longer to be prosecutors in the lower courts then someone else would have to make the early decisions in relation to charging and to bail. I do not think that the legal advisers would be enthusiastic in relation to taking on this role, particularly if it required turning out in the evenings or the early mornings.

(B) In reality, the efficiency of individual Centeniers depends upon their ability and their training. If the Centeniers have sufficient ability and have sufficient training and experience then they can do a very good job and can be as good as a legal adviser (although lacking the legal knowledge of a professional lawyer). Training can never fully compensate for a lack of natural ability.

(C) There are great differences between St. Helier and the other Parishes. If we leave out parking and speeding offences, then St. Helier deals with about 80% of other cases. The quality of the St. Helier Centeniers is, therefore, crucial to the system. After St. Helier, St. Saviour, St. Peter (because of the Airport), St. Brelade and St. Clement follow in that order in terms of activity. The other seven parishes have much less activity with St. Mary, Trinity, St. John and St. Martin having the least.

(D) The quality of the St. Helier Centeniers is generally good although some are better than others. They get the most experience and the most practice. There has been a problem with the rapid turnover of Centeniers in some of the 7 quieter parishes.

During the last seven years St. Lawrence (twice) and Trinity (once) have found themselves with the senior Centenier having only about one year of experience.

The Centeniers of the 7 quieter parishes and particularly those of the 4 very quiet parishes suffer from a lack of opportunity to present non routine cases.

(E) There are organisational problems on the mornings which are not dedicated to St. Helier cases (that is Monday, Tuesday and Thursday mornings). With numerous Centeniers appearing as well as legal advisers. If no one takes the lead in orchestrating the morning then it can be disorganised and my colleague Ian Christmas is sometimes very frustrated by this.

(F) There are difficulties in keeping a proper balance of the workload between the different court days so that sessions do not become overloaded. This is particularly difficult with a number of different parishes and Centeniers each booking in cases. There is a constant need for the Court officers to oversee the process and sometimes it goes wrong and sessions overrun.

(G) Difficulties can be caused by the need for cases to be adjourned to a later date upon which a different Centenier will be dealing with the cases for his parish. This can lead to the new Centenier not being up to speed on the case. This problem can also occur as between different Legal Advisers.

(H) I favour the greater use of specialist presenting Centeniers and the law already allows for this. This could create difficulties of continuity upon retirement unless replacements were to be trained up in advance. It would also lead to other Centeniers gaining even less experience. Routine cases would continue to be dealt with by other Centeniers but the more difficult cases would be dealt with by a specialist. Most of the St. Helier Centeniers would need to be specialists.

(I) Most trials are now dealt with by Legal Advisers. The Court will often suggest to Centeniers that cases should be referred to the Legal Advisers for advice to be obtained or for a trial to be conducted. A very good and friendly working arrangement now exists between the two groups.

(J) The current system is satisfactory, has improved enormously over the last seven years but could still be improved further.

(K) The cost of replacing Centeniers completely with Legal Advisers would be very considerable.

4) TRAINING ASPECTS

(A) The Legal Advisers and Mr. Ian Christmas have been involved in the training program. The standard of training has improved and is improving but as it is voluntary those who need it most will probably get the least training. The 7 quieter parishes with their low volume of non-routine work and fast turnover of Centeniers have particular difficulties.

(B) Training cannot make someone who lacks good judgment/reading/presentational skills into a good Centenier in Court.

(C) I am not sure as to how well the role of an appointed trainer has worked. Experience in the training of judges has shown that this is best organised by judges and I suspect that the best training will be organised by Centeniers for Centeniers.

5) SUPPORT AND ADVICE

(A) The A-G has oversight of the honorary police. However, he also has oversight of just about everything in terms of prosecution and legal advice to the States.

(B) It is virtually impossible for the A-G to effectively fulfil this role. As a result there is a partial power vacuum. I have been a very pro-active Magistrate and at times

have had to step into the vacuum in order to point Centeniers in the right direction.

The Court often comments on the over usage or under usage of cautions at Parish Hall enquiries but these are really matters for guidelines from the A-G. If the A-G delegated matters down within his department then to whom would he delegate this? In the past there have been proposals for a Director of Public Prosecutions (separate from the A-G) or an Honorary Police supreme (under the A-G) but nothing has come to fruition. Will my successors be as pro-active as I have been?

6) CONCLUSION/OPINION

(A) In order to arrive at an opinion it is necessary to balance many different factors as follows:-

- 1) the future role of the honorary system;
- 2) the possible knock on effect on more junior honorary ranks;
- 3) the value of local knowledge;
- 4) the preservation of the Parish Hall enquiry system for the appropriate use of cautions, fixed penalties deferred decisions etc.;
- 5) the efficiency of presentation in Court;
- 6) the competence of individual Centeniers;
- 7) the cost effectiveness of the system;
- 8) the possibility of further improvement to training and of better presentation by the use of specialist presenting Centeniers and better management of Court lists.

(B) In balancing these factors I come out in favour of the Centeniers remaining in the system as prosecutors in the lower courts, provided that the quality of the individuals can be maintained at an acceptable level.

B. Iwan G. Myrddin
(MAGISTRATE)

19 / 9 / 2006