

# **SOCIAL AFFAIRS SCRUTINY PANEL**

## **The Centenier's Role in the Magistrates Court**

**TUESDAY, 19th SEPTEMBER 2006**

**Panel:**

Deputy F.J. Hill, B.E.M. of St. Martin (Chairman)  
Deputy D.W. Mezbourian of St. Lawrence  
Deputy A.E. Pryke of Trinity

**Witness:**

Mr. I. Le Marquand (Magistrate)

**Present:**

Mr. C. Ahier (Scrutiny Officer)  
Mrs. J. Rueb (Administrator)

**Deputy F.J. Hill, B.E.M. of St. Martin:**

Can I start off by saying good afternoon and thank you for coming. I will introduce myself. I am Deputy Bob Hill, the Chairman of the Social Affairs Scrutiny Panel, and my 2 colleagues to my right will introduce themselves.

**Deputy D.W. Mezbourian of St. Lawrence:**

Deputy Mezbourian.

**Deputy A.E. Pryke of Trinity:**

Deputy Anne Pryke.

**The Deputy of St. Martin:**

The gentleman to my right is Charlie Ahier, who is now our clerk, and Jane over there is the lady who --

**Mr. I. Le Marquand:**

Jane Rueb nee Vautier.

**The Deputy of St. Martin:**

Yes. I understand that before you came here you were given the notice of what is expected of the privilege that is given to you.

**Mr. I. Le Marquand:**

Yes, indeed. Yes, I have that.

**The Deputy of St. Martin:**

Okay, fine, thank you. Now, you are certainly known because we have met with you in the Magistrates Court. Can I again thank you for the time given not only to myself but also to my colleagues because I think we have found our visits very enjoyable and very helpful and obviously you have been of great assistance to us with our inquiry. The purpose of this really is to look at the role of the Centenier in the Magistrates Court, and it follows along a recommendation made by Rutherford way back in 2002/2003.

The Home Affairs Committee, as it was at the time, decided they would not pursue that particular recommendation. As a part of scrutiny, what we were looking to do is to see the validity of that particular decision, how it was arrived at, et cetera, and whether, in fact, the decision was the right one.

The purpose for you here this afternoon, you are certainly key to some of the process because you are the person that people appear before. So, we have a line-up of a number of questions and maybe I could kick off by asking you really how do you see or what is the role of a Centenier in a Magistrates Court?

**Mr. I. Le Marquand:**

The role of Centenier in the Magistrates Court is that of a prosecutor. When he is appearing in the Magistrates Court he fulfils that role. He is involved in the production of the charge sheets beforehand based, of course, on advice that he will receive from the police and possibly other agencies. He first of all calls the party forward by name, he then reads the charges, and then if there is a plea he proceeds to outline the guilty plea and he proceeds to outline the facts of the case. He also, of course, if there are adjournments, will be involved in bail decisions and matters of that nature. But if I had to put it into 2 words - I am now starting to go into the mechanics in some detail - I would say he is a prosecutor.

**The Deputy of St. Martin:**

Yes, maybe Deidre would like to come in on the sort of ...

**Deputy D.W. Mezbourian:**

Yes, I would like to come in on that comment, Mr. Le Marquand, because having read the reports that we have collated in connection with this review, it was our understanding from reading those reports that Centeniers present cases in the Magistrates Court and do not prosecute.

**Mr. I. Le Marquand:**

Well, that is a fascinating concept that there could be a difference between a presenter and a prosecutor. It is correct, of course, that the role of the Centenier is a modified role, but that is only because of the role of the Magistrate, which is not that of a straight judge. The Magistrate still retains the juge d'instruction aspects of his role. Juge d'instruction is a French word in fact encapsulated in our law, but in Jersey it is a quite different concept of an examining Magistrate to that elsewhere. But the Magistrate is far more proactive in the sense that, firstly, if he thinks the charges are wrongly framed he may well

suggest amendments need to take place. In modern times, of course, he is more likely to suggest that the Centenier go in to seek advice with a legal advisor in order to frame those charges. Similarly, of course, when you come to a trial situation, the role of the Centenier is not that of a prosecutor in the conventional sense because there is no prosecutor in the conventional sense. The Magistrate will cross-examine; the prosecution will question the prosecution witnesses and the defence witnesses. But I think when you were talking about the vast majority of cases which are guilty pleas and you are talking about bail applications, there is no doubt in my mind that he is fulfilling the role of a prosecutor. I think the confusion lies in relation to trials where his role is not that which you would expect entirely of a prosecutor, it is more that of a presenter, but trials are a vast minority of cases.

**Deputy D.W. Mezbourian:**

May I continue please, Chairman?

**The Deputy of St. Martin:**

Yes.

**Deputy D.W. Mezbourian:**

Because, to be frank, you have thrown my line of questioning, or I think our line of questioning, because you have told us something, as I said, that is completely different to our understanding and I am looking --

**Mr. I. Le Marquand:**

Could you tell me what your understanding is and I will comment on it?

**Deputy D.W. Mezbourian:**

I would like to. I am trying, Mr. Le Marquand, to find the section in this report which is entitled *Magistrates Court Practice and Procedures, Working Party Report*.

**Mr. I. Le Marquand:**

That is the 1998 report.

**Deputy D.W. Mezbourian:**

It is the 1998 report.

**Mr. I. Le Marquand:**

Yes, I do not know if I have seen that report.

**Deputy D.W. Mezbourian:**

I am not aware that we have found any evidence or any documentation that supersedes the comments

made in this report.

**Mr. I. Le Marquand:**

Do you have a copy of that? Would you like to put a copy of that to me?

**Deputy D.W. Mezbourian:**

We can arrange to hand you a copy.

**The Deputy of St. Martin:**

It might be helpful. Have we got a copy now that we can --

**Deputy D.W. Mezbourian:**

I do not know that we have a spare copy.

**The Deputy of St. Martin:**

Maybe if we give the one ...

**Deputy D.W. Mezbourian:**

I am now trying to refer to the specific section in it.

**The Deputy of St. Martin:**

Whilst you are looking, it may be helpful for Mr. Le Marquand, I think what we came across there was a *Jersey Judicial and Legal Services Review or Committee Second Interim Report* which was dated 23rd October 1990. I think from that there was a review, or proposals or suggestions made that should be followed up, and I gather nothing happened for about 7 years and then followed by that particular working party's review and then that party made some comments, I think, that Deputy Mezbourian --

**Mr. I. Le Marquand:**

You are referring back to the Le Quesne Committee reports?

**The Deputy of St. Martin:**

The Le Quesne Committee.

**Mr. I. Le Marquand:**

Yes. Those were in the early 1990s.

**Deputy D.W. Mezbourian:**

Yes, but the report that you have just been handed, Sir, is dated 1998 and refers to the *Judicial and Legal Services Review* from 1990. I would just like to take a few minutes, if I may. I think you should

take a few minutes to look at the report you have just been handed. I am just trying to find now the section that I believe is in disagreement with what you have just told us.

**The Deputy of St. Martin:**

Would it be easier for us to stop the tape and let the Magistrate have a look? In the meantime possibly, Charlie, if you could give us another couple of copies of those?

[Aside]

**The Deputy of St. Martin:**

Okay, maybe if you could carry on with your line of questioning. We are looking to see the difference between a presenter and a prosecutor.

**Deputy D.W. Mezbourian:**

Yes, okay, so just for the purpose of clarity we told the Magistrate that it is the Panel's understanding that Centeniers present cases in the Magistrates Court and do not prosecute and that is in response to the Magistrate's comments made initially that Centeniers prosecute.

**Mr. I. Le Marquand:**

Yes.

**Deputy D.W. Mezbourian:**

So, subsequently we referred the Magistrate to the *Working Party Report of 1998* which is entitled *Magistrates Court Practice and Procedures* and which was in itself referring to the *Le Quesne Report of 1990*.

**Mr. I. Le Marquand:**

Yes.

**Deputy D.W. Mezbourian:**

The Magistrate has now been handed a copy of the 1998 report in order that he may peruse it and, indeed, he has done that, albeit very quickly. So, if I may go back to your affirmation that the Centenier acts as a prosecutor.

**Mr. I. Le Marquand:**

Yes.

**Deputy D.W. Mezbourian:**

May I refer you to page 7 of the *1998 Working Party Report* and at the top of page 7 the second sentence

states: “The Centenier’s role is confined to presenting the defendant to the Court.” If I may also refer to page 9, Section 6.2, the second sentence in that section states: “The Centeniers Association is firmly of the view that its members should not become prosecutors” which by implication I believe thereby means that in 1998 the Centeniers were of the opinion that they were not prosecuting but presumably merely presenting cases in Court.

**Mr. I. Le Marquand:**

Okay. Let me go back in time. Most of the legislation that we work under was framed in 1864 with the *1864 Loi Sur La Precedente Criminale*. That was the substantial piece of law together with the 1853 law. Subsequent to that there have been amendments, 1949 law amendments, but there has not been a complete review of the criminal justice system in total since 1864. What has in fact happened is that bits have been bolted on to the existing procedure by virtue of a variety of amendments. Mr. Hill referred to the amendments which took place as a result of *Le Quesne Report*. Most of those came into existence around about 1995/1996, there were laws around about that time I think continuing on possibly to a little bit later. Now, the reality and the fact of the situation is that the existing statutory base for the Magistrates Court is wholly defective. It is wholly defective. Magistrates have had to operate for many years despite the legislation which is wholly defective. It just does not hold together properly; the bits do not relate to each other properly. As a result of that what has in reality happened in Court from time to time has been quite different to the law as it was originally and, indeed, as it is at present. Now, that may shock you but that is the reality of the situation. If you had the AG (Attorney General) in front of you he would say exactly the same thing. That is why there is a working party currently working in relation to a complete review of criminal justice procedure chaired by the Attorney General, of which I am a member together with advocate Rebecca Morley-Kirk and an advocate from Crills. We have been working for some years now on a complete review of the criminal justice system and we have now got to the stage of drafting instructions in relation to that and we are now working our way through detailed drafting instructions. Now, why am I telling you all this? The reason I am telling you all this is that we could not operate properly if we operated in accordance with the existing statute. It is wholly defective. The Royal Court has assisted us from time to time in interpretations of the amendments and so on in ways which allow us to operate. I will give you an example. If we followed the 1864 law, then the first time that a person appeared before the Magistrates Court together with the accused in a serious matter which was likely to go up to the Royal Court, they would warn all the witnesses and all the witnesses would be heard on the first occasion, the first hearing of the matter, because that is what the 1864 law said and it has never been repealed. Now, in practice that would be total and utter nonsense and unworkable and, of course, does not fit in at all with the later provisions allowing for paper committals and things of that nature. So, what Magistrates have had to do, and they have had to do it for a long time, is that they have had to adjust the system from time to time to make it workable without doing too much violence to the actual text of the statute because the statutory base is wholly defective. That means, in practice, the way in which the Court procedure from time to time varies and changes. I have been the author of numerous changes together with my colleagues in order to

make a workable system, but I am only following the tradition of all my predecessors who had to work despite the defective nature of the legislation under which we work. That is why if you look and take a theoretical view and examine the statutes and the documents you might come to a view theoretically as to who is doing what and how it operates, but in fact the way it operates in practice is completely different to the way in which the statute is worded and has to be to make a workable system. So, we are dealing with something which is in a continuously developing stage, the actual roles. Now, if I give you an example of that, once the lower Courts decided that we should be human rights compliant in terms of bail applications, immediately the role of the Centeniers had to change because they had to be up to speed in terms of whether or not they were opposing and, if so, on which human rights compliant grounds they were opposing. It is not for Magistrates to be saying: "Well, I think I might want to oppose bail on the basis of this, that or the other." So, if we examine the different roles of the Centenier in relation to different aspects of procedure, I would argue that they are effectively, whatever the theoretical position, appearing as a prosecutor in all situations other than at trials where they are presenting.

**Deputy D.W. Mezbourian:**

May I come in with a question?

**The Deputy of St. Martin:**

Yes, come in.

**Deputy D.W. Mezbourian:**

Is the role of a prosecutor not to cross-examine a witness?

**Mr. I. Le Marquand:**

At trial, yes, but I am distinguishing trials --

**Deputy D.W. Mezbourian:**

From the cases that are presented in the Magistrates Court?

**Mr. I. Le Marquand:**

From presentation of cases where there is guilt or whatever.

**Deputy D.W. Mezbourian:**

So, for clarification, you are saying that the Centenier in the Magistrates Court, and that is the reason we are here today --

**Mr. I. Le Marquand:**

And the Youth Court.

**Deputy D.W. Mezbourian:**

And the Youth Court, yes, presents the case and at the same time they are acting in the role of the prosecutor?

**Mr. I. Le Marquand:**

Yes, apart from at trials.

**Deputy D.W. Mezbourian:**

Apart from trials.

**Mr. I. Le Marquand:**

Effectively that is the role that they fulfil, yes.

**Deputy D.W. Mezbourian:**

In the Police Court is it never necessary for a prosecutor to cross-examine a witness or a defendant?

**Mr. I. Le Marquand:**

No. I do not want to go into too much detail, but almost inevitably I have to start talking about examples of different procedures. If we look at bail, for instance, somebody has appeared before the Court, they are being remanded to another date and it is a question of the terms of the remand. Now, a Centenier already has the power to grant bail; in other words, when he charges a person to only release them on provision of a sum of money. Under the PPCE (Police Procedure and Criminal Evidence) part, which has not yet come into effect, they have --

**The Deputy of St. Martin:**

If you could just give us the PPCE, is it ...?

**Mr. I. Le Marquand:**

PPCE law, the part which has not yet come into effect. There is a part which has not come into effect yet which deals with charging of people and time limits and so on.

**The Deputy of St. Martin:**

Just for clarification, could I ask what the actual piece of legislation is called?

**Mr. I. Le Marquand:**

Police and --

**The Deputy of St. Martin:**



Police and Criminal Evidence?

**Mr. I. Le Marquand:**

No, it is PPCE in Jersey; it is PACE (Police and Criminal Evidence) in England.

**Deputy D.W. Mezbourian:**

PPCE.

**The Deputy of St. Martin:**

You are referring to PACE, what we would know as PACE?

**Mr. I. Le Marquand:**

Yes, I think it is called a PPCE in Jersey rather than a PACE, P-A-C-E.

**Deputy D.W. Mezbourian:**

Police and Criminal Evidence.

**Mr. I. Le Marquand:**

I cannot remember.

**The Deputy of St. Martin:**

It was, yes. It was called the Bill.

**Mr. I. Le Marquand:**

Yes. Under that, which has already been passed by the States some time ago, they will have the power to set conditions in relation to bail. Now, they cannot possibly be doing that unless they are a prosecutor. What would be the basis of that if they were not? When the case comes up before the Magistrate and it is being adjourned and an issue of bail, the Magistrate will invite them to indicate the conditions they are asking to be imposed, if they are opposing bail and asking for remand in custody what their concerns are, the human rights compliance concerns are, et cetera. That is the role of a prosecutor. It is not the role of a presenter. They are being asked to express a view in relation to this, et cetera, but there is no cross-examination of witnesses in relation to that. The Court makes a decision based on submissions from either party. Now, if it is a guilty plea the Court will hear an outline of the facts. That is effectively the prosecution version of the facts. The defence may challenge those, but unless they are challenged materially and that challenge is material to sentence, the Court will then proceed to sentence based upon those facts. But there is no questioning or cross-examining of witnesses involved in that unless there is a material difference, in which case the Court can adjourn the matter for a type of trial called the Newton hearing - that is a hearing on material differences of fact - in which case the normal trial rules will appertain. So, in all those general categories of case they are acting as

prosecutor. Now, if there is an issue of what we call jurisdiction, i.e. an issue as to whether the case should be dealt with at the level of a Magistrates Court or at the level of the Royal Court, the Centenier, if he is presenting it as opposed to a legal advisor, will be asked to say what is the prosecution version of the facts because that is the correct basis for the Court to decide the question of which Court to deal with it, i.e. what the prosecution say happened, what the prosecution believe they can prove beyond reasonable doubt. So, they have a right to say that; that is the function of a prosecutor. A Magistrate cannot possibly be trying to say what he thinks is the prosecution version of the facts. Back in 1864 when the Centenier would appear with a report, et cetera, the way it worked was that the Magistrate heard all the evidence on the first occasion and, of course, because he had heard all the evidence he could take views of fact on this, that and the other but that does not happen now. We could not possibly operate such a system. It would be ludicrous, time wasting, et cetera. So, those are a few examples.

**The Deputy of St. Martin:**

Could I just come in on this one? Just seeing your particular role again, referring to the 1990 *Le Quesne Report*, it said: "The dual role of a Magistrate should be abandoned and he should not be required to adopt any procedural role of examination or cross-examination." That was line 19, page 59. Were any changes made to that?

**Mr. I. Le Marquand:**

Yes, in practice, yes, because the vast --

**The Deputy of St. Martin:**

But it has not come as law yet, Mr. Le Marquand?

**Mr. I. Le Marquand:**

No, it was. The law which allowed the Attorney General to appoint legal advisors changed that because under that law if there is a legal advisor prosecuting a case then the judge no longer plays the ancient role, he plays the role simply of a judge, and that is enshrined in the statute which is about 1995. I cannot remember its name. If I had had prior notice I could have come with all the statutes.

**The Deputy of St. Martin:**

We did not expect to go down this particular line with the answers you have given us.

**Mr. I. Le Marquand:**

So, in practice the vast majority of trials are dealt with now by legal advisors, but the minor trials are still dealt with by Centeniers: parking matters, sometimes more serious matters than that. There is an issue and there always will be an issue as to where the appropriate boundary line should be between what is dealt with by a legal advisor and what is dealt with by a Centenier. The view of the current Magistrates I think is that we believe that other than the most minor matters they should be dealt with by

a legal advisor and in those cases we are simply a judge, but in cases where the Centenier is involved and not the legal advisor then we still play the dual role.

**Deputy D.W. Mezbourian:**

So, you, Sir, are able to play the role of prosecutor?

**Mr. I. Le Marquand:**

No, I do not play the role of prosecutor, no. I could not do that.

**Deputy D.W. Mezbourian:**

So, what is the dual role that you play when --

**Mr. I. Le Marquand:**

It is an inquisitorial role. It requires me to inquire. Now, the difference is that, of course, I will have access to statements in advance from the prosecution witnesses so I know roughly what they are going to say and I will seek to take them through their evidence to get out what it is they are saying. The defence will then cross-examine and I can re-examine, then when the defence witnesses give evidence I can cross-examine, so that still exists. Frankly, otherwise you would have legal advisors presenting parking trials, which are hardly the most stunningly interesting things. They do not seem to have much interest in presenting them so far.

**The Deputy of St. Martin:**

I am just wondering whether we looked at questions 3 and 4. We had asked have you had sight of Centenier Lamy's report that he has done?

**Mr. I. Le Marquand:**

He sent it to me. I glanced at it but I did not read it in detail.

**The Deputy of St. Martin:**

Well, I think what we were going to ask you was whether you wished to comment on it. We will give you a copy of it.

**Mr. I. Le Marquand:**

Right, okay.

**The Deputy of St. Martin:**

He says: "If Centeniers are to maintain their role as junior prosecutors for many years to come, there is the opinion of a few likeminded colleagues that we need to change." We were going to ask you sort of how do you see the role of a junior prosecutor in the role of a Centenier as opposed to a legal advisor?

Because obviously you were mentioning that in 1999 there was a change when I think it is fair that it was met with quite a consideration of resistance from within the Centeniers Association. They were opposed to it initially.

**Mr. I. Le Marquand:**

To legal advisors, do you mean?

**The Deputy of St. Martin:**

Yes, to legal advisors in 1999. I read it somewhere in Clothier, but it was just to comment on how would you -- I think you have done pretty well so far. You have really explained where the situation is different, how you see the Centenier's role and that of the legal advisor. You would see that a legal advisor would be a senior prosecutor.

**Mr. I. Le Marquand:**

Yes, it is not just a question of seniority. You see, the prosecutor's role starts at a very early stage in relation to the matter because you must remember that it is only the Centenier who has the power of charging a person. Now, if he is not prosecuting when he is charging a person, I would like to know what he is doing because he has to determine the dual tests which any prosecutor has to determine, which are the test as to whether the evidential test is met, whether there is sufficient evidence to warrant a charge and, secondly, the test as to whether it is in the public interests to bring a charge. Now, that is what a competent Centenier does. He looks at the papers provided by the police and he decides if he thinks there is enough. If he does not think that there is enough, he tells them to further investigate or whatever. The point I am making is you must not overlook that that starts at a very early stage and if Centeniers were to cease to be prosecutors as I have defined the role, then you would have to have legal advisors turning up at the weekends and perhaps early in the morning and late at night, whatever Centeniers currently do, in order to charge people, to make decisions on bail, et cetera, because those are all prosecution roles. Where I think there will always be questions and issues and the boundaries will move from time to time I think will be in 2 areas. Firstly, as to which areas are dealt with by the legal advisors and which are dealt with by the Centeniers, that will always be a fluctuating, moving issue. In 1999 when I became Magistrate there was no question whatsoever that there was a great deal of suspicion amongst some of the senior people in the Centeniers Association that they were getting pushed out, et cetera. My colleague, Ian Christmas was the first legal advisor involved and he had a very difficult task in terms of brokering that, but in fact attitudes are now completely changed. There are now very positive attitudes between the 2. The Centeniers are very willing to take advice. In fact, ironically they are more willing to pass cases over to legal advisors to deal with now than legal advisors are willing to take them on because of work pressures and so on. So, I would not describe them as junior in that sense because they make the first decision, the first decision which is as to whether a person should be charged or not.

**The Deputy of St. Martin:**

Maybe we are going to have Centenier Lamy here on Thursday. He may be looking at junior prosecutors in one particular role because I think, in fairness to the Centeniers, if indeed they have a doubt they are in a position to contact a legal advisor.

**Mr. I. Le Marquand:**

Yes, they are.

**The Deputy of St. Martin:**

I think any time 7 days a week so I think --

**Mr. I. Le Marquand:**

Yes, they are. They can see an advisor, you are absolutely right, but they still make that decision, the power of charge remains theirs. It is not vested in a legal advisor or anybody else, subject to the Attorney General reviewing it and over-ruling their decision in relation to that.

**The Deputy of St. Martin:**

If we are finished on that, maybe I could ask Anne to look at 5 and 6. Could I ask you to look at numbers 5 and 6 and put them together?

**The Deputy of Trinity:**

We have talked a lot about the Centenier's role in presenting or whatever in Court. Are you satisfied with the current system as it is?

**Mr. I. Le Marquand:**

Yes. There are aspects of the current system which could be improved, but the difficulty is it is not as simple as that. If you asked me the question is the system generally satisfactory, I would say yes, it is, but it is part of a much bigger picture. Now, in the document I have produced today I highlight in my conclusion opinion section 8 different matters which I personally would weigh factors some in favour, some against, and I think it is a balancing exercise. But you have to see this whole discussion against a much bigger backdrop. It is outlined in here; if you would kindly read it afterwards you will see what I am saying in more depth. Any decisions have got to be made against all sorts of factors because we first of all have got the issue of the whole question of the future role of the honorary system. That is a major issue at the moment with the honorary system about to lose the welfare system and so on. What does it exist for? Is it an important part of our historic heritage which we want to keep or is it not? The bigger debate and the role of the Centeniers is tied into that. Secondly, if you take away the role of the Centeniers as prosecutors as I have defined it, will that effectively have a knock-on effect to the junior ranks and destroy the whole honorary place system? Thirdly, how much do you rate the value of local knowledge, the Centeniers knowing individuals, knowing families, et cetera? Fourthly, this is where

Rutherford got it totally and utterly wrong. If you care to read my comments, you will see a fairly destructive destruction of Professor Rutherford's report contained therein. It was a bad report. He was the wrong person to have been chosen to do it. He came, frankly, in my opinion, with his own agenda which was an extremely liberal agenda, liberal in criminal justice terms. He had his own agenda. He was for 15 years the chairman of the most liberal pressure group in the UK. How that man could have been chosen as if he was an independent person coming in astonishes me; totally unsuitable for that purpose. But there we are, you will see what I say in relation to that. But he got recommendation 4 and recommendation 5 of his report, which were an increased role for the parish hall inquiry on the one hand and yet the removal of the Centeniers from appearing in the lower Courts. That is complete and utter nonsense. Those 2 roles are totally incompatible and inconsistent. Anybody understanding the system who have read that say: "What? How can he have come up with those 2 things which are inconsistent?" The reason why they are inconsistent is because only a prosecutor can fulfil both those roles. If he is no longer a prosecutor, then the whole parish hall inquiry system dies with it. So, there is a bigger issue there is what I am trying to say in a longwinded way, and Mr. Rutherford completely missed the point, totally and utterly missed the point in relation to that. It was not because of his existing bias, it was just a complete misunderstanding. Then, of course, you have got the question of the competence of individual Centeniers, which is the question you are asking me which I will come back to in a moment. You have got the question of efficiency of presentation in Court. There are issues there which my colleague will no doubt talk to you about, areas where having many, many Centeniers from different parishes appearing, sometimes 8 or 10 there on the same morning, can make the sessions very jumbled, et cetera. I have covered all this. There is the cost effectiveness, the cost of a system having additional people, bearing in mind it is not just the time in Court, but it is also all the work at the earlier stages and then what does happen to the parish hall inquiry because if that dies then you really have got a lot of extra cases coming to Court, et cetera. Then finally there is the system, there is the question as to whether amendments cannot be made to the system which would improve it in terms of training or better procedure, whatever. I have covered all that in here. Can I come back to your question now? I think this is the problem. In my mind I run into about 8 factors here and I think that 5 of them weigh in favour of Centeniers keeping their role, 2 would weigh against to a degree, and one of them is neutral. Now, in relation to the question of the competence of Centeniers as prosecutors, in reality that depends upon the ability of the individual Centeniers and their training and some of them are very good. Some of them are as good as a legal advisor except they are not legally qualified and others are very poor indeed. The differences tend to take place based upon a parochial issue and this has got to do with 2 factors. Generally speaking, St. Helier does the vast bulk of the work; probably if you took out speeding cases and parking cases 80 per cent roughly of the overall work. That means the St. Helier Centeniers, although there are many of them, actually get far more practice, they get far more experience, they therefore achieve a much higher standard. Whereas if you look at the opposite end of the scale, shall we say some of the country parishes, small country parishes like St. Mary, Trinity, St. John, Centeniers get very little experience outside of routine matters like speeding or whatever. At the same time one of the

strange factors is you would expect that where the Centeniers are very, very busy, as in St. Helier, that you would have a big turnover because they are all under pressure and it is a big commitment. The reverse has been true. Again, you will see from my paper that where there have been problems of rapid turnover and change is in the smaller parishes. So you get a double difficulty sometimes there where you get people who get a low level of workload and, therefore, of experience in dealing with matters and a high turnover of Centeniers, and that really does create a problem because as soon as you have trained them up, if they have only done 3 years, they have gone again and you have to train a next lot up. So, my answer is that the quality is very, very variable. Some are very good indeed and, as I say, might be as good as a professional prosecutor would be when they have done their preparation well and thoroughly, and some are really quite poor and it is a real struggle at times. I am a pretty patient person. Occasionally I have my moments like all the rest of us, but I am a pretty patient person and I will try and make the system work and will try and muddle it through. My colleague, Mr. Christmas, I think is not quite as patient at times with some of the Centeniers - I do not know if you have received any comments on that - but being a previous prosecutor I think he expects higher standards and so on. So, it is a real mixed package. St. Helier are generally very good. I think there is almost 4 groups of parishes: there is St. Helier on its own; then you have got St. Saviour, St. Peter - that is because of the airport and drugs cases - St. Brelade and St. Clement, which would be the next 4 in terms of activity; and then you have got 7 parishes with less activity. Yes, Trinity, St. Lawrence, St. Martin, yes. If I can just take St. Lawrence as an example, St. Lawrence I think twice in my period as Magistrate has had a situation where the Chef de Police has only had about 12 months' experience. I think you had a complete turnover twice.

**Deputy D.W. Mezbourian:**

We did.

**Mr. I. Le Marquand:**

That happened once for Trinity, a complete turnover. Mr. Le Sueur, who I think is currently the Chef, I think when he started as Chef he will tell you he had done less than 12 months. It was a complete turnover and that does create real problems, which is why I tend to favour an increased movement - and this is already happening I have to say to a degree - towards the use of presenting Centeniers. I tend to favour a movement towards that. In other words, that there would be Centeniers across the parish boundaries who would take on responsibility for presentation to other than the routine cases, but there are difficulties with that. Again, it is all dealt with in detail in here if you care to read it. There are difficulties with that because if you just have a class of presenting Centeniers and others do nothing at all, how do you start to train up your next generation? So, I think you would still need to differentiate between the more complicated cases with a presenting Centenier on the one hand and the simple routine cases where I think other people should be involved so they can start to learn and train.

**The Deputy of St. Martin:**

Perhaps we could come to that a little bit later on . I know it is an area we are going to cover.

**Mr. I. Le Marquand:**

I am sorry. I answered your question.

**Deputy D.W. Mezbourian:**

Yes. Just on a side issue, you said that you had just written a paper there.

**Mr. I. Le Marquand:**

Yes.

**Deputy D.W. Mezbourian:**

Is it just for us or are there any other people that you --

**Mr. I. Le Marquand:**

Yes. No, it is for you. I did not know how many people were going to be here, so I produced 7 copies. This is quite a detailed summary. It starts with my attack on Professor Rutherford's choice and his --

**The Deputy of St. Martin:**

If I could show for record purposes that you presented this to the Panel consisting of 6 pages and also, because we have members of the public here, you are saying that this is a public document.

**Mr. I. Le Marquand:**

Yes, I am happy for it to be a public document.

**The Deputy of St. Martin:**

It would appear it has already found its way into the media already. So, you are quite happy for this --

**Mr. I. Le Marquand:**

Yes, I am, yes. Some of the expressions of opinion are my expressions of opinion, of course.

**The Deputy of Trinity:**

Is that going to go to the Home Affairs Department and the Minister as well or is it just your thoughts?

**Mr. I. Le Marquand:**

No, I produced it for you.

**The Deputy of St. Martin:**



You present it for the purpose of the Panel, it says at the top.

**Mr. I. Le Marquand:**

In all honesty I started producing some notes as an aide-memoire to myself and then I started to think: "Well, if I do a bit more work and type this up then I have got something to leave with you" because I realised we probably would not cover the whole area and I think you will find a much more in-depth or balanced view than I am able to give you verbally in relation to that, an analysis of the different parishes and so on. The first section is general comments on the Rutherford report, which you will guess is not exactly complimentary from what I have said so far. The general comments on the role of the Centenier in the Magistrates and Youth Courts, that is trying to give you the wider, bigger picture. Then the degree of efficiency of Centeniers as prosecutors is Section 3, which I hope I have been dealing with. I deal at Sections E and F with some of the practical difficulties of having multiple presenters on a particular day. That is something that concerns my colleague, Mr. Christmas, particularly, which I have not dealt with in depth. If you look at Section J on page 5, you will see I say: "The current system is satisfactory and has improved enormously over the last 7 years but could still be improved further."

**The Deputy of Trinity:**

So, what do you see are the main areas that need to be improved?

**Mr. I. Le Marquand:**

I think there are always going to be continuous issues of training. I think there are issues as to whether training should be compulsory or not. I know that has been raised before and I think it is still voluntary. You see, we are left frankly with a system which is an historic muddle because we have this extraordinary situation where Centeniers are elected by the parishioners. Now, I am not saying that is wrong, but then if the parish does not find a suitable Centenier then the parish gets fined. So there is pressure to find somebody to take it on even though they may not be very good at it; it is just to comply with the law. Now, I think that needs to be reviewed, frankly. There ought to be some sort of basic competency test before people fulfil the role. If you turn the clock back - horror of horrors not that many years ago - to the situation where someone got through the vetting system as a CO, it has been accepted that it is quite proper that there be procedures for vetting people's criminal record and so on, but it seems to me there ought to be some sort of basic competency test as to whether that person is going to be capable, but that is inconsistent with the historic system where there is pressure upon the parish to go out and find somebody even though they may not be very good. I think that probably needs to be looked at.

**The Deputy of Trinity:**

Would you see that as the main area that needs to be looked at?

**Mr. I. Le Marquand:**

No, no, I have thrown that out in passing. I have not even included that in here, incidentally. I may live to regret having said that, of course, but I think that is right. I think that tied in with that is the issue of compulsory training. It is extraordinary if you think about it. The person has this role of a prosecutor as I have defined it and yet might actually not be competent, they may have no criminal record. Can you think of any other area of public life where someone would be given such an important role without prior testing of that sort of nature?

**The Deputy of St. Martin:**

I think that was one of the recommendations made back about 1998 as well, about the importance of training and ...

**Mr. I. Le Marquand:**

Yes. Training has improved. You will see I have put a section on training and Robin Morris' thing must be part of the work the legal advisors have done in assisting. I know my colleague Ian Christmas has been involved in training. I have done some training in recent times. I think it is improving, but I am still concerned about whether it is compulsory or not because you know how it always is in any organisation: if it is not compulsory those who most need it are the least likely to turn up for it.

**The Deputy of Trinity:**

Just a very quick one. Do you feel that it should be compulsory?

**Mr. I. Le Marquand:**

Yes, I do. I personally think that they need to be thinking about a competency test. This is not just a numbers game and particularly if one is going to move over a period of time towards an issue of presenting Centeniers, i.e. specialists who have particular gifts and abilities, it is issues that there ought to be a basic test of competency; alongside that is that of a criminal record and so on, and there ought to be compulsory training.

**The Deputy of St. Martin:**

Could we just ask what sort of mistakes, if any, are being made that could have been overlooked or have got to be dealt with? Obviously mistakes happen, we are all human. What sort of mistakes happen or errors may be going on through the Magistrates Court?

**Mr. I. Le Marquand:**

We all make errors. I make errors as well from time to time; most of mine do not get uncovered, though. All sorts of errors are made. There are difficulties; there are problems in relation to the framing of charges. It is commonplace for the Magistrate to find there is an error in the charge, particularly if it has come in through one of the outlying parishes. There has always been this big debate as to whether there should be a central charging office as opposed to 12 different charging offices. Sometimes you get

situations where the Centenier is plainly unprepared and somehow they have not anticipated a guilty plea and, therefore, they have not prepared to outline the facts, et cetera. I hesitate to tell you what happened this morning in the Magistrates Court because it would probably embarrass an individual Centenier but, as you asked me the question, it is fresh in my mind. We had a situation this morning in a Youth Court where we heard the facts. In fact, it was a chapter of accidents because the accused did not even tell us he had a lawyer. A lawyer was not in the Court at the time and we discovered that halfway through. But, anyway, the Centenier outlined the facts and that was fine, and I said to him: "Well, we are going to now ask for a stand-down report," which means a Youth Action team member going out and getting information and then coming back and telling us whether we need a full probation report or whatever. I said: "Whilst this is going on, Centenier, would you be so kind as to ring up the parish of Grouville" - who were making an application for compensation because there was damage to one of their cars and who correctly, incidentally, had got someone from another parish to present the case; they were not presenting it themselves, there was so conflict of interest there - "so that we will have all the information." Now, the stand-down report took place and everything else happened and we came to the end of the list, ready to go on this case, and they said: "Oh, we do not know where the Centenier is." "Oh, well, we will adjourn for a few minutes." It turns out that he had either misheard me or totally misunderstood me. He thought that we had asked for a full background report with a delay to another day and he disappeared. He just was not there any more. But a St. Helier Centenier was there; spoke to him over the phone; he stood in and we completed, but it was an extraordinarily embarrassing incident. It was a Centenier from one of the parishes that you represent, incidentally, one of you. I am looking to my right. Okay, these things happen, but then sometimes embarrassing things happen with the legal advisors. They make embarrassing mistakes. Sometimes embarrassing mistakes happen with young counsel.

**The Deputy of St. Martin:**

I think, in fairness, you did that say that you thought, generally, Centeniers are performing quite a satisfactory role, if you want to generalise it. You started that off in your early statement.

**Mr. I. Le Marquand:**

If I balance all the factors together but taking the big picture into account, yes, but the improvement would be, I think, by having special presenting Centeniers.

**Deputy D.W. Mezbourian:**

I would like to go back to the Rutherford Report, if I may, which means that I am not asking the question that I should be asking now, but I would like just to have clarification, Sir, from you about your comments on Professor Rutherford as an unfortunate choice for an independent review.

**Mr. I. Le Marquand:**

Absolutely.

**Deputy D.W. Mezbourian:**

You make those comments and then you refer to the points about the parish hall inquiry and the Centeniers. Are you making your broad comment mainly on those 2 points covered by Professor Rutherford in relation to the parish hall inquiry and the role of the Centenier, or are you speaking on his report as a whole?

**Mr. I. Le Marquand:**

I am speaking on his report as a whole. The mistake he made in not understanding that these 2 were tied in together was not, in my opinion, influenced by his own predisposition towards an extremely liberal approach to the criminal justice system. It was a mistake.

**Deputy D.W. Mezbourian:**

He made 10 recommendations in his report, but you are really only commenting here on the recommendation he made about the Centeniers in the Magistrates Court.

**Mr. I. Le Marquand:**

I thought that is what I was here for this afternoon.

**The Deputy of St. Martin:**

Yes, you are here on recommendation 4, I think it was.

**Mr. I. Le Marquand:**

Do you want to know what I think about the other ones?

**Deputy D.W. Mezbourian:**

Well, no, but for clarity, Sir, because this report has been handed to the media, I do feel that it would be fair to establish that and that when you say: "He was an unfortunate choice for an independent review of criminal justice matters" it is purely in connection with what we are discussing here this afternoon.

**Mr. I. Le Marquand:**

No. It is not in connection with what we are discussing this afternoon.

**The Deputy of St. Martin:**

He made 10 recommendations, 9 of which the Home Affairs Committee are accepting and the tenth is the one that we are here for today.

**Mr. I. Le Marquand:**

Well, with respect, I do not think that is right. They have never expressed a view on recommendation 9

which part of it is to do with reclassification of cannabis and ecstasy. They have never adopted that. I personally have bitterly opposed that, but they have never adopted that. Could I run through them? Would that be helpful?

**Deputy D.W. Mezbourian:**

Through the recommendations?

**Mr. I. Le Marquand:**

Yes. They adopted 1 but it has never been implemented. They adopted 2 and I think it has been implemented to a degree. They adopted 3; that has not been implemented. There is no de facto police authority in existence. It has no chairman, it is not functioning. I do not think they adopted 4 because there has not been any room for the creation of a director responsible to the Attorney General.

**The Deputy of St. Martin:**

I do not have the list in front of me.

**Deputy D.W. Mezbourian:**

What do you want, Rutherford or the criminal justice ...?

**The Deputy of St. Martin:**

Yes, Rutherford. Yes, I have Rutherford here, sorry.

**Mr. I. Le Marquand:**

They did adopt the first part of 4. They did not adopt the second part, which is what we are dealing with, the role of the Centenier, and they did not adopt the third part, so they have not adopted any part of 4. Frankly, 5, the role of parish hall inquiry has continued as it did before. There has been no meaningful change there.

**Deputy D.W. Mezbourian:**

You see, Sir, in the draft policy paper on the Criminal Justice Policy that Home Affairs has produced, they state quite categorically that the Rutherford Report made 10 recommendations, 9 of which they are taking forward. So, they are not saying that they have adopted them, but they are saying that they are taking them forward.

**The Deputy of St. Martin:**

They are being considered as opposed to being opposed to the particular one about the Centeniers.

**Mr. I. Le Marquand:**

9 of which they are taking forward?

**Deputy D.W. Mezbourian:**

Yes. That is what they state on page 3.

**Mr. I. Le Marquand:**

That is simply not correct. It is simply not correct.

**Deputy D.W. Mezbourian:**

Bearing in mind that, by implication, their criminal justice policy is based on the Rutherford Report, you have quite categorically told us this afternoon that you believe that the Rutherford Report has deficiencies.

**Mr. I. Le Marquand:**

The Rutherford Report is not an acceptable basis for going forward. I spent a great deal of time at meetings which were convened by the Home Affairs Committee and then departments discussing various different aspects of the criminal justice system. Those meetings were excellent. They were excellent. They came out with very clear agreed changes which were needed, many of which were urgently needed and were non-controversial. The process of that led to the recommendations which are contained in there. I am not saying I agree with all of them, but I agree with most of them, I have to say, because it came out of talking to the people on the coalface and seeing what they thought and then putting these together, but there is no logical connection between the Rutherford Report and those. Those were produced by a completely different route. The Rutherford Report is a bad report, in my opinion, and was substantially a waste of time, apart from the general analysis in relation to it.

**The Deputy of St. Martin:**

Yes, okay. I do not think we ought to dwell too much on that. It is probably something for another day, but I think that those points you made are --

**Deputy D.W. Mezbourian:**

I do have another question for the Magistrate, if I may. I would like to refer back to what you said quite early on in the hearing, which was that a working party has been set up, and I believe you said it is headed by the Attorney General.

**Mr. I. Le Marquand:**

Yes.

**Deputy D.W. Mezbourian:**

Could you just repeat what that working party's remit is?

**Mr. I. Le Marquand:**

Its remit is to redesign the criminal procedures for all the courts. It is set out on a basis of what we would like to do if we had a blank piece of paper and were starting from scratch. It has come up with proposals which are now at the stage of drafting instructions. This is a very, very lengthy process. We have had many meetings over quite a number of years. It got set back because the Attorney General was unfortunately ill, but that is its remit. It will come up with far-reaching proposals for review of the whole of criminal procedure.

**Deputy D.W. Mezbourian:**

Are you able to intimate what consideration has been given to the role of the Centenier in presenting cases?

**Mr. I. Le Marquand:**

Yes, continuing with it as it is, effectively. There are no changes proposed in that area.

**Deputy D.W. Mezbourian:**

Is there no proposal to introduce obligatory training?

**Mr. I. Le Marquand:**

No, because this is a criminal justice law and that would be dealt with separately. The issue of how you would qualify to be a Centenier, how you would be trained, et cetera, would not be something that would fall within the remit of a criminal procedure law. Otherwise, we would end up redrafting all the law of Jersey, would we not? It is a big, big job, this. It has been going on for some years.

**Deputy D.W. Mezbourian:**

I appreciate that.

**The Deputy of St. Martin:**

I think some of the questions have been asked. We were talking about mistakes. We accept that that is life.

**Mr. I. Le Marquand:**

Yes.

**The Deputy of St. Martin:**

What procedures have you got that are in place to rectify these? Do you inform the Attorney General? What process is there in place to ensure that if mistakes are occurring a report goes off somewhere or suitable words of advice are spoken?

**Mr. I. Le Marquand:**

Well, if you look at Section 5, which starts on page 5, you will see that I highlight the current difficulties in relation to the role of the Attorney General. I highlight what I described as the power vacuum that exists and indicate that, in fact, I have had to take a much more proactive approach in terms of dealing with and advising the Centeniers Association than probably any of my predecessors did, because the Attorney General simply cannot do all the things that he is supposed to do. He has far too wide a remit. There is this power vacuum as to how things function. So, if things are going wrong, we will mention matters to individual Centeniers; we will take it up with the Centeniers Association. We have monthly meetings which the Centeniers are part of. Sometimes we write papers to them. Sometimes I will write to the Attorney General if it really is in his area and he needs to send out directions as to when to prosecute or when not to prosecute or whatever. But it is a sensitive area because I find myself having to fill the gap to a degree simply because he is not there. He does not sit in Court; he does not appear in Court; he does not know what is going on. So, this is quite an interesting development of the role of Magistrate. I think my predecessors were far less proactive in relating to the organisations and going out and trying to solve the problems than I have been. You will see I deal with that under that section.

**The Deputy of St. Martin:**

If someone needed help and support, that message would go along somewhere down the line. You mentioned earlier that a new, inexperienced Centenier no doubt may have a few problems.

**Mr. I. Le Marquand:**

Well, unfortunately, because I have not been in the loop recently in terms of the training process, I do not know precisely what is happening. I confess that to you. My colleague will know better but no doubt you will hear from the Centeniers about their training programme.

**Deputy D.W. Mezbourian:**

Why would your colleague know more about the training? Has he been involved?

**Mr. I. Le Marquand:**

Yes, he has been more involved.

**The Deputy of St. Martin:**

That is Mr. Christmas?

**Mr. I. Le Marquand:**

Mr. Christmas, yes. He has been more involved in the holding of seminars and things. I have been involved in the past but I have not been as involved. He has tended to team up with the legal advisors to help with the training aspects in recent times. I have not personally been as involved. I am speaking to them on Thursday in relation to matters but I do a lot of other things.



**The Deputy of Trinity:**

You have talked about your link that you have got with the Centeniers Association and you are speaking to them next week.

**Mr. I. Le Marquand:**

Yes.

**The Deputy of Trinity:**

Have they been supportive in you coming to talk to them about the problems that occur?

**Mr. I. Le Marquand:**

Yes. Since 1999, when I became a Magistrate, effectively, together with my colleagues, we have revamped the whole way the place has run. Hence, my comments about the statute. Now, initially, there was a little bit of resistance, but once people started to understand what we were trying to do, the Centeniers have been very, very supportive. I inherited a system in which at times cases were being adjourned almost indefinitely. I was horrified when I discovered cases which had gone 6, 7, 8 months without anything happening to them. Everything is now adjourned to a day and the Centenier and the defence know what we expect will happen on that day. So, we have a case managed system now, cases where the Court proactively manages the cases. It is one of the paradoxes, actually, that the situation with my predecessors was more so that they were reactive, that the Centeniers were running the cases and they were just reacting to them, whereas currently we are proactive. The Court takes hold of the cases and drives them by setting dates and so on and so forth. The Centeniers are delighted because we help them to know what they are supposed to do and when and so on.

**The Deputy of Trinity:**

You said that there was a little bit of resentment at first?

**Mr. I. Le Marquand:**

No, I do not think there was. I do not think there was because we took the Centeniers with us. There was a major change of personnel at the head of the Centeniers Association soon after and a new chairman and other people who came in were very positive, whereas the previous ones had not been. It is not as though I personally had any difficulties but I do not think I am the sort of person who would have had difficulties, if I could put it that way.

**Deputy D.W. Mezbourian:**

Do you or does the Court have any involvement in organising the day-to-day running order of places or is that a matter for the Centeniers?

**Mr. I. Le Marquand:**

Well, this is one of the issues that Mr. Christmas will no doubt talk to you about, because he does get very frustrated at times, as you will see I have said. The main sessions are morning sessions now for general remand courts as opposed to trials, ignoring the Youth Court for a moment. So, the main workload is coming in on the Monday morning, Tuesday, Wednesday, Thursday, Friday. Some of those mornings - you will see it is all down here - Wednesday and Friday are dedicated to the parish St. Helier and they also have quite a lot of input on a Monday, and others have a number of different players involved in them, particularly Tuesdays and Thursdays. It can be very difficult. If you have got 8 or 10 Centeniers there and nobody is taking charge in terms of who is the lead Centenier, who is running the running order, it can be very bitty and people do not know what is happening.

**The Deputy of St. Martin:**

I have some previous experience of courts.

**Mr. I. Le Marquand:**

Yes.

**The Deputy of St. Martin:**

Certainly, from my experience, it always seemed to be that the Magistrates were in charge of the Court and the running order was dealt with by the Magistrates department. As police officers, you were told you were number 34 on the case or number 35 or number 2, whatever it was. It seemed to be that the Magistrates were running the Court. Are we saying here that it is not as such, it is the Centeniers who decide the running order, et cetera?

**Mr. I. Le Marquand:**

Yes, it is, essentially, because the Magistrate is in no position, sitting on the Bench and dealing with the cases, to know whether advocate so and so has finished seeing his client in the cells and is now ready or what is happening here. Neither is the Greffier. So, it is an area of difficulty because the people who know where things are at are not the judge or the ...

**The Deputy of St. Martin:**

Does that not lead to the criticism that was levelled only recently about people remaining in the Magistrates Court for quite a considerable time on a speeding offence because they were left towards the end of the day, rather than possibly saying: "These are pleading guilty or intended pleas of guilty; we could deal with them early on and save their time and also the Centenier's time."

**Mr. I. Le Marquand:**

Yes. This is a difficult area. We have a general running order and the lists are listed in accordance with the general running order. In general, we will take the cases involving lawyers first. There is a batting

order.

**The Deputy of St. Martin:**

Who sets that batting order?

**Mr. I. Le Marquand:**

We do.

**The Deputy of St. Martin:**

The Court?

**Mr. I. Le Marquand:**

We do, but we never follow that batting order. You must understand, we have difficulties; we have difficulties getting the prisoners down sufficiently early in the morning so that the lawyers can see them. So, if the prisoners have not come down sufficiently early in the morning because the prison vans have to go to the Royal Court first and only deliver them to us at 9.50 a.m., then the advocates will not have seen them. So, you are waiting and then you will find there will be a duty advocate who has been allocated to deal with all the custodials. They may have 4, 5 or 6. So, whereas you would like to take the custodials first and get rid of them, you cannot because the duty advocate is not ready. Our system is not without its difficulties. I think every court must have this problem. We simply cannot run with a fixed batting order.

**The Deputy of St. Martin:**

You allow for considerable flexibility?

**Mr. I. Le Marquand:**

Well, there has to be, there has to be, because we do not know. You see, we do not have a dedicated bar in Jersey quite the same way as they have in the UK. We do have, increasingly, lawyers that specialise in criminal matters of some firms but other firms, it will be senior partner of a small firm turning up or whatever. What if they have got a case at the Royal Court on the same day? You are having to juggle people around, so it is quite difficult. I probably should set Mr. Christmas the impossible task of solving the problem as he is the one who finds it the most frustrating, but it is a difficulty which we have not been able to solve. I have to say, having said that, where we have one of the top class St. Helier Centeniers basically running the St. Helier morning, you know the difference. It all goes smoothly. At the end, you say: "Thank you very much, Centenier. Everything has gone smoothly this morning. I am sure you have caused that to happen." If you get a different Centenier presenting who is perhaps not as competent you pretty well know the wheels are going to fall off several times, but there you are. I am a patient man. We make the system work.

**The Deputy of St. Martin:**

One of the questions we have is what can you do; whom would you report it to? The Attorney General or the Chef des Connétables, the Centeniers? What systems are in place to try to rectify the problems that are being caused?

**Mr. I. Le Marquand:**

Can a leopard change its spots? One of the difficulties I have always experienced is that once people have got into bad habits of operating, it is very difficult to get them out of those bad habits. Some of the Centeniers who are the most difficult to deal with are some of the most experienced ones who have got into bad habits. How do you change them? I do not know. Mr. Christmas tells them off quite regularly and sometimes it has some effect; sometimes it does not. The same thing can happen with advocates and prosecutors. We do our very best with what we have got.

**The Deputy of St. Martin:**

We had prepared a programme of questions or a line of questions. There are 2 or 3 that we have not asked which I would like to cover, but would you like to come in with something at the moment?

**Deputy D.W. Mezbourian:**

I have got another question, if I may, with reference to the working party.

**Mr. I. Le Marquand:**

The Attorney General's working party?

**Deputy D.W. Mezbourian:**

The Attorney General's working party.

**Mr. I. Le Marquand:**

The so-called 1864 group. It is called the 1864 group because it feels like that is when we started, although that is actually the previous law.

**Deputy D.W. Mezbourian:**

Has any consideration been given to the role of the Centenier as investigator and prosecutor?

**Mr. I. Le Marquand:**

No. Investigator and prosecutor, to me, means the decision in relation to whether to prosecute or not, his role in relation to that.

**Deputy D.W. Mezbourian:**

No. By dint of him being an Honorary Police officer, there is always the possibility that the Centenier

may have been involved in the investigation of a case. I am sure it does not happen often.

**Mr. I. Le Marquand:**

So, you are talking about a different Centenier presenting the case, if he would give evidence. If the first Centenier is involved in an investigation and would give evidence, that someone else should present the case, is that what you are talking about?

**Deputy D.W. Mezbourian:**

Would it be possible for a Centenier who has been involved in an investigation of a case to then present that case in Court?

**Mr. I. Le Marquand:**

It is possible but it is bad practice and it is now frowned upon. It would be unusual. That is one of the areas that has been tightened up on in recent years.

**Deputy D.W. Mezbourian:**

How has it been tightened up?

**Mr. I. Le Marquand:**

Well, they just do not do it. They get someone else to present it for them.

**Deputy D.W. Mezbourian:**

Should that be something that would be specified anywhere, that that should not happen?

**The Deputy of St. Martin:**

Other than good practice, perhaps.

**Deputy D.W. Mezbourian:**

Yes, other than following good practice?

**Mr. I. Le Marquand:**

It could be. The difficulty when you are drafting a law in relation to criminal procedure is knowing down to what level you want prescribe things, because if you over-prescribe things, you lose flexibility. You cannot set out a statute of all the appropriate ways of dealing with something. Your statute would be too large and unworkable.

**Deputy D.W. Mezbourian:**

I ask because the panel has made a visit to the Crown Prosecution Service in Southampton, and when we were talking to them there about the procedures over here, we touched on that, that perhaps someone

who had been involved in an investigation could then, in fact, be called upon to decide as to whether or not to charge and then to present the case in court. Although we would, I am sure, all agree that that would not be best practice, at the moment our understanding is that it is something that could indeed happen.

**Mr. I. Le Marquand:**

It used to happen in years gone by. It was not unusual that the Centenier would be one of the witnesses in a case that he was presenting, but it does not happen in modern times. I cannot remember that happening.

**The Deputy of St. Martin:**

That would be really going back to one of the reasons why, when Mr. Cyril Phillips carried out his review, one of the reasons why the role was changed in the UK, whereby a police officer was not the person responsible for making the decision to charge either. So, you had a complete separation of responsibilities from the police to an individual party in the Crown Prosecution Service. We have a little bit of a link here where we still have police charging, making the decision to charge, albeit Honorary Police as opposed to States Police.

**Mr. I. Le Marquand:**

Yes. If you had a situation where there was an Honorary Police speed check and the Centenier was operating the machine and took the measurement and so on of speeding, it would not be good practice for him then to make the decision to prosecute. I see that as being the sort of area that the Attorney General should give guidelines on. I suspect he already has, but as I am not privy to his guidelines, I cannot answer that question. If I was the Attorney General, I would give a guideline on that.

**The Deputy of St. Martin:**

Yes. We have guidelines. Could I just ask my panel, we could probably look at number 13 as one that we could ask Mr. Le Marquand. We have sort of jiggled it a little bit around and we have had to play a Magistrates Court. I think it was down for me anyway. You talked earlier about having meetings. Do you have regular meetings with the chefs, the Centeniers, the Attorney General's legal advisors? Are there routinely brush-up sessions or wash-up sessions or whatever you want to call them?

**Mr. I. Le Marquand:**

There are 2 levels of regular meetings. There is a monthly meeting of the ... I cannot remember what we are called now, but a group which comprises one or 2 Centeniers, a legal advisor, probation chief normally, one representative advocate, representatives of the police. Now, that is more of a strategy meeting and tries to deal more with high level issues. Yes, we will raise any problems which are arising and they will take it back to their respective groups. Then, in parallel with that, there is a court users meeting which widens out the circle and would include viscounts and various other agencies and that, I

think, meets quarterly currently. I am not sure about that.

**The Deputy of St. Martin:**

This obviously has improved the efficiency of the running of the court and also in presentations?

**Mr. I. Le Marquand:**

Yes. When I started, I tended more so to convene meetings when there were specific issues, but we have now found that having a regular pattern of meetings is good to deal with issues.

**The Deputy of Trinity:**

That has been well taken up by all of them?

**Mr. I. Le Marquand:**

Oh, gosh, yes, yes. We normally have 2 Centeniers representing.

**The Deputy of St. Martin:**

Anne, we are getting close to the end of what we have to say, but if you look at number 16, would you like to ask that one?

**The Deputy of Trinity:**

Can I just go back to number 15 and talk about if there is a complaints procedure in place for anyone that has been involved with the court, if they wish to make a complaint? Is there one set up?

**Mr. I. Le Marquand:**

A complaint against whom?

**Deputy D.W. Mezbourian:**

Anybody. It could be against the Magistrate.

**The Deputy of St. Martin:**

It could be against you!

**Mr. I. Le Marquand:**

Well, if it is a Magistrate, they have got a right of appeal, have they not?

**Deputy D.W. Mezbourian:**

Yes.

**Mr. I. Le Marquand:**

I am always on tape in Court. Everything I do is on tape all the time. All the decisions I make, I give reasons for. If you wanted to complain against one of the Magistrates, I suppose if it was a relief Magistrate, I suppose you would complain to me and if it was me or Mr. Christmas, I suppose you would complain to the Bailiff, but then there is the appeals procedure as well.

**The Deputy of St. Martin:**

About the Centenier, I think, would be the Attorney General or the law officer, legal advisor?

**Mr. I. Le Marquand:**

The Attorney General, because he has a disciplinary function, even though there is a highly developed disciplinary code and disciplinary system in relation to complaints against the Centenier with the jurats sitting as a board to determine. I do not think there have been any cases in recent times. I sat when I was Judicial Greffier with the board back in the mid-1990s. So, there is a disciplinary procedure very clearly set out. The Attorney General has responsibilities there. I think the Connétable has responsibilities as well, because you understand the Centeniers are subject still to the jurisdiction of the Connétable. The Connétables have not yet been removed from having a role as the senior police officers in the parish, although they do not function any longer. I think Bob Le Broc was the last Connétable to go around booking parkers. I do not think it happens now. If you had a complaint against the Greffiers, the Judicial Greffier would be the ...

**The Deputy of St. Martin:**

But I think the answer is there are procedures in place?

**Mr. I. Le Marquand:**

Oh, yes.

**The Deputy of St. Martin:**

Maybe I will just look at number 16. I think we have heard a lot this afternoon really about where we are going forward, but one suggestion has been made in Centenier Lamy's report that it would be good to have a pool of Centeniers presenting cases, as opposed to individuals. You mentioned earlier about sometimes you have got as many as 8 different Centeniers in Court in the morning. Would consideration be given to having a pool?

**Mr. I. Le Marquand:**

Well, I think that is what I am hinting at in terms of presenting Centeniers. Different parishes have different practices. St. Helier will have one Centenier presenting all the St. Helier matters on that particular session, whereas St. Saviour, for instance, which tends to present their cases for the first time on a Thursday morning, the individual St. Saviour said, yes, come down, so you might have 3 or 4 of them all sitting presenting their own cases. You have got an issue of continuity, you see, because if the



cases started with a particular Centenier, and then they have to pass it over to somebody else, there may be a loss of continuity and knowledge. On the other hand, it is not very efficient to have so many sitting there. My own view is that routine matters could properly continue to be presented by ordinary Centeniers, if you want.

**The Deputy of Trinity:**

An example of a routine matter?

**Mr. I. Le Marquand:**

Speeding, minor motoring, but I think that more complicated matters should be presented by a presenting Centenier. There is quite a complicated inter-relationship - I probably should have mentioned this - between the Centeniers and legal advisors. Sometimes a case will start with a Centenier, he will then seek advice on the case, and sometimes the legal advisor will give him advice but say: "Carry on with it." Other times, they will take it over. So, the file could pass from one to the other and then back again on occasion. It is quite a complicated thing. I think I favour moving towards specialists. Again, you will see I have dealt with this in my paper, and I mentioned that the St. Helier Centeniers would have to pretty well all be presenting Centeniers because of the way they operate.

**The Deputy of St. Martin:**

We were a bit concerned whether the law allowed for it, but I think we have found, under the Criminal Procedures 1996 law, that it does.

**Mr. I. Le Marquand:**

Yes, it does, with the consent of the Connétable or whatever. This is dealt with very informally, as in my situation this morning where the Centenier disappeared not realising what was happening and we asked his colleague to stand in. You must also understand that you get people charged in different parishes. You might have someone with a speeding charge in St. Lawrence and a drunk and disorderly in St. Helier and an assault in St. Brelade. Now, you cannot have 3 Centeniers presenting the different aspects, so there always had to be a need for co-ordination. They will agree between them who will become the lead Centenier and will take on those matters.

**The Deputy of St. Martin:**

You mentioned legal advisors. Are there legal advisors sitting in a Court throughout the morning or throughout the day as a rule?

**Mr. I. Le Marquand:**

They are generally there in the mornings. There will generally be one of them there to assist in the mornings. I cannot say they are always there but there generally will be one around.

**The Deputy of St. Martin:**

Has there been or is there a general increase in cases coming forward? More and more court cases, you are dealing with more cases?

**Mr. I. Le Marquand:**

No, we are not. I would say we have had a decline in numbers. I have not come armed with statistics to prove my point. We are having an increase in serious crime. The numbers of cases we are sending up to the Royal Court seems to be increasing and that is mainly due to success of the police in catching people dealing in drugs and so on. Unfortunately, we seem to have had an increase recently in quite nasty assaults, but the generality of the volume of cases has actually declined. It is slightly artificial inasmuch that if I were the police chief and I wanted to increase the overall figures, I would just send out my man with his new machine which does not need to stop people and take pictures of lots of people speeding and I could boost the numbers by a great deal. In fact, we are getting more speeding cases coming in as a result of this and that could distort the figures, but overall, the numbers of cases have been dropping. I think that does correspond with the recent police figures.

**The Deputy of St. Martin:**

Thank you. Are there any more?

**Deputy D.W. Mezbourian:**

I have got one more question, Sir. One of our terms of reference is to examine the system of training and assessment provided to Centeniers for their work in the Magistrates Court. Have you ever been asked to make an assessment on a Centenier's performance?

**Mr. I. Le Marquand:**

No.

**Deputy D.W. Mezbourian:**

To formally assess?

**Mr. I. Le Marquand:**

I am not quite sure what the word "assessment" means in your terms of reference.

**Deputy D.W. Mezbourian:**

I think that our intention by that word was to refer to continual appraisal to ensure that Centeniers are presenting cases to a high standard and that that standard is maintained by a form of assessment.

**Mr. I. Le Marquand:**

I do not think there is any system of assessment. I do not think there is; I do not know of any. We

certainly do not do it. Would we be willing to tell Centeniers how good or bad they are? Yes, we would, but would they like being told is another matter. Would we then have to tell the advocates how good or bad they were? Maybe they would have to tell us what they thought of us. There is not a system and that is, I think, an issue, but the reason there is not a system is the reason I said: because they are elected and there is not a competency test prior to them being elected. It is all part of the historic system and I am suggesting that perhaps in modern times there should be a competency assessment made. It is difficult. We have still got the same historic system. The parish of St. Clements gets fined for failing to give us a Centenier and so they rush around, they find somebody, and perhaps they do not find someone who is up to the job but, nevertheless, they fulfilled the obligations.

**The Deputy of Trinity:**

Can I just pick up a point which is about competency? What do you mean by that? What criteria would they need to meet?

**Mr. I. Le Marquand:**

What do I mean by competency? Well, it is primarily the ability to make good decisions. I say to Centeniers when they are first sworn in that some of the decisions they will have to make are every bit as difficult as the decisions that I make, and they look surprised. But the decision as to when to prosecute and when not to prosecute, the decision as to whether to caution a person or impose a fine on them, these are difficult decisions. The decision as to whether there is sufficient evidence to warrant a charge, that is a difficult decision. The decision as to whether it is in the public interest, that is a difficult decision. The decision as to whether to oppose bail or not oppose bail, that is a difficult decision. You have got issues as to whether people have the ability to make logical, reasonable decisions or not. I see that as a primary competency. You will see I refer to that. Now, in addition to that, there is training; you could tell people how to do things; you could tell people which bits of a Centenier's report should be outlined. To give a practical example, for a speeding case, you have got a guilty plea. An experienced Centenier will tell me where the place was, which direction the person was coming from, what the road conditions were like, what the speed was, what they said after they were cautioned, and one or 2 other things which escape my mind. That is what I need to know. But a Centenier who is inexperienced will proceed to read out the entire Centenier's report and he will tell me the date upon which the machine was last tested, who the officer was, all sorts of things I do not need to know. Now, most people learn by experience. It would be helpful if they received some training before they first appeared to know which bits they should say and which bits they should not say, but some people do not seem to have the ability to really get to the stage of understanding which bits we need to know and which bits we do not, or whatever. Then you have got another aspect, which is what I call Court presence: how a person presents in Court. Do they have a clear reading voice? Do they have a certain presence? Do they come over as competent and effective? Can they pick up a document and immediately paraphrase it? Some have got that ability, some have not, and you will see what I am saying here is that no matter how good the training is, it will not compensate if the person does not have

the natural ability, but someone who has the potential can obviously be improved with training. So, competence is a combination of your innate ability to make good decisions, to present clearly, et cetera, on the one hand, and good training.

**The Deputy of St. Martin:**

Just picking up on page 59 again of the 1990 report, it said: "It should be obligatory for a newly elected Centenier, before he presents any cases in Court, to receive some training in presentation and prosecution of cases. The same obligation should attach to an existing Centenier on re-election." One of the problems we have there, of course, is the present law that says that you have to ensure that the parish has a Centenier, irrespective of whether he or she receives any training.

**Mr. I. Le Marquand:**

Yes. That is exactly what I am highlighting. You see, it might be better not to have someone appointed who really was not very good and to recognise that for a period that you need assistance from a wider pool of people in dealing with it.

**The Deputy of St. Martin:**

I think that is something which we could say is for another day.

**Mr. I. Le Marquand:**

It is a big question. I might be very unpopular for saying that, but there we are.

**The Deputy of St. Martin:**

Could I just confirm, I do not think Deputy Pryke or Deputy Mezbourian has any questions.

**Deputy D.W. Mezbourian:**

I would say that at the moment I do not have any questions, but I think that perhaps when we have had the opportunity to look at the actual comments ...

**The Deputy of St. Martin:**

Read this and thank you for it, Mr. Le Marquand.

**Mr. I. Le Marquand:**

Yes. Please do read my, I suppose, written submission as it has become now, because I have tried to deal with the factors as I see them which are relevant and my own analysis of those factors.

**Deputy D.W. Mezbourian:**

But it may be, Sir, that when we have looked at that we will have some further questions, which I would imagine the Chairman would hope could be addressed through correspondence.

**The Deputy of St. Martin:**

In one form or another. We will wait and see.

**Mr. I. Le Marquand:**

Yes, absolutely delighted to talk to you again on another occasion. I am really interested about the issue of their role and whether they are prosecutors or not. De facto they are, apart from trials. Whether they are in law or not, who knows, but then with unworkable legislation you have to make it work.

**The Deputy of St. Martin:**

Could I just take this opportunity as I have members of the public here, if anyone has got any questions that have not been asked that they thought should have been asked, I am quite happy for them to put them to me, if you like, and I will consider whether they should be put to the Magistrate.

**Deputy D.W. Mezbourian:**

Thank you, sir.

**Mr. I. Le Marquand:**

Thank you very much.

**The Deputy of St. Martin:**

Could I just thank you on behalf of our panel? I think you have been extremely forthright and it is really a pleasure to have someone like yourself to be so honest and forthright with us. I think we have got a lot to think about and you have been very helpful with the answers you have given us. Is there anything at all that you feel we should have asked you and have not asked?

**Mr. I. Le Marquand:**

No, but I think I would just ask you to read this because I have not dealt with all the aspects in as much depth as perhaps I might have liked to, and I think, as I say, this is not a decision that can be made in a vacuum because there are wider issues. I am straying and I am well aware I am straying here on to political ground, but the issue as to the future role of the honorary system is a big issue for the Island. I do not say that because I am a traditionalist, but because I think from time to time things need to be reviewed and the role of the parishes, the things which they do well, the things which should be done at that sort of level, needs to be reviewed. In Guernsey, of course, they did away with the Honorary Police system some years ago and, fine, they operate an entirely different system, but I think you have to be aware when you make changes of the knock-on effects. If there is going to be a continual reduction of the role of the parish, as it were, eventually the whole system will collapse because there will not be any point in maintaining it. There are other areas the parish currently deals with where I do not think there is a logical case for them doing so, but I am not going to mention those today. I think it is a question of

finding out where things are done better at a local level. That is one of the areas where the local knowledge issue comes into play, not in St. Helier, but in some of the smaller parishes. I think that is a very big political question because it also interplays with the role of Connétable in the States and so on, because exactly the same issue could come up. If the Connétables are no longer there, will the parish system just wither away, et cetera? So, you cannot make these decisions. The other thing that I would want to say in passing is the one thing I think I did agree with Mr. Rutherford on - I am sure there is more than one, but one I certainly did agree with him - was that he highly valued the parish hall system, particularly for youths. He failed to understand it correctly, but he highly valued it. It is interesting. He said perhaps it should be clarified, but he did not understand it so perhaps he did need to clarify it. I think it is right to say that elsewhere people are very keen to try to find diversionary processes for youngsters so that they do not come up before a Court level into the full criminal justice system too early. There is no doubt whatsoever that the system we have is a very valuable system, working in conjunction with the probation department and voluntary probation and deferred decisions and so on. I think that is a major, major asset that we have and I think that needs to be said.

**Deputy D.W. Mezbourian:**

In responding to that, sir, when we were in Southampton that really is one of the comments that we had from the people we met there when we discussed the parish hall system, and that is exactly what --

**The Deputy of St. Martin:**

There were certain strengths to the arguments of retaining that system.

**Deputy D.W. Mezbourian:**

Yes, the fact that it is diversionary.

**Mr. I. Le Marquand:**

Yes, in other words, diverting from taking people directly to Court.

**Deputy D.W. Mezbourian:**

Yes, absolutely, and they were very interested in that.

**Mr. I. Le Marquand:**

Yes. Well, I think that is an important issue. The other thing that has to be said - and I say it in my paper somewhere or other - is that you have to have somebody who is inserted after the investigation by the police and after they have made their recommendations in order to determine whether or not there should be a charge and so on and so forth. Now, I know the CPS (Crown Prosecution Service) do that now, do they not? I am not sure if they do that uniformly in the UK; I think they probably do. One of the advantages of our system is that that decision can be made quite quickly at times. The Centenier can go down to the police headquarters and can look at the statements and the evidence and can make a

decision very quickly. If you are going to have professionals doing it, they are going to have to do the same. They are going to have to turn up at night time and all sorts of times.

**The Deputy of St. Martin:**

Well, I gather they do. It has to be a 24-hour cover.

**Mr. I. Le Marquand:**

We then have to have a 24-hour cover, which is very expensive, very expensive. I know that because we have recently been doing assessments as to what it would have cost if the States had implemented the PPC law with the requirement for Saturday courts almost every week. It would have been incredibly expensive, which is one of the reasons why we opposed it.

**The Deputy of St. Martin:**

Anyway, with that, I think I will conclude. We have run over time.

**Mr. I. Le Marquand:**

Oh, yes.

**The Deputy of St. Martin:**

There is no extra payment for overtime! Again, can I thank you for coming to see us?

**Mr. I. Le Marquand:**

Thank you very much.

**The Deputy of St. Martin:**

If we need to get you back, we are pleased to know you are willing to come.

**Mr. I. Le Marquand:**

Yes. I am pleased that Mr. Christmas is able to come. He will give you a slightly different angle.

**Mrs. E. Cregeen:**

Can I ask the Magistrate a question?

**Mr. I. Le Marquand:**

Yes.

**Mrs. E. Cregeen:**

We have been discussing with you the Honorary Police and the Centeniers. What do you see as the future of the jurats?

**Mr. I. Le Marquand:**

The future of the jurats?

**Mrs. E. Cregeen:**

Is it an anomaly?

**Mr. I. Le Marquand:**

No. It is an excellent system. Oh, gosh, you are going to get me into hot water now if I give an honest answer.

**Mrs. E. Cregeen:**

Why not?

**The Deputy of St. Martin:**

I do not know if that is within the terms of reference, really, the jurats.

**Mr. I. Le Marquand:**

The jurats are an excellent institution and long may they remain. The sensible, wise people of experience who make decisions of fact are working alongside a professional judge. Again, I think we have an excellent system. We have that combination of professional lawyer and the sensible man in the street or woman in the street. So, I think, no, far from being an anomaly, I think it is a strength. In fact, if I had my own way - not that I will and I am resigned to this fact - I would have all trials dealt with by jurats and would abolish the jury trials. But that is not going to happen and that has been discussed *ad infinitum*, really, by the 1864 group. We are going to end up with a mixture, I think, just as we have at the moment. No, I have every confidence in the jurats.

**Mrs. E. Cregeen:**

I hope you did not mind me ...

**Mr. I. Le Marquand:**

Not at all, no. I just wondered if you had ...

**The Deputy of St. Martin:**

For the record purposes, could we have your full name so we can ...?

**Mrs. E. Cregeen:**

Elizabeth Cregeen, C-R-E-G-E-E-N.



**The Deputy of St. Martin:**

Are you okay on that one, Jane? Okay, right. With that, I really must put an end and thank you all again for your attendance.

**Mr. I. Le Marquand:**

Thank you.