



**Formal Negotiations on a  
New Cayman Islands Constitution**

**First Round**

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**Between**

**The Cayman Islands Delegation**

**- and -**

**The United Kingdom Delegation**

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**Monday, 29 September 2008 – Thursday, 2 October 2008**

**Held at**

**The Ritz-Carlton, Grand Cayman**

### **The United Kingdom's Delegation**

Mr. Ian Hendry - The Chairman  
Ms. Susan Dickson - Legal Counsellor, Foreign and Commonwealth Office  
Mr. Michael Bradley - Constitutional Adviser, FCO Overseas Territories Directorate  
Ms. Helen Nellthorp - Deputy Head, FCO Overseas Territories Directorate  
Ms. Sarah Latham - Desk Officer, Cayman Islands FCO Overseas Territories

### **The Cayman Islands Delegation**

His Excellency the Governor Mr. Stuart Jack  
Hon. Samuel Bulgin, QC, Attorney General

and a National Negotiating Team comprising representatives of:

#### **The Elected Government**

Hon. D. Kurt Tibbetts, JP - Honourable Leader of Government Business, Minister of District Administration, Planning, Agriculture & Housing

Hon. Alden M. McLaughlin, Jr. JP – Minister of Education, Training, Employment, Youth, Sports & Culture

Hon. Anthony S. Eden, OBE, JP - Minister of Health & Human Services

Hon. Charles E. Clifford, JP - Minister of Tourism, Environment, Development & Commerce

Hon. V. Arden McLean, JP - Minister of Communications, Works & Infrastructure

#### **The Government Backbench**

Ms. Lucille D. Seymour, BEM  
Mr. Osbourne V. Bodden

Mr. W. Alfonso Wright  
Mr. Moses I. Kirkconnell, JP

#### **The Official Opposition**

Hon. W. McKeeva Bush, OBE, JP, Honourable Leader of the Opposition

Mr. Rolston M. Anglin  
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Mr. Cline A. Glidden, Jr.  
Ms. Juliana Y. O'Connor-Connolly, JP

**The Cayman Ministers' Association** - Pastor Al Ebanks

**The Cayman Islands Conference of Seventh Day Adventists** - Pastor Shian O'Connor

#### **The Chamber of Commerce**

Mr. Will Pineau – CEO Chamber of Commerce  
Mr. Eddie Thompson, President Elect      Mr. Stuart Bostock, Vice President

#### **The Human Rights Committee**

Ms. Melanie McLaughlin, Chairperson HRC Constitutional Working Group  
Mrs. Sara Collins, Partner and Head of Specialist Trust Disputes Group

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**TUESDAY, 30 SEPTEMBER, 2008**  
**2008 CONSTITUTIONAL NEGOTIATIONS**  
**HELD BETWEEN**  
**THE CAYMAN ISLANDS DELEGATION AND**  
**THE FOREIGN AND COMMONWEALTH OFFICE**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Good morning everybody. I hope everyone slept well and didn't have to work too hard.

I think we should resume this morning by looking at — am I a bit too loud, is that better? — by looking at Proposal 5 and —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Mr. Chair, forgive me just a second. Just so that everybody will know, sir, we were only able to have at this time seven of those Drafts which have been distributed and they remain there so that everybody will have a copy. Should be within the hour. Just letting you know that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right, thank you very much. That will be helpful.

I think there was one element of the Proposal 5 (that's the second point that we hadn't reached yesterday), and I would like to spend a little time, first of all, looking at that point. And then, before moving on to Proposal 6, there are one or two relatively minor points on the chapter in the 2003 Draft Constitution, which relate to the legislature, that I would like just to mention without necessarily trying to press for any conclusion on it. But I'll come to those after looking at Proposal 5 (2) as it were, that is to say: **“The overriding powers of the UK Government and the Governor to make laws for the Cayman Islands, without the approval of our Assembly; to annul laws that have been duly passed; and to give directions to our Assembly, should be restricted or eliminated.”** And the first thing that struck me about the wording of this part of the proposal is that it's rather imprecise, perhaps deliberately so, **“should be restricted or eliminated”**. Now I wonder if I could just ask, Kurt. The paper you've just mentioned would it be helpful to look at this thing when you've got that paper ready? So, we could actually just postpone it for the time being.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Yes, Mr. Chair, I think that's perhaps the most appropriate way to deal with it because not everybody has copies yet.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Can I then —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** May I just say, in the Draft I think the relevant sections will be section 73, with a note following, and then section 112.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** So when we get there — when everyone's got a copy of that, we'll come back to this. I'm assuming —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** I'm sorry, the numbering's just changed in the recent Draft, so the last paragraph that I mentioned, 112, becomes .. I'm sorry ... 113.

### **2003 DRAFT CONSTITUTION, PART IV, “THE LEGISLATURE”**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, when everyone's got a copy of that piece of paper we'll come back to that.

Could I just mention, as I said, a couple of relatively minor points as I was just re-reading this morning the 2003 Draft, Part IV, The Legislature, if you all have that. In section 45(1)(c), 45(1)(c), this disqualifies from being elected as a Member of the Legislative Assembly a person who has been adjudged or otherwise declared bankrupt under any law enforced in any part of the Commonwealth and has not been discharged.

Now, when talking to the other Overseas Territories in their constitutional reviews, I think all of them, or almost all of them, have wished to change the reference to “Commonwealth” to “any country”. The law enforced in any country rather than in any part of the Commonwealth. Now, I don't feel very strongly about this, but it does seem rather old fashioned to regard bankruptcy under the law of a Commonwealth country as conclusive on this point as opposed to bankruptcy, for example, in the United States. And I don't know whether you have a view on that, whether you'd like to think about it. Yes. Alden.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):**

Morning, Mr. Chairman, morning everyone. I agree — I think we agree limiting it to the Commonwealth is probably old fashioned, but I'm not sure we're all confident that every judicial system in the world and every country in the world necessarily accords with general principles in relation to these matters. So, open it up to every country in the world as an outright prohibition or disqualification factor I think may be problematic.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. Well, I — can I leave it for you to think about? As I say, I don't think we have a strong view about it, but it's a point to consider.

And the other one, it's in the same — the other point it's in the same section. The other point's in the same section in 45(1)(e), a little bit further down the page. **A person is disqualified to be elected as a Member of the Legislative Assembly who is under a sentence of death imposed on him by any court in any country.** And then it goes on to disqualify someone serving or who has served a term of imprisonment exceeding 12 months.

Now, we have raised — we the UK side have raised with the other Territories the question whether they wish to retain the reference to “a sentence of death” as a disqualification, “sentence of death anywhere in the world”. And the reason for our raising it simply is that capital punishment has been abolished in the UK and here for murders at any rate.

Now, some territories have preferred to delete this sentence with reference to “a sentence of death” and some have preferred to keep it. It's quite a difficult one because irrespective of whether the death sentence applies in the territory, or for that matter in the United Kingdom, obviously, it does in some other parts of the world, and some other parts of the world, picking up Alden's point, one might regard the criminal justice system as less than ideal. So, it is actually quite a difficult issue.

Just for information — this is only for information — the law in the UK is that a person is disqualified for election to the House of Commons if under sentence of imprisonment for 12 months or more, but not if that person is under sentence of death. Now, why it is that way I don't know, but that is the position. So, that's just a matter of information. Of course you can ignore that if —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):**

Mr. Chair, just to speak to this just for a couple of minutes, and looking at a very hypothetical example but — so, in the United States, the death

sentence exists and somebody who is an elected Member goes to the United States for whatever reason, whether it's a visit or not, something happens. That person is charged, that person is convicted, and that person during that time up, until his conviction on sentence, is a Member of the Legislative Assembly in the Cayman Islands. What happens?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** What part of anything that we have would be able to deal with that for disqualification?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, of course — section 45(1) deals with disqualification from election in the first place. But your hypothesis is in section 46: **The seat of an elected Member of the LA shall become vacant.** It's under little 'g': **If any circumstances arise that if he were not a Member would cause him to be disqualified for election thereto by virtue of any provision of section 45(1) other than paragraph (g).** But then there's section 47 which allows for delay while an appeal is taking place; it's quite a complicated procedure, but the Governor, and ultimately the approval of the Assembly by approval of the LA itself, can delay a vacation while appeals are being carried out. You see what I mean?

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Yes, sir. But, Mr. Chair, 45 — or rather, 46(g).

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Which speaks to if you are not a Member of the Assembly, if we take out the death sentence of — out of 45(e).

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yep.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Then he could be convicted and not be disqualified.



**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Yes. That's it. I mean —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** That's why I'm asking the question really.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, you could have a situation where — I mean, in most cases, if a person sentenced to death in another place, they would be incarcerated and, you know, they won't in practice be able to stand for election or remain a Member anyway because they'll be out there.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Right, but I'm just asking what —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And there's already a provision in 46 that if you cease to be resident in the Cayman Islands you lose your seat.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Okay. Okay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But you could have a situation, I suppose, where a person is convicted, escapes the jurisdiction or place where he was convicted, comes back to the Cayman Islands, he is not extradited —

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Puts on his suit and comes into the Legislative Assembly.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** [laughter] Yeah. So anyway, I leave the point with you to think about. I mean, I — it would be wrong of me to say that we have a firm preference either way, but I think it's one to think about. And as I say, some Territories have opted to keep in the reference to a death sentence.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** And just one — yes, sir. And just one more point on that because I think the way that (e) reads, do you interpret that to mean that if the sentence is 12 months, as in most jurisdictions, the individual may not necessarily serve 12 months incarceration, is it the period that he or she is actually incarcerated or is it the sentence?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think it's the sentence.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** I just want to confirm that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** We think it's the sentence.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** I just want to confirm that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Irrespective of whether one is released before.

**HON. D. KURT TIBBETTS, JP (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE & HOUSING):** Yes. Okay.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Mr. Chair, I'm just wondering, on the same section 45(e.), if we have a minimum barrier of 12 months —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** — wouldn't that take care of any sentence higher than that for — obviously, life imprisonment or sentence of death would be higher than 12 months.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** So, if he's disqualified at a 12-months bar, then anything, in excess of that is really repetition, isn't it?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, you see, it says if you leave out the reference to sentence of death, it would say "is serving or has served a sentence of imprisonment" by whatever name called exceeding 12 months, so it would be a sentence of imprisonment.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Exceeding —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Exceeding 12 months.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Twelve months. Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. So, it would take care of any sentence of imprisonment greater than 12 months, but it would not include death sentence unless it was specified, as it is now in the Draft. You see what I mean?

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Okay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** So, I mean it could be drafted in a different way, you know, any sentence more severe than —

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Okay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** — a sentence of imprisonment of 12 months which will probably catch a death sentence.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Which I think is the intention here.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. Oh, it is at the moment.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** The intention is to disqualify someone under sentence of death anywhere in the world.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** By any court anywhere in the world including, you know, the most unrespectable legal systems that you could imagine. But that's the choice for you. And I say, I repeat again, I don't want to press any particular solution, but I think it's a thing I feel obliged to raise because of the abolition of the death sentence. And the UK government has gone around, you know, complaining in the US and other places about the imposition of the death sentence, so it's a thing I feel I need to raise. But I have to say, our Ministers have not insisted on Territories taking this out of their Constitutions. They have not insisted on that. So, it is really a matter for your choice.

Yes, sorry. Sam?

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Exceeding. Yes, so it's got to be at least 12 months and a day.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Susan?

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):** I think one of the points was because of the attitude to the death penalty, we wondered whether it was sort of respectable to have it on the face of the Constitution. And so I think that one thing you might want to think about is whether you can draft something which would catch the situation without actually having to refer to it on the face of the Constitution.

**PASTOR SHIAN O'CONNOR (REPRESENTATIVE OF THE CAYMAN ISLANDS SEVENTH-DAY ADVENTISTS CONFERENCE):** Mr. Chairman, in that regard, since in most jurisdictions the death penalty is substituted for life imprisonment, would that be favourable here, life

imprisonment rather than death sentence because I think that's a substitute in most jurisdictions? Would that be favourable here?

**MS. SUSAN DICKSON (LEGAL COUNSELLOR, FCO DELEGATION):**

Well, I don't think we were arguing that point. I think that would be caught by this clearly. I mean, our point was and the thinking in some other territories was because of the attitude to the death penalty and the fact that it's been abolished, should we be referring to it on the face of the Constitution. And in the case of UK they've just taken it out completely; we don't have this restriction. But it would be possible I think if you want to catch this situation, to reword it without actually referring to it specifically.

But the other point I think that, you know, worries us slightly is that in some countries, for example, China, you can apparently get the death sentence for tax evasion. So, you know, situations like that and should we be catching something like that. Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Anyway, as I say, I think it's — I put it into the mix for something for you to think about in a modernised Constitution, but I'm not, you know, applying any pressure one way or the other because, as I say —

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** We'll think about it, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

Can I just — can you just hold on a moment while I just flip through because I think there was one other point? [pause] No, I think that was all at this stage. There are — there are some questions about the right to vote and so on, and that's coming at a later stage in the set of proposals. So, has the — has everybody got your paper now? Shall we move on pending? No?

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. Okay. Well, shall we look for a little while at Proposal 6 and come back, when the paper is available to everybody, to the point on Proposal 5 that's outstanding?

Proposal 6 is to do with —

[inaudible comment by the Honourable Leader of the Opposition]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It's the second point on Proposal 5, the one that reads: “**The overriding powers of the UK Government and the Governor to make laws...**” et cetera.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** But we haven't dealt with [inaudible] matter of the AG yet in Proposal 5 [inaudible].

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, we haven't resolved it.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Sorry?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** We haven't resolved it. I'm aware of that. We haven't resolved the point.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah, but we debated it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Oh, we debated it for a long time yesterday.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** No, we didn't. When I tried to get in, sir, you stopped me, and I'm gonna have my say on it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Let's go back to that if you would like to do that.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Please.

### **PROPOSAL 5 – ROLE OF THE ATTORNEY GENERAL**

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman ... Mr. Chairman, yesterday the remarks of the Government by the Minister of Education left me very much concerned. It was not only yesterday, because the Minister has been on radio and at the meeting on Thursday the Minister made similar remarks that the attorney — the Honourable Attorney General is not our Attorney General, he's the UK's Attorney General according to what he said. But

more than that, I don't recall the words but we have them on tape, that the Attorney General had did something wrong sometime, giving the impression that something had gone wrong in Cabinet and that because of that they have to seem to want the position — in other words, take him out. And I have challenged the Government on this because our Constitution says that he advises, the Honourable Attorney General advised the Cabinet, when he's in the House he advises the legislature. That's what our present constitutional order says.

The country — I have had many, many discussions with people on this and many calls on it because of what was said by the Government, which was more or less repeated here yesterday morning and has not been refuted by the — well, nor by you, nor the delegation consisting of the Governor and the Attorney General. And, Mr. Chairman, as I said, I am — the country has been told about something that happened, and I want to find out what this is that the Member, the Minister is leaving the impression that has gone so sorely wrong in our system of governance that we now have to take these steps as he and his Government is outlining.

I know yesterday you made reference to the fact that he is — he's not the UK's Attorney General, he is our Attorney General according to our Constitution, as I have pointed out. And this matter, sir, cannot be left out in the open; this has to be cleared up because too many people have said this, and some other things, is the overriding concern on though points, that is, the Governor's powers, the Honourable AG's presence in Cabinet, voting or non-voting and in the House the same position. This cannot be just smoothed over. It has to be cleared up.

And I want to know and I have asked the Government when they — on Thursday, and then on Friday morning they took up all the radio show host's time on these matters, and then on the afternoon again on that radio show, the government's radio show, they went back there doing the same thing. This has to be cleared up because the country cannot be left with the impression that our constitutional order is not working to that extent. And so, if the Government has something up their sleeve or something that they are disquieted, so disquieted that they want something done about it, then, they need to say so.

I'll tell you my experience in Cabinet. At all times the AG has given full advice to Cabinet whether we liked it or not. It was what was law, what was according to the Constitution. That has always been my experience. Now, the Government has had some problems, we know, but they can't take dislikes to change — they can't take their dislikes to change the Constitution in this manner. So, they have to come clean, they have to tell us what it is that is bothering them. And who knows, Mr. Chairman? They might get some sympathy on this side. Empathy on this side as well. But the Minister of Education just can't say those things and let the country believe that the Governor and the AG is conspire — is in some conspiracy to do wrong or to have done wrong and

then let it go at that. That is not right. That is not good governance and it's gone on for too many weeks.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. I — what I said yesterday was that I would have more to say from our perspective about the role of the Attorney General because that is dealt with later on in one of the later proposals. And I — you know, just as a sort of prelude now, the UK side is very concerned about the way that proposal later on is formulated.

Now, I don't know this row about what is said on radio shows only, but I mean, would the — would the Government representative like to say anything at this moment, or?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Chairman, I think Mr. Bush has forgotten that the press have left and that there is absolutely no mileage to be gained. Let me start again.

Mr. Chairman, I think the problem is that Mr. Bush has not appreciated that the press left yesterday and that there is no mileage to be gained in political statements.

What he said just now is what he's been saying for some time. I did my best yesterday to explain the Government's position, which until recently was consistent with Mr. Bush's position about the role and appointment of the Attorney General. Mr. Bush, on 10<sup>th</sup> February 2003 in an unprecedented move actually moved a motion of No Confidence in the then Attorney General arising from the infamous *Eurobank* case. So, the issue about the challenges of that office as presently constituted has been around for a long time.

Our position, which I will reiterate for the benefit particularly of Mr. Bush, is that the present arrangement where the Attorney General is a Member of the House and a Member of Cabinet, full Member, appointed by the Governor, by the UK government essentially, and expected to advise Cabinet, as well as the Governor, on occasion places him in an untenable position and creates potential for conflict of interest. That is not, in our view, in the best interest of good governance. It does a disservice to whoever holds that office and it does mean that continually questions are asked about where — in a difficult situation, where the loyalty of the holder of that office lies. Now, I think that is the point that Mr. Pineau was seeking to make yesterday when he raised the issue. You can take soundings all around this community, particularly the business community, and those issues will come to the fore. That's all that is.

I have said before Sam Bulgin is a good friend of us on this side, particularly a good friend of mine. This has nothing to do with Sam; this has to do with the holder — with the office as presently constituted.



**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, it seems that the Minister of Education constantly thinks of the press. That's why he refers to them as he does. But he can't turn and twist that this time because they have gone on record to say that something was done. They cannot deny that; that is on record. And he left a sour taste in the mouths of the populace of this country as to what is going on, what went on. As I said, I have made it absolutely clear what we found in Cabinet, as Members in Cabinet at all times, with this current Attorney General. He had been forthright and I cannot say at any time that he took the Governor's side and we had many, many hot issues. Many, big issues, but he spoke down the middle to where the law exists.

I am not going to get into this thing with the Minister of Education about Ballantyne because that era of this country has gone, and we have moved on, and I believe the Islands are the better off for it. I don't need to explain to anyone that I protect this country when I am leading the government, when I think it is necessary, and will stand up and say to you forthrightly. I do not say one thing in the presence of you, the Foreign and Commonwealth Office, and then get on radio when you're not here and say something else. What you hear me say is what I have said to the country. But that's the Government's long suit, but they can't hide on this issue because they will not get the support from the public for it.

I am going to leave the matter because we can't hear — he's not going to tell the truth on it. And I have no doubt from what I saw yesterday and the way that the reaction came from the Governor and the Honourable Attorney General that that man was doing the same thing in the room as I heard him do on the radio. In fact, he went much further on the radio. But I'll leave it at that. Suffice it to say that he has brought nothing to show us that that condition must be changed, nothing, and he has [portion missing from recording] —

**RECESS**

**RESUMED**

**PROPOSAL 14 – LIMIT THE ROLE OF THE ATTORNEY GENERAL  
AND CHANGE THE RULES OF HIS APPOINTMENT**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. I don't personally mind taking out of order the — although I tried to keep putting it off, but proposal number 14 is: **“Limit the role of the Attorney General and change the rules for his appointment.”** I

mean, if you would like to take that point now, I will be very happy to elaborate on our perception of this proposal. Are you happy to do that? I mean, we might as well. We seem to be unable to do anything else at the moment.

This point is not an unusual one for us in our discussions with Overseas Territories in reviewing their constitutions. It always comes up and it always creates quite a lot of heat. But I must tell you frankly, as I always tell you frankly when we have a strong position, we have a strong position on this and I'm confident of the view of our Ministers on this.

It would not be acceptable for the Attorney General to be described in any other way than legal adviser, principal legal adviser to the government, not the Cabinet, but the government as a whole. And the government includes the Governor and it includes the Cabinet and it includes the departments of government. Now, it may be that from time to time the Attorney General finds himself or herself pulled one way or the other by those who want to get him on their side. Of course that happens. I know, I was a government legal adviser all my career, and so was my colleague Michael was Attorney General here. This happens. But the good Attorney General gives objective legal advice to whomsoever asks him for that advice and does not trim his advice according to who is asking him. That's the nature of the office and an Attorney General who does otherwise is not worthy of holding the post. But in terms of the Constitution, it will not be acceptable to us to describe, as I think proposal 14 indicates, the Attorney General as simply legal adviser to the Cabinet. That's point one.

Point two: it is acceptable to us to hive off from the current function of the Attorney General the prosecution powers, and to create instead a director of public prosecutions in the Constitution over whom the Attorney General would have no supervisory or any other role. So, point two is, we could accept that change, which we readily accept can present difficulties of a possible conflict of interest where the Attorney General may not feel able to brief the Cabinet on matters to do with a possible prosecution. So, that's point two.

Point three: method of appointment. We could not accept the Attorney General being appointed by the Governor acting in accordance and advice of the Premier. We cannot accept that. As a maximum, if you wanted some political input into the appointment, we could consider the Attorney General being appointed by the Governor after consultation with the Premier, meaning not bound by the advice of the Premier. On the other hand, you will probably have seen a different method in the new British Virgin Islands Constitution whereby, the new judicial and legal service commission there advises the Governor on the appointment of the DPP and the Attorney General. So, this independent body has a role in advising the Governor, and the Governor must accept the advice of that commission unless the Governor is convinced that it would be prejudicial to Her Majesty's interests or some such phrase. So, there is

ultimately the Governor's veto, but the whole process is different from the current one where the Governor appoints the AG in his discretion. In the BVI system, the judicial and legal service commission would do the preparation and make the recommendations and the Governor would be obliged to accept subject to the exceptional veto. Now, we could explore a method of appointment like that which would have the advantage, I think, of giving much more of a local input into the selection of the AG.

Incidentally, our position on the appointment of the DPP is the same. We would be content for the judicial and legal service commission to advise on the appointment of the DPP subject to an exceptional veto by the Governor.

I think that is — I think that summarises our position on the group of proposals about the Attorney General, but I just finish by saying it is a matter — this is a big issue to us, but I think it's one which you will see we're far from being negative across the board. We just — we share your interest, we want to make sure that this vital office functions. We're prepared for some modernisation of the kind I've described and, in particular, the hiving off of the prosecutorial powers and an adjustment in the method of appointment. And perhaps, lastly, although I don't think you deal with it here, we would regard as very important, vital in fact, that the security of tenure of the Attorney General and of the DPP should be clearly written into the Constitution, along the lines that it currently is, in order to protect against arbitrary dismissal. Now, I hope that helps that you've got clearly our position on that. Alden?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Chairman, starting with the points in the order that you articulated them. The government of the Cayman Islands under the present Constitution, and even under what is proposed by us, is made up of a number of component parts.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** For the purposes of the role of the Attorney General, it is the Governor and the government and the Cabinet and the legislature. Because the Attorney General in the present — in his present manifestation serves all of those masters, that creates the real conflict — or potential for conflict which exists because the roles aren't the same. And the Governor, the Governor, under the present Constitution and under — even under what we propose, because he retains special responsibility and reserve powers acting on behalf of the United Kingdom Government, not on behalf of the Cayman Islands, has very — has very different interests, in many instances, to consider other than the interest of the Cayman Islands.

Throughout the Constitution there are references to as long as it doesn't prejudice Her Majesty's interests and so forth and so on. No question that he has — the Governor has a dual role: responsibility to the United Kingdom government to ensure that the Overseas Territory does what they think is appropriate in terms of good government and so forth, that's fine, but also the matter of the protection of Her Majesty's government's interests. So that — and this is increasingly the case as Cayman becomes more sophisticated, becomes more of a global player, particularly in relation to the financial services sector and the tremendous role we play there on the global stage.

To have one legal adviser who advises the government, made up of the Governor and the Cabinet, is to continue to invite real strain, stress, potential for conflict, and both local and international criticism of our system of governance. It would be much — it would be much safer, much more satisfactory I think to everyone if the Attorney General was responsible to Cabinet and principal legal adviser to Cabinet. And where the — and he would advise the Governor in those instances as well because Governor is part of Cabinet, but where the matters that the Governor requires advice on are not matters for which the local government, the elected government has responsibility. The Governor should seek separate legal advice because under the present arrangement, and even under the proposed one as you've just proposed it, you wind up in a situation where the Attorney General, who's supposed to be principal adviser to the government, is being asked to give advice to the Governor in relation to matters which involve Her Majesty's — the UK's interests. That's fine as long as those interests don't conflict with local interests. And increasingly the case is they do conflict, particularly in relation to international agreements and initiatives, particularly as they relate to the financial services sector and otherwise.

So, our position — and we're very strong on this and we've taken lots of advice on it — is to continue this arrangement with one legal adviser to both the Governor and the Cabinet is to invite a continuation of the strains, stresses which are already very clear and apparent, and which invite continued comment, negative comment, and criticism of our system of governance. That's point number one.

The question about the appointment of — I think this is point three though, I've forgotten what point two was. I don't think —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Point two was the DPP cutting off the —

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** We're happy with that. We don't have any issue with that. But point three is the manner of appointment.

Again, the whole question of the appointment of the AG comes back to the original point. The whole perception of to whom does his loyalty — or to whom is his loyalty owed and the perceptions which continue to exist as long as that is perceived to be a UK appointment. We take entirely on board the concerns about ensuring — the concerns to ensure that we do not politicise this office, and no one on this side is suggesting that person should be an elected person. We've never suggested that. And, indeed, I think I can safely say that your proposal which is — which comes from the British Virgin Islands Constitution of the appointment being done to a judicial and legal services commission is something that we will carefully consider, and we find at least at this stage quite attractive. But we really must work, the UK and the Cayman Islands, to deal with this really negative perception about the role of that office. It creates huge problems, not only from a perception standpoint, but for whoever is in that office. And if these things persist for as long as they have, there must be a problem with the arrangement.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Can I just respond to one point before asking Michael Bradley to comment as a former Attorney General here, amongst many other things, and that is right at the beginning Alden, you said that the Attorney General serves more than one master. Now, that seems to me to, in a way, encapsulate the difference between us because we do not see the Attorney General as serving any masters, just like my colleague Susan does not serve masters in the Foreign Office. Even the Foreign Office Ministers, they have clients and the Attorney General has several clients, not masters who order him how to give his advice. At least I hope they don't, and I'm sure the present Attorney General wouldn't tolerate it if they tried to.

You see — and the other point I just wanted to make is this, and this is really at a higher level, it doesn't just relate to the Attorney General. If we were to go along the road you press us to, one legal adviser essentially selected by Cabinet to be the Cabinet's legal adviser, the Governor can go off and get his own legal advice somewhere else. That immediately divides the Governor from the Cabinet and that is not acceptable.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It is not our philosophy. Our philosophy is cooperation, and the Governor works with the elected politicians for territory. And I can tell you — I'm looking to my

political advisers over here — our minister would not accept any such division in any shape or form. This is absolutely fundamental, and it goes quite above the argument about the role of the Attorney General, and we'll come back to it when we discuss how the Cabinet is to operate.

But having said that, could I just ask Michael to make a comment, if you'd like to, on this because he is — knows the office of Attorney General here and elsewhere very well. Please, Michael.

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** Thank you, Mr. Chair. In many ways I'm a loquitor on behalf of the present Attorney General here in the sense that Mr. Bulgin here is sitting and I'm sure he is dying to speak, but again, I think it reflects the probative, the role of the Attorney General in that he isn't seeking to speak because he considers that by doing so he would be drawn inadvertently into arguments of policy as opposed to legal matters.

As some of you know, I have been an Attorney General here and in other places in the past, and my thinking may be subjective but it's fairly firm in this respect. And I think that one point that concerns me is that through history in the Cayman Islands there may have been an intermeddling, an intermixing of looking at personalities rather than principles.

In 2003, when this Constitution was drafted, the Draft 2003 Constitution, it provides, after long and careful debate there, what the role of the Attorney General should be. Certain events happened after that and thinking may have changed because of personalities rather than principles.

As far as I've been concerned as an Attorney General here and elsewhere, you are the government's principal legal adviser; you're the Attorney General of the Cayman Islands; you are appointed by the Governor and potentially in the future, subject to the advise of an independent body; but you're employed by and paid by and responsible to the government of the country. The Attorney General would not ever give differing legal opinions to different people. There's a legal opinion that he will give when he's asked for, a legal opinion that he gives to the Governor, to the government (not to a political party) and to the legislature. It is perfectly proper in certain circumstances if the government party is unhappy with something that the AG has advised upon for them as a party to seek separate legal advice from their own legal adviser. It is perfectly proper for the opposition if they're not happy with an opinion that the Attorney General has given to seek independent legal advice as a party. It is perfectly proper for the Governor.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Can you put in the Constitution that the government would pay for that?

[laughter]

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** We haven't got to the finance sections yet but we will. It's perfectly proper for the Governor in relation to his reserved powers if he has got an opinion from the Attorney General, to seek advice from the legal counsellors in the United Kingdom.

The job of an Attorney General is never difficult — is never easy, it's difficult, but the Attorney General is serving the country; he is giving, for what it's worth, the best legal advice that he can; his responsibility is to be impartial. And an Attorney General, like any other civil servant, has impartiality built into his system because he knows in the course of events there may be a general election and a new party will come into power, and, of essence, the Attorney General is associated in the minds of the people with the government, and when a new party comes into power he should be able to give the same impartial legal advice that there is.

I think that there's an argument for saying that because he is not an elected Member the Attorney General should not have a vote. I think elected Members should be the only people perhaps that should have votes, and the time where three elected Members were able to have a built-in majority for a government should be the thing of the past. But I think that he cannot perform his functions properly and impartially unless he has got a right of audience as a Member of the Legislative Assembly, to be able to say and give legal opinion, and express the dangers, the pitfalls as he perceives it, legally, not in policy, in following certain paths.

And I'm sorry if I've gone on at such length, but when I was Attorney General I was paid a compliment, inadvertently, when Ministers turned around and said: Well, I suppose you're the only Attorney General we've got.

[laughter]

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** And that's right and that's the way it should be. But there is an advice being given, you like it or lump it but it's given honestly. And I think that to diminish the role of the Attorney General would be a diminution of the good governance of the country. No vote perhaps, but to be a Member to have the right to appear. Thank you Mr. Chairman.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Professor, go ahead. You go ahead, Professor. I'll come after you.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Mr. Chairman, that was a very moving statement of the role of the ideal Attorney General of which I'm sure Mr. Bradley was, and indeed I think the same degree of integrity should be accorded to the present Attorney General.

As far as I see these proposals, they don't seek at all to diminish the role of the Attorney General, perhaps to strengthen it, to clarify some weaknesses in it and clear conflicts. I don't think — I mean I take the points and I think they're very well made, but I do think it's wrong to paper over some of these cracks. I think they must be looked at very carefully.

The analogy of client isn't quite correct because if three of us in this room wanted to — three being the equivalent of the Governor, the Cabinet and the legislature — wanted as clients to select a lawyer, we would all agree we all have equal say in the appointments process. That would be the kind of cooperation to which you refer. But in this case it is just one of the three, the Governor, that makes the appointment, and it's being suggested here not that the Cabinet and the legislature agree as well but that it be put into the hands of a semi-independent body who can give advice as well and vet the — vet the appointment.

And so, I would say that this proposal seeks to add to the integrity described so well by Michael Bradley of the Attorney General, and I think it would be wrong to paper over some of these cracks, but rather to look at what is being proposed here, which is to have a fairer, more transparent, more open appointments of the process in respect of the attorney.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, McKeeva, please.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, from what we've gathered from the public, they have many concerns or several concerns in these areas. Over



riding concern is where we would be if some of these offices go. If we are not seeking political independence, then, we cannot create the divisions by — divisions in offices and the removal of officers that perhaps would cause that to come about prematurely. We cannot do it behind the backs of the people, or unknown to the people as to what they are getting. And some of the finer things have not been told to the public.

I think I have outlined our position, but to make it absolutely clear, the AG remains, his office duties, prosecutorial duties go, and the DPP is created. The appointment is done in consultation with a Chief Minister. I see they're using the word "Premier " all through this document as if it's a foregone conclusion, but we're not supporting that either. Consultation with a Chief Minister, not the judicial services. The government — and appointment is not done by the judicial services, it's done by the Governor. Sorry, the judicial council. So, Mr. Chairman, that is our position.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Ah, Kurt, sorry, you wanted to say something?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yeah, Mr. Chairman, I heard what your adviser has said, Mr. Bradley, and we don't want to get into this morning how he's appointed, that's separate from what we're talking about. That's just a light moment.

[laughter]

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Is it now?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** But, Mr. Chair, hearing what your position is, that is the position of the UK, and going further on with that, I need to ask you so that you can continue on your position so it's a full position. We understand the two options from your perspective of the appointment. We also understand the role. And Mr. Bradley has said that perhaps not voting, which would mean *ex officio*, I presume that that's what you mean, are you speaking or are you in agreement with what your adviser has said as that being the UK position or a possible position? I'm just wanting to get a full understanding.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Hon. D. Kurt Tibbetts: And also would that mean both the Cabinet and the Legislative Assembly? And when you speak to him or the position of Attorney General advising the Cabinet, which would include His Excellency and the Legislative Assembly, does that include the role of Speaker when it comes to advise? Perhaps I'll stop there so we can...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Get those points clarified.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, taking the last point first, and subject to correction, subject to correction by the Attorney General who's here, I don't think the current Constitution says anything expressly about the AG being an adviser to the — legal adviser to the Speaker, but I think in practice the situation has grown up here as in other territories —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Right, but the question is —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** — the AG does —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** The question with that, sir, is if that is the case and that is the position of the UK, then should it be addressed?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You mean expressly in the Constitution?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yes. That's —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I don't see a problem with that.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Okay.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But, you know, subject to ... do you want to comment, Michael?

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** If I may interpose briefly, and subject to what the present Attorney General's practice are, it has generally been the position that the Attorney General, as the government's principal legal adviser, gives advice to the government. In the legislature as a Member, I personally adopted the attitude that the Speaker or the House asked for legal advice to guide them, I was more than happy to do it as Attorney General except in the situation where there was politics involved, in other words, as to whether questions were within the realm of *ultra vires* or not, and in that case it was the Speaker to make a determination rather than the Attorney General. But an Attorney General I feel should always constructively help the House as much as it can using its expertise, but he has got no direct responsibility. And if you, Kurt, feel that perhaps there should be words added as to whether or not it's part of his duties to advise [portion missing from recording] —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I have a very bad conscience, and that is that yesterday I cut off Will Pineau, who was in the middle of something, and I got so fierce about it. So, Will, would you like to make a point on this?

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Thank you Mr. Chairman. Maybe my choice of words maybe is what got you upset, and I apologise if it was —

[laughter]

[inaudible comments]

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** If I could just say a little bit of background about how we've arrived at our position on this subject. We've been conducting membership surveys on these subjects really since 1991, through different periods of constitutional discussions, and the role of the Attorney General has indeed been one of those topics that always has captured our members' attention.

Interestingly enough, in the early 90s there was strong, you know, strong support for allowing, you know, the Attorney General to be a member of government and give — just pretty much in keeping with this current condition. And then, as we move forward to more recent situations, particularly in 2003, the members' views on this position have pretty much changed quite dramatically, and many of them are calling on, like we've heard, change in that role and greater checks and balances.

During your discussion with us about the position of the United Kingdom you made an important point about whether it's a good Attorney General, you mentioned a good Attorney General will do the following. What is the situation when you have somebody who doesn't — is not honourable in that role? What are the checks and balances in place in our Constitution to ensure that there are mechanisms in place that somewhat protect the interests of the Cabinet?

And so, that's a question that I'd like to throw out to you, sir, and maybe in your discussions with other Overseas Territories, obviously, the British Virgin Islands have decided to change that role in their Constitution, this current draft, am I correct? They've — and so maybe you can kind of give us some indication as to what Her Majesty's government would feel about, you know — you've already outlined the position, you've heard the Government's position, and you've heard the Opposition's position.

You know, in a modern era going forward, can an Attorney General in the current role that he or she plays serve as many roles and ensure good governance of a country. And it's a question. I'm not giving an answer, but I am saying through our membership, and the business community generally believe that the Attorney General's role is too multifaceted in today's evolving global environment.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, well, the answer is we did go through this in some detail in discussions with the British Virgin Islands, both government and Opposition and their — their legal advisers, including the Attorney General of the BVI at that time. And the key change that we all agreed, including the then Attorney General of the BVI, was to hive off the prosecutorial responsibilities, and in BVI there is now a separate DPP. And that was considered to be the key change because that was where there might be a serious difficulty. And indeed, that's where there was a serious difficulty here in *Eurobank* saga that the AG at the time was inhibited from keeping the Cabinet informed of the things that were going on in connection with that prosecution because of the duty he felt to maintain the privacy of what was going on in that prosecution so as to avoid any possible political interference with it. Now, you can argue about whether he exercised that judgment correctly.

But the key change with which we are quite happy, as we were in the BVI — and the same point has arisen in other territories too — is to separate that out, remove from the Attorney General any constitutional responsibility for prosecutions and put that into the hands of another office, another senior office, a DPP or whatever you like to call him, who is appointed in a similarly independent fashion and whose security of tenure is provided for in the Constitution.

Now, I think the — to answer your first question, what if you have one who is not doing the job properly, in the case of the BVI the solution is dependent on the establishment of a new judicial and legal services commission; it's in section 95. And not only does the judicial and legal services commission advise the Governor on the appointments of these offices, whether it's the AG and the DPP, but the judicial and legal services commission advises the Governor on disciplinary control over persons holding those offices and removal. And as I said earlier, the advice of that commission must be taken unless — I'm just looking for the relevant provision ... unless, 95(1), **the Governor determines that compliance with that advice would prejudice Her Majesty's service.** And you may ask what that means, and I don't think it's yet been tested — I know it hasn't yet been tested — but the idea is that if the Governor is satisfied that advice of such an august commission would damage the — in this case, the legal services of the government, either the Attorney General or the DPP, by recommending so and so for appointment, then the Governor has a veto. Equally, if the commission advised on the removal of one of these people and to do that would damage the legal services because it was unjustified, and all the consequences that would flow from an unjustified removal, then, the Governor would have a veto.

But I emphasise that we went through this, as I say, in some detail with the BVI politicians and their legal advisers, that the Governor's veto would be exceptional. The way that it is drafted is it is an exceptional power. Now, that is one solution. The solution in the — to the question of how do you remove Attorney General or a DPP in the current Constitution of the Cayman Islands and in the Draft of 2003, to remove an Attorney General you would have to set up a tribunal, and the Attorney General could only be removed for inability to perform the functions of his office or misbehaviour, and it would have to go to a tribunal and a tribunal would advise the Governor on the matter. And that is — that is the position at the moment.

It's rather similar to but slightly less elaborate than the removal of a judge, a senior judge, in order to provide for security of tenure and to avoid un — to avoid political interference of an un — of an improper kind of what they're doing. And this is just a personal view, and my esteemed colleagues who are or have been Attorneys General might disagree with me, but I think if there were a practice of an Attorney General or even a DPP, an Attorney General, for example, giving different advice to different people within the government, or of a DPP prosecuting or not prosecuting

somebody because politicians had lent on him, I would regard those as potential misbehaviours. I mean, that's so serious.

So, if your concern is that there is no means of coping with a situation where there is not a good or a bad Attorney General or a bad DPP, I think it's catered for. The balance — you have to strike a balance between giving these office holders the security of tenure to enable them to act impartially, without fear of favour, on the one hand, but not making their position so secure that you can't get rid of a bad egg, basically. That's the balance you need to try to draw. And I think and hope we've done it in the BVI Constitution in a slightly different way from under the current Constitution here. I think that's all I would have to say on it.

Do you want to add anything else?

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Just the point about the cost, the cost factor, which is one of the important underpinnings of a lot of our membership responses. The cost for operating government and adding — adding on positions and other things. So, this Judicial Review that would be set up in the case that there were any allegations against an Attorney General, that's an expense I'm assuming that would have to be borne by the Cayman Islands government.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. I mean, the judicial and legal services commissioners conceived in the new BVI Constitution consists of — and this is just what was agreed in that case — the Chief Justice; one judge of the Court of Appeal or the high court; the chairman of the Public Service Commission; and two other members, one nominated by the Premier and one by the Opposition. Now, first of all, three of those members are office holders anyway, and two of them are the ones who, presumably, would want some recompense for the time they — per diem, whatever it is, for their work on the JLSC.

The other point is that the JLSC would not, I think, need to meet very often. I mean, you know, there's a limited number of posts that the judicial and legal services commission would have to advise on. Your proposals, the proposals we're going to look at, they would be judicial appointments, and I'm suggesting — and the DPP, and I'm suggesting one possible solution is to add the AG to that. So, there's not very many people. You're talking about, you know, eight or nine. And I don't know that the cost would be — I don't think the cost would be very great actually.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, please.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman, just to add a few thoughts and perhaps bring some of the conversation thus far, in particular, to the minds of the Government and sort of what the way forward is going to be.

Firstly, let me say that one of the principal reasons we do not support the notion that the Attorney General should fall as one of the offices recommended by the judicial and legal services commission is principally due to the fact that that commission is chaired by the honourable Chief Justice, or would be chaired by the honourable Chief Justice, who is the head of the judiciary, which is one of the separate arms of government. And so, certainly from an appearance of conflict, we see where his role would fit in, in regards to appointing judges and magistrates. Those would be people that are in his department, and that he should and would have some responsibility in regards to running that department anyway, and this is broadening the scope how I've seen it outlined and the proposal I've seen the from the Government. You'd be broadening the scope to other people to lend that to that appointment process, so it isn't obviously just him singularly making these appointments and therefore — and also being the person that has to be responsible for the day-to-day running of that very critical area, or arm of government I should say.

I keep hearing reference to the 2003 events. The truth is, after the 2003 events there were many Caymanians who thought we should go independent. Those are not good times, in my opinion, and is not a good reference, frame of reference for any discussion that I'm going to have about my Constitution, the Constitution that I expect is going to govern the people that I've been elected to represent. It's sort of like a statistician. All of the anomalies you have to take out of the equation. Those are the outliers. Those are the factors that ought not. So, I keep hearing this reference and I — the more I hear the reference, I'm a human being, the more I'm led to disagree with the points that are being put forward, because I don't think those references have any place with how it is that we should be viewing what we're trying to put together.

At the end of the day, if we're going to — if we're going to put together a Constitution, where we try to predict every single scenario and say, oh, well, we're going to be able to — we're not going to be able to account for every circumstance in life. Now, we need to try to put in place — I agree with the point that we want to ensure that we do have some mechanism that does allow for the removal of, I believe, all holders of any position within this Constitution, including elected Members, if there's serious misconduct and misbehaviour.

Now, as I've listened and looked at the Government's proposal, I cannot get my head around any notion that would call for government as an entity to not have a consistent and singular general counsel who is the Attorney General. If I think of this as a very large company, the Cabinet is the board of directors. The board of directors has to have the same general counsel as every department within the company, they just have to. Because the Governor, in this instance, is seen as an outside director, should he have constitutionally a separate legal adviser? I think not. I think the entire entity has to have single legal advice. I think Mr. Bradley has painted the picture as it ought to be painted. At the end of the day, the advice is not — may not necessarily be advice that you like or advice that you agree with, in which instance, you get whatever other advice you think is necessary.

I keep hearing reference to the international services sector, the international business sector. Absent the events of 2003, I never heard any members that I have interacted with having major complaints about the system as it exists in Cayman. And, certainly, if we're going to talk about international agreements, international agreements are policy, critical policy. In my mind, the Attorney General will give advice as to the implications of the technical legal aspects of that agreement, whatever they are, so that Cabinet is very much aware of what the ramifications are if they were to enter into that agreement. If you have an Attorney General that they don't believe holds the requisite expertise, once again, Cabinet has — can avail itself of any legal advice that it wants. In fact, many successive governments had a separate secretariat for that very function, to try and do research and ensure that though specialist areas are getting the attention that they need.

And so, I struggle greatly to be able to be convinced of the Government's position. I came here, we have our view, but at the end of the day, we keep talking, and in my mind we're here in the spirit of negotiation, and certainly if the Government can put forward arguments that can change our minds on this side we would be happy to do so. Thus far, in this instance, we just have not been convinced.

In regards to earlier pronouncements, one of the things that I have heard and is still not clear in my mind, I have heard Members of the Government make or draw a picture where they have said that the Attorney General has advised the Governor on particular matters and was then unable to advise them on the same matter. And so, perhaps, the Government needs to paint that picture very clear to the Opposition so that we can really understand and perhaps be sympathetic to where the Government is coming from and then be able to see how it is that we can deal with those sorts of areas and those sorts of instances, if and when they do arise. But thus far I can't go — and I will not change my mind and my opinion based on the fact that the Government has painted a very — or have given what I call just a sound byte.



The — this whole issue has to be about good governance, sensible structure to government that suits the Cayman Islands, has to be. And I have heard other suggestions thrown out, Mr. Chairman, and some of those suggestions we haven't had time to discuss some of them and we will do so on the lunch break. But I will say this, that the Government ought to, in the spirit of negotiation, ensure that if they are minded to change their minds on any of these points that at a minimum, give consideration to the fact that personally — and I think it would be in the best interest of them, ourselves and the general public to not necessarily latch on to any of the points that have been raised thus far, for example, the appointment being through the judicial and the legal services commission, without us trying to make sure that we all understand it, we all have ensured that we all are very comfortable with it, because in my mind the last thing we want is very important aspects like that, yourselves not having a clear indication as to where we are and being unable to make a sensible recommendation via a new draft, or making a recommendation based on your gut feel and there still be a large divide and we still have a big fight over important matters like that come the referendum.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. That's very helpful, Rolston. I think you touched at the end on a very important point that, you know, at the end — not at the end of today or even at the end of this week, but at the end of the rounds of negotiation we have on this, you know, we shall all have to try and make a judgment about — on all the difficult points — and I recognise this is a difficult one — what would be the thing that is most likely to be acceptable to all of us and to the people ultimately.

I would prefer now, because I think we've given the position of the AG and the various facets of it a good run. I'm not saying we're closing down for good on this; we'll obviously have to come back to it. But perhaps, Alden, would you like a final word on it now?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Yes, sir, just to say where we are. Mr. Chairman, I think a number of the proposals that — well, not proposals, but of positions that have evolved as we've spoken, we find some encouragement in, even in some of what Rolston just said. But I would like to leave the Chair and your team with this — with this key point from our standpoint.

We have — whatever we agree to has to reflect what we believe this community feels/thinks about this issue. There remain abiding concerns about the potential for conflict in the various roles that the Attorney General is required to play under the present Constitution, and indeed in the proposals that you make. These are not just our concerns. You've heard them reflected from the Chamber of Commerce. The whole scene

with the *Eurobank* case undermine credibility in that office in a way that has never fully been repaired. We, I think, will make a huge mistake if we believe that the fault lines which became apparent then are not going to continue to deepen and widen as time goes on. What is happening now with relation to the police and the judiciary has dealt this country the biggest blow it has ever received in relation to international credibility. All around this community all of the businesses and firms are asking and asking us and asking others what the hell is happening in Cayman. We have to try to come through this system — through this process with a system which reassures people that regardless of who are in these various posts and positions and so forth; that there are adequate checks and balances; that there are provisions which prevent conflict and which assure that the best interests of the Cayman Islands are taken into account; that there is local involvement in decision making; that there isn't somebody sitting in the FCO who's directing traffic down here with little true appreciation of what's happening. And so, I want us to consider all of the proposals that are being made in the context of what is the reality of Cayman. It is all well and good to speak about ideal situations and — the integrity of former Attorneys General and so on and so forth. That is all great. But the reality of the Cayman context is very different than it was even a year ago, and we've got to deal with that.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. Thank you.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** McKeeva.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Finally it's coming to the forefront what the Government's gripe is. I think some of it is coming; they will get to it before the end of all this, I guess.

But he has raised this matter of the police and the judiciary, and from what I see, no, it is not good. We would want it to be perfect in this Island and that all is well, but how many years we have been saying that it has not been well? How many years we have been pointing fingers and making accusations and saying all sorts of things? Now, hard pills to swallow, I've gone through some of it, but at the end of the day, if you are in the right and I say — I made this analogy. If your heart is pure and your hands are clean, then you have nothing to worry about.

If ... I don't see all of that, despite how hard it is for us as a country, what is that to do with the process unless, *unless*, the Government is saying that the Governor has not done his job right, or that he was bias, or that somehow he maneuvered and done things to

certain people and didn't do things to other people that should have gotten it done, or that he was directed by the FCO who should not have done this dastardly act. What are the Government saying? That's the points that I've been raising. That's what they have not come forward and said in clear and unambiguous terms.

If the Governor is wrong, and I have this when constituents — because we hear the same thing. He is right to one extent that this has caused discussion in the community. But I have said — and I have had my fights with the Governors. Oh, I — I'd like to say that I chased one out of the country because he was no good. But we have a Governor that I believe had tried to do his job, and I would say that in his presence and I would say — and have said so behind his back, not that there are things that I like — let's leave it at that — but I believe that he has tried to do his job fairly.

But it has touched on certain sacrosanct institutions in this country. As I said that for years people have been saying, why isn't something done. Now that it is done — if the Governor has been frivolous, because a man is not guilty till he's proven so, one, and from what — how I see it and where it stands, if — if a man is not charged, then you can't take his permits away, you can't take his passport away. You wait till he gets charged. And if he's on the moon you bring him back. And that's to do with the Commissioner of Police that was — reference was drawn.

And in the case of the judiciary, if the Governor has been frivolous in this matter, then he will have to stand up to the test. And I am prepared, as the Leader of the Opposition, to go on attack at that time. But what if the Governor is right and there's too much wrong in the judiciary that needs to be cleaned? And perhaps, Mr. Chairman, it's a little bit poetic justice for politicians because if it was a pol — if it was McKeeva Bush, they over there would have been clapping their hands and had him for dinner every night. Down here, where they didn't want to come before, they would have had him for a big party. He done the right thing. So, perhaps it's a little bit poetic justice. When it comes to politicians it's all wrong. When it's other areas it's right. I want to see the matter cleared up. The only how it can be cleared up is to do what the Governor has done.

Too often have these things gone and nobody said anything, nobody done anything and then who gets — at the end of the day, what is in question? What is in question is our judiciary. That — you think it's only internationally that the talk is on the one side now because something has happened? No. I have been around many big tables and the talk has been: Yeah, what is going wrong? Why isn't somebody doing something about this? This is no cause for them to bang up the Governor and to bang up the process and the Constitution that we have to say that it is all wrong. And that is a problem I find with the Government. They want something done because of these things they say, and then when

something is done then they — it seems to — they put on a small shoe and it's squeezing them a little bit. That or they all want to get the people riled up about the situation, and therefore one day they're going to come and say: See, ladies and gentlemen, I told you so. That's why we need we need our own flag. That's why we need to go independent. They are selling the stage for something that the people don't want thinking that they can rile them up enough, picking a fight with the Governor to help them along the road to independence. If they think that is the right thing to do, be man enough, woman enough to stand up and say to these Islands: We need to set a date for independence and these are the things that we need to do. But I am not going to sit here to push us into that corner and then have to swallow it at a time when we might not be able to swallow it. So, Mr. Chairman, I don't think that they're gonna get anywhere with it.

They're not making their case good enough, and I just can't buy that there's something radically wrong with what the Governor has done until such time is proven that he has done wrong. And that can't be too far away. That can't be too far away. The time will come when we will have to say to the Governor: You done wrong, and whatever else we want to say, or: You done right and cleaned it up and therefore our judiciary is now squeaky clean with justices that we can be proud of and that are not going to do things that questions are left unanswered and open in the international arena, as has been done for so long in this country. And, Governor, I thank you. And if you're wrong you know I gonna cuss you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. Well, the only comment I was going to make — and I would like to try and move on to another subject now — is we must all bear in mind — and others have mentioned this too — that no Constitution can guarantee that the people who hold various offices described in the Constitution will be perfect and paragons of virtue. All we can do is to try and create a structure whereby, they are sensibly selected and appointed and may be removed in case bad things happen. And that's what we're — that's what we're about.

**PROPOSAL 5 – The overriding powers of the UK Government and the Governor to make laws for the Cayman Islands, without the approval of our Assembly; to annul laws that have been duly passed; and to give directions to our Assembly, should be restricted or eliminated**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I wondered if we could just go back to the subject we left over from Proposal 5, and we've now got the working Draft circulated by the Cayman Islands Government, for which, thank you very much. And we can — we can

turn the heat on me now because this is a proposal to deal with: **“The overriding powers of the UK Government and the Governor to make laws for the Cayman Islands, without the approval of our Assembly; to annul laws that have been duly passed; and to give directions to our Assembly, should be restricted or eliminated.”** That's the sub point in Proposal 5 that I was wanting to return to. And having had a chance to look briefly at the working Draft circulated, I would just like to ask Kurt or Alden or Jeffery Jowell, somebody over there, to take us through the first one which is very big letters on — in bold on page 48 which doesn't actually have a — have Draft provisions.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** I'd ask Professor Jowell to walk us through it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, thank you.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Thank you. I — the provisions that have — that deal with that question, assent to bills, which I suppose is 73, and then two provisions which we haven't included here which have to do with the disallowance of laws and the reserved powers of the Governor, and then, of course, Her Majesty's reserved powers which is on page — in section 113.

Mr. Chairman, I — in all these respects, the 2003 Draft cedes fewer powers to the Cabinet or the legislature than do the provisions, the corresponding provisions in the British Virgin Islands or Gibraltar, or indeed, to some extent, even the draft Falklands constitutions. And we were very struck with what we thought was a very helpful proposition that you made yesterday that one ought to look at each of these reserved powers, powers of assent and so on, in a way that might divest powers which are not necessary to keep either in the hands of the Governor or the — or the UK. And at the moment, therefore we have not inserted in this Draft the powers of disallowance or the reserved powers because they all differ somewhat one from the other. The Gibraltar one is a little

different from the BVI one. In each case, they divest a certain amount more power that is kept under the 2003 Draft.

As far as the assent to bills that is concerned, that is section 3 on page 47, the one addition that we put in might also be pruned. I'm going to suggest that this really needs sort of more careful thinking and drafting than we can perhaps give it immediately, but this is the position that we're taking.

The addition that's been made to the — on the assent side is the one that — section 73(4) which is — has the footnotes — says, it's a complete replica of the Falkland Islands one, which says: **Before refusing any assent to any bill, the Governor shall explain to Members of Parliament why he or she proposes to do so, if necessary in confidence, and shall allow those Members the opportunities to submit their views on the matter in writing to a Secretary of State.** So, in other words, simply just imposing refusal, providing in accordance with more modern notions of good governance, reasons and rationality into the process, the opportunity to make representations. So, that is suggested there. As far as the others are concerned, as I said, I think they need more careful discussion on the basis of the criteria that you helpfully put forward.

As far as section 113 is concerned, that is the Majesty obviously — Her Majesty retaining her powers, and indeed she must do this under the — under the relevant statute, the West Indies Act 1967, to make laws from time to time for the peace, order and good government of the Islands. But we are inserting there, which we cannot find has been inserted anywhere else, a subsection as a suggestion: **Provided that in all cases that — 113(2) on page 71: Provided that in all cases where Her Majesty seeks to exercise that power in — the power in (1) there shall be prior consultation with the Premier** obviously through the Governor, or words to that effect. These are suggestions simply to take forward, as I say, what you suggested yesterday.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, thank you very much. There are a number of points here. And starting out as positively as I can, first of all, no problem with the addition to the section about assent, as you — assent to bills, 73(4) in your Draft. This — you're quite right, we worked this out the first time earlier this year with the Falkland Islands, and I think it's a good thing. So, I don't think we have any problem with that at all.

A second point, which I think is interesting, I noticed that in your working paper you had deleted the section which was in the 2003 Draft about Royal Instructions. That is to say, Royal Instructions in the formal sense of being put down in — actually approved by the Queen and then set out in the Royal Instructions. Now, that's fine because in 2003, the 2003 Draft, it has it as section 53. That is rather inconsistent with the list of revocations, the instruments that would be revoked that we had in

mind in 2003. On page 5 of that Draft you'll see that amongst the various existing Constitution Orders in Council there are — at the end of the list the instructions issued under the sworn and signed manual insigne to the Governor of the Cayman Islands on 26 July 1972. And we thought about this back in 2002/3, and we thought we could get rid of those old Royal Instructions. And so, I think it's consistent with that to have no section in the — in any new constitution for Royal Instructions of that kind. And that I think, and my understanding is that addresses one of the points in the in the revised proposals paper about: **The UK government has power to issue instructions to the LA with regard to making of laws and such instructions must be obeyed by the LA.** I'm assuming that is a reference to the old Royal Instructions. So, no problem about that either.

Another thing which I think is welcome and we would certainly agree with is that in your Draft you have retained a section from the current Constitution and reflected in the 2003 Draft, which is section 74 in your working paper, on page 48 which allows **the Governor to return to Parliament any bill presented to him or her for assent transmitting there with any amendments which he or she may recommend and Parliament shall consider such recommendation.** Now, I think that's actually an important safeguard. It doesn't bind the Legislative Assembly or Parliament, or whatever it's called, to do anything other than consider it. But it's useful that you have it still there.

Then, when we come to the Governor's reserved legislative power, now this is — this is — let me go to Orders in Council first. The reserve power to legislate by ordering council is there as Professor Jowell said in the West Indies Act and reflected in the constitutions or the Orders in Council providing for new constitutions for all of the Territories — all of the Caribbean Territories dealt by the West Indies Act, and there is no way that the UK government will agree to get rid of that. I can stake my life on it.

The novel paragraph that is in 113(2), I do understand the — I do understand the argument for it, and indeed, in some ways, it reflects what actually happens in practice in 99.99 per cent of cases. And indeed there are — there have been occasions when an Order in Council has been made for the Cayman Islands and other Territories which have been unpopular, the one to do with legalising homosexuality between consenting adults in private, the one on capital punishment a few years before that, but they're pretty rare. However, it won't surprise you to hear that — and you are honest enough to say this was unprecedented and novel. I certainly can't agree to it today, and I doubt, I strongly doubt, whether it is acceptable to write it into the Constitution, because the power of Her Majesty to legislate is untrammelled. I mean, in the spirit of trying to be helpful, it might be possible, it might be possible, and I don't want to go any further than that because we certainly haven't gone to our Ministers about this. It might be possible to have some sort of

exchange of letters outside the terms of a Constitution, but done in the context of it, which expresses some sort of description of an intention, you know, best endeavours in normal — normally, or something like that that, but there will be such consultation because I think that that's actually — represents the truth of the practice. But there may be an occasion ... I see McKeeva Bush is working himself up to speak on this. There might be an occasion in the future where the power has to be exercised against the wishes of the Territory. There might. I don't know. Heaven forefend but there might. And I know, I recognise it says **only after consultation**. I recognise that it's a very reasonable and reasonably worded proposition.

Going on to — I'll come back to you, McKeeva, in a moment. Can I just finish the sort of reaction on the other two points?

The Governor's reserved power to legislate, at the moment that power in the current Constitution, and reflected in the 2003 Draft Constitution, is exceptionally wide and, of course, it comes from another age, it comes from 1972. And it even refers to times when the UK treasury might be propping up the budget of the Cayman Islands. Oh, what a laugh, you know? So, in that respect it's obviously wholly out of date. It is true that there are different provisions in different territory constitutions.

I think the proposition that I would like to put on the table for the time being for consideration is that that power, the Governor's reserved power to legislate, is a misnomer really because it's not actually a power to legislate himself. And actually, if you look at the Gibraltar Constitution, it is actually rather a power of the Governor to legislate himself. It's a power for the Governor to push through legislation which is already before the House either in its original form or in its amended. And I recall that it was used here a few years ago on the issue of interception of telecommunications, and it was done, I think, with the concurrence, or non-objection anyway, of the Cabinet at the time. So, it is a power that could be usefully used on some occasions.

And what I was going to suggest for the time being — I haven't written it down yet — is limiting that power to a grounds of good government or something like that. You don't need all the other stuff as a sort of forebank. So, if you look at — if you look at the 2003 text at the moment, it's in — it's on page 52, section 61: **If the Governor** — what I was going to say: **If the Governor considers it expedient in the interest of good government that any bill introduced** et cetera. So it cuts out all the stuff about public order, public faith, detailed control of the finances of the Cayman Islands and all that stuff. But that's just a thought. I haven't put anything down on paper yet, that's just a thought there.

And lastly, as regards disallowance, now, clearly this is an *ex post facto* control and you can argue about whether it's useful given that in practice none of us in this room I guarantee will be able to put their hand



on their heart and say they know a case where a law has actually been disallowed by Her Majesty. But I do know many cases where not — I'm not particularly talking about the Cayman Islands, but here and in other territories where the fact that the power exists and therefore requires the FCO in London to look at carefully every law of the Cayman Islands after it has been passed just to check that there are no problems of a human rights kind or compatibility with treaties, that sort of thing. The fact that the power exists and is — means that these laws are double checked back in London, sometimes things come up whereby what happens is where — if a problem is found the FCO gets in touch with the Governor's office or directly with the Attorney General's office and say: We have found this thing and we thought we should draw it to your attention. For the time being the power not to — the — what's called the G3 form which means that Her Majesty will not be advised to disallow it. It is not issued while the thing is — while the problem is looked into. And sometimes it can be fixed quite easily, sometimes the explanation comes back: Well, actually, you have misread it because this is what it means and this is what we intended. Ah, yes, you're quite right. Or, yet: You've got a point there. We'll need to amend that. And it is done.

Now, in the case of the BVI Constitution — and I think — I was about to check the Falklands new constitution — the power of disallowance remains but with an important qualification and that is that disallowance — **The power of disallowance may not happen until the expiration of a period notified by a Secretary of State to the Governor, who shall advise the Speaker of that period in order to get the Legislative Assembly an opportunity to reconsider the ordinance in question.** Now, I think actually that's a useful thing to put in because, again, it reflects the reality. There is no way in which — in political reality that the Secretary of State in London would disallow a law immediately without going back and saying: There's a problem with this, please look at it again. It just wouldn't happen. So, this actually would reflect practice. And so, we would certainly be open to modifying the power of disallowance in this way if it was thought useful.

I think that's our position for the time being on all those points.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Could I just respond very briefly? May I just respond very briefly? Speaking for — entirely for myself from the technical side, I think that's all a very positive response, and the reason we thought this was best and actually put in here but considered, so we can achieve the most favourable mutually beneficial solution here.

The one point I would raise is about the overriding power of Her Majesty and Orders in Council, and, of course, the Caicos Islands case which has been heard in the House of Lords but hasn't been actually — we haven't yet got the final judgment. But the Court of Appeal decision

does imply that certain standards of consultation and good administrative practice — the normal public law standards do sometimes apply even to Her Majesty's discretionary powers. In that case the Orders in Council in respect of the Caicos Islands, that's the law at present which, of course, wasn't previously the law even a couple of years ago. So those sort of considerations of consultation before you act and, of course, acting within reason — within bounds of reasonableness and so on, are creeping in even to Her Majesty's powers according to some decisions. Of course, it may all be reversed in the House of Lords, but under the present law that was one of the reasons for inserting that consultation clause.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, thank you very much. Would anybody else like to say anything on this bundle of topics? I'm sorry, McKeeva, I stopped you earlier from wanting to take the floor but...

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** I was drawing reference to page 71 and 113 of the Government's document.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Just to say only that on section 2, where it says that: **Provided in all cases where Her Majesty seeks to exercise the power in (1), there shall be prior consultation with the Premier.** But I thought that should be with the Cabinet, whether something is going to be done the Governor would inform Cabinet and not just the Premier. I mean, by natural extension — well, he should.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** The Chief Minister should inform his Cabinet. But I believe that whenever something like that is done, it's an important matter that is being done, it's a big issue and therefore he should explain it to the Cabinet.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Thank you very much. I understand the point. I think it's well made.

We've got about 20 minutes. Unless anybody wants to say anything on this point — Kurt?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, just quickly, although we haven't — although we don't have it in the Draft, I just wondered what your thoughts were. The Draft that was passed out, section 74, which is The Return of Bills by Governor. **The Governor may return to Parliament any bill presented to him or her for his or her assent, transmitting therewith any amendments which he or she may recommend and Parliament shall consider such recommendation.** I am wondering what your thoughts are. Should we not have some specified time period for this? Otherwise, he might put it on the right hand side of his desk and it stays there.

[laughter]

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Which has happened in the past.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I'm looking at the Governor. He operates as quickly as he can. I know you're —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** No. No. No. No.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Not this one.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I know you're not talking about this one.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Unlike what has been said prior to this, we have no personal gripe with this Governor, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** That's good to hear.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** It's all to do with the post.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** That's very good to hear. I think it's quite reasonable. We'll think about that. I mean, you know, one or two months —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** There has been — there has been at least one occasion that we've had that happen in the past.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** And the Constitution as it is now doesn't have a provision such as this in it where he — the Governor could come back and say: Listen, I can't assent to this because of such and such and such, and I'm going to suggest that you make these changes that I can.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** But in doing so, all I'm saying is that perhaps we should have a time limit.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** What sort of time limit do you think would be reasonable?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** I mean...

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Ninety days.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** What are we talking about, 30 days, 60 days, 90 days?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** At least between one [inaudible] and then the next. [inaudible] But the Constitution sets it out.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** But the truth is — the truth is, Mr. Chair, it may be one of the — it can be — it doesn't have to be, but it can be one of those bills that you really don't want to wait on. I mean, it might have — it might have certain importance attached to it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, I understand the point. Yeah.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** So I —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. You don't — you don't want to —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** So I would...

[inaudible comment by the Honourable Leader of the Opposition]

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Ninety working days.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** No, that's a bit much. I just don't know — Governor — through you, Mr. Chair, what do you think is reasonable time wise?

**HIS EXCELLENCY THE GOVERNOR, MR. STUART M. JACK:** I actually think it's quite difficult to come up with a formula. I think we need to think a bit more about this because, as has been pointed out, there is sometimes pieces of legislation which require quick action for very good reasons. But if — and it hasn't happened to me, but if a Governor was to send it back, in particular, send it back with his own suggestions as to what those amendments should be, in other words,

with the drafting language and so on, there is the period that the Governor would require to take legal advice and to prepare those amendments, so there may be some underlying policy issues as well. So, I would expect in most cases that's a fairly serious situation, it's not something that happens very often. Probably the Governor would I think legitimately require a fair bit of time to prepare that. So, something like 90 days might make a lot of sense, but with an understanding that if it was genuinely urgent that a Governor would be expected to make his best efforts to do it more quickly. And certainly if I was presented with that situation — and certainly we can't write all of this into a Constitution — I think it would not be unreasonable that the Governor gave notice that he was considering doing this, or gave notice that he was looking at drafting the amendment so that the legislature and those in government who are responsible for implementing that piece of legislation were on notice that changes were on their way, even if at that early stage the Governor wasn't able to indicate what those changes were.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. Well, I think that's very helpful. Thanks. Thank you, Governor and Kurt. We'll think some more about that, but I think in principle there's no — you know, there's no great problem, it's just a matter of the writing on the right formula.

In this bundle of issues — I know we'll have to — you know, you'll have to think about what we've said and we'll think likewise about what you've said, but this — you know, this is quite an important area to get right.

Would it be — we're going to break in about quarter of an hour. Would it be good to start in on the next proposal regarding A Senate or No senate? Let's do it. Let's go for it.

### SENATE OR NO SENATE

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Senate or no senate. All I've seen is that — all I've seen is that the revised proposal paper recommends no senate, and the paper of Her Majesty's Loyal Opposition takes three or four pages in arguing for a Senate. So, perhaps I should turn to the Opposition to speak first on it.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, this is a proposal that when it was first proposed we didn't get a lot of feedback on it, and when the Government put it forward I think they put it forward in such a way that people thought we were going to create a United States system of governance.

Well, this is not the case, and when it is explained in greater detail than was done on our website, for instance, people understood more what we were proposing.

Contrary to the position of the Government, the Opposition fully supports creating such a body, as it would add significant value to the legislative and policy making process in the Islands. Feedback as we have had from the public — and this goes way back — is that the wider community, people wished to see more involvement in the activities of the legislator — Legislative Assembly by the wider community. And so, we found some support for it, and it is one that I believe if we go to referendum that should be questioned.

Our position is based on the premise that the Senate would provide a necessary oversight role on the work carried out by Members of the Legislature and Cabinet, is also based on the recognition that the Cayman Islands have a fast growing economy, with a corresponding increasing array of socioeconomic issues and that it requires enhancement in its social institutions to more effectively deal with increasing issues, particularly in the form of additional resources, to better handle the important policy making and law making process.

At the same time we did not find a great deal of support to significantly add to the number of elected Members in the Legislative Assembly. The creation of a Senate, I believe, as far as the UDP is concerned, is an effective way to add to the resources required in the area of policy making and oversight of the Legislative Assembly, without incurring significant costs and while maintaining a number of elected Members which is more appropriate to the size of the country.

A Senate would carry out duties such as the following, Mr. Chairman, which perhaps you would know already, but for the record: checking the work of the Legislative Assembly by reviewing proposed laws and its policies of the government; carrying out review or other key issues from time to time as required; making use of public hearings and topics as required to enable Cabinet to arrive at a more fully informed position on issues, as they would have gone through a rigorous procedure of research, debate and, more importantly, public discussion and feedback, which would be formally coordinated and carried out by the Senate. Ultimately, the Senate would bring enhanced accountability and quality to the government's law and policy making procedures by drawing on highly knowledgeable persons within the community who are appointed as senators.

The current process of consulting by ad hoc committees with various industrious associations where it exists, and if the advice is being taken, would be complemented by having a Senate who would be drawn on to better coordinated efforts required in such consultation and provide impartial assessments of the issues at hand. It can also be argued that having the senators instead of the Ministers directly engaged through various industry bodies most of the time helps to minimise the

politicalisation of the various issues. The reason for this is because the Senate through a formally defined role would be taking a more technical and objective approach to issues in order to add value to the work of the Assembly and of the government.

A Senate through the well defined operational procedures will also ensure that more rigour is applied to assessing key issues while taking some of the workload away from the Members of Cabinet.

The nomination of senators would be organised in such a way as to minimise the dominance of any one particular political party in arriving at conclusions and recommendations by spreading the nomination across both parties as well as the Governor, and in most cases — all cases from what I can see and have read — the Governor — the government, of course, carries a majority. So, the number of senators would be minimised; any compensation to senators would be kept to nominal amounts as they would be people who hold various positions already; the Senate would make use of the existing staff and facilities, the building, of the legislature, with some minimal additions like a few research officers, which is already evidently needed by the Legislative Assembly. And so, Mr. Chairman, the above is not meant to be an exhaustive description of the framework, and I believe that appropriate research and additional expertise would be required to set up the required laws and procedures of the Senate to operate effectively.

We believe that it is a value-added institution in these Islands, and so it is worth noting that the value of having a Senate body has been recognised and implemented by most of the world's most successful democracies as a means to relieve the workload of elected members of the legislature, as well as to more effectively tap into some of the many highly knowledgeable and qualified individuals from within the wider community who would, Mr. Chairman, not get into electoral and confrontational politics, but who has expertise that they would offer.

I know, Mr. Chairman, that the Government is not supporting the issue, the proposal, and I don't know what the UK is doing since I know the UK has been downsizing in the House of Lords, and they might use the excuse, too, that the UK is abolishing the House of Lords, but I wait till I see that day when that House will be abolished. But this is nothing like the House of Lords, this is similar, and all senates I believe that came in the Commonwealth afterwards had some semblance of it and that's where it sort of derived its origin. Only the United States framers had a different makeup altogether, and perhaps that's why they're having so much trouble, but maybe we'll say that's why the UK is having so much trouble, too. But I believe that this can work and I believe it's good for us, notwithstanding the Government's opposition to it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. We've just got a few minutes before the lunch break. Would



someone from the Government like to respond to that before we break, and I'll have a number of questions after lunch but...

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** We were hoping we'd hear from you, sir, but in a few short sentences, we have been unable to find any support for the Senate in our consultations, and that's the first point. And the second point is that we believe that it actually goes against the democratisation that we are seeking to achieve by creating a set of individuals who are appointed and who actually carry out some form of legislative function and oversight without actually having been elected.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Yes, Will.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Thank you, Mr. Chairman. Our Chamber of Commerce was established by the government in 1965, with one of its purposes was to — for the legislators to be able to get more of the thoughts and opinions of the different businesses in the various districts. It was established in 1965 under Mr. John Cumber when he was the administrator at this time, and Mr. Harry McCoy was working for government and he went about framing our constitution for our organisation. And one of the things that we do in our constitution, which is important for us and even the role that we're playing here today, is to promote/protect our membership and also the public welfare. We take that role very, very seriously as you see from the — from the different reports that we've developed over the years on the Constitution. We're a nonpartisan body and we are cross-representative in our membership. As I said in the opening statements, our organisation has 663 corporate entities and 73 different associate members, which include the Cayman Islands Civil Service Association and the Cayman Islands Minister's Association among others.

So, the point — that leads me into the next point I'd like to just make is that we also have very robust civil society or associations. We actually have more than 20 industry-specific associations represented in our country and all of those industry associations, I dare say, have the ears — certainly put their positions forward to the government officials when necessary. Some of those associations include the Cayman Islands Law Society, the Cayman Islands Tourism Association, the Caymanian Bar Association, the Fund Administrators Association, just to name a new.

We asked this question to our membership as well, whether they would support the addition of a Senate. I think generally there was not sufficient amount of discussion on this subject for us to maybe possibly

reach a final conclusion on it, but the end of the day they believe that at this given time, with the robust nature of our civil society, it may not be necessary at this time to add a Senate. The — some of their comments related to cost and I know the Leader of the Opposition mentioned that, that under their proposal it would not be a high cost. But again, without knowing more details out of the inner workings of how a senate would function, it's difficult for us to really, you know, put an informed decision on that. So, in the — in the situation we have in the country with such a robust civil society, I believe, with these associations, then I think the Government is receiving a lot of feedback and I think in many cases it's nonpartisan feedback. It's from business entry groups; it could be associations that involve the Ministers, et cetera. So, given that scenario that's the position that we'd like to express.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you very much. That's very helpful. Well, I suggest we break now for lunch.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** And come back to the point.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Come back to the point definitely.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** I think we could finish the point, sir, if — I mean, I think it would be quick.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well...

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** We could finish it.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** If you would prefer, I could say something now.

My — the points I was going to make are the following:

As regards composition/structure/functions there is one territory which has a senate and that's Bermuda, the only one that has a senate. And just for example, the Senate of Bermuda consists of 11 senators: 5 appointed by the Governor on the advice of the Premier; 3 by the Governor on the advice of the Opposition leader; and 3 appointed by the Governor in his discretion. So, in the Senate in Bermuda the government never has a certain majority because it only has five and there are three Opposition nominees and three Governor's nominees. They might have a majority if they get one or more of the Governor's nominees on this side, but it isn't guaranteed. And like the House of Lords in the UK, the senate, although generally required to participate in the passing of bills,

or generally the senate's approval is required for the passing of bills, the senate cannot stand in the way of the elected House indefinitely. There's a reflection of the UK Parliament Act whereby, the Upper House can delay matters for one session, but if the bill is brought back in the next one it can't do that anymore, it can be bypassed. And, equally, the Senate in Bermuda has limited powers in relation to finance bills. So, there is a model in another territory that one could look at reflecting.

However, the questions I was going to ask were rather similar to those already mentioned. I mean, it is a wholly — in Bermuda it's a wholly appointed body, it's not a democratic body. This is, as the Leader of the Opposition acknowledged is and has been for several years, a matter of some controversy in the UK about the House of Lords, and indeed it was downsized a few years ago by scything away — long overdue, in my opinion — many of the hereditary peers and it's a pity that not all of them have gone. I say that with some feeling because I've sat in the box of the House of Lords advising ministers well into the night while these ghastly people carried on talking about things of which they knew nothing, and it kept me from my bed. [laughter] Anyway, that my prejudice out of the way.

Anyway, as far as the cost is concerned, I was going to raise that, too, and it's rather difficult to envisage — to estimate, but even if you had 11 senators as in Bermuda or something like that, and they were involved in all parliamentary business, and they would, I suspect, want to have staff and some of them would want researchers and so on to enable them to do their job, clearly, it wouldn't be minimal costs is my guess. I don't know. One could probably get some idea by consulting people in Bermuda about it. There's probably a budget for the Senate each year, I would imagine.

And the only other question really is, is there a necessity for an additional layer of government?

I cannot say that this is a matter on which the UK would have a strong view one way or the other except that I think — I think our Minister will probably need to be persuaded that it would be a useful addition to the current legislature arrangement. And I know McKeever has made some argument for why it would. You couldn't — you know having a review of bills as they go through from a different body from that where the initial debate goes on, and so on and so forth. But my guess is that her concerns will probably revolve around whether this had any value and whether it was — you know, whether the expense would be worth it, although she wouldn't have to pay obviously. Sorry, Will.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** Just a final thought or point. Our members are also concerned about the ability for them to have more time to review legislation, so I'd like to come back to that question as we go forward.

There have been times in this country when legislation what been passed with very minimal public attention for review.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** And there's also been times when legislation has been brought before the Legislative Assembly, without having regulations accompanying it. So, again, going back I'd like to bring that up for another discussion, but our members have strong views about incorporating some provision about public notice on bills.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** That's why you should have the senate. The Chamber is not a government, you know?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** That's fine, Will, by all means we can come back to that.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Are we going to come back or we are going to finish this, sir? I think we could with one observation by our legal adviser and...

**UDP's LEGAL ADVISER:** I was going to raise a point is based on what — it was — it wasn't clear to me based on what you said, Will, whether or not your organisation really had ample time to review what was suggested, and I was curious how you could arrive at a conclusion when you didn't have an opportunity to review it. That was just...

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** When there's limited discussion on any matter whether people have options 'A' or 'B' they'll always probably go with the one that they're most familiar with.

**UDP's LEGAL ADVISER:** Right.

**MR. WILL PINEAU (REPRESENTATIVE FOR THE CHAMBER OF COMMERCE):** And in this case, they're most familiar with one legislative body. So, again, coming back to Mr. Bush's point, maybe there's more need for education on this.

**UDP's LEGAL ADVISER:** Yeah. No, I raise it in the context of having worked with Maples for a long time, and I know historically Maples were behind the real engine behind developing offshore legislation and so on. So, I would find it unusual for them, for example, by way of the Law

Society, to make a suggestion that would be the complete antithesis of how they operate. So, that was just an observation on my part.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** And Mr. Chairman, members can think of it what they want, but there — while civil society is good, there are many competing interests and self interests, and therefore, a government body with — bolstered constitutionally is more democratic than the process that I know obtains. And they can't tell me that. I've been in government a long time, I know what obtains around this town. And so, I — while civil society has its place, it cannot form the — the place of — of what I'm talking about. I think Mr. Pineau has — has some substance in what he said in that people will gravitate towards what they know, and that is why it's, sir, it's a pity that the Chamber didn't educate, nor did the Government, and there is — there is not a lot of education on much of this stuff, because the Chamber surveys only 94 people. The Government didn't have tremendous amount of people to their meetings, neither did we. But we did have the largest one — I keep saying that — thanks to the Adventists Conference. But when the Government says it hasn't found any support it's because they didn't explain it. And so it needs that.

I believe that it's something that should be put to the referendum and I explained, Mr. Chairman. But when you talk about democracy, the problem that I have is this: when you talk about democracy and you're talking about what reality and realistic and needed and Government and someone draw a reference to it, many times, many, many times I've found legislation change or brought in force and then three months, oops, need changing. Government complains about the amount of work they have, and therefore we find ourselves meeting so irregularly often, but still because legislation now have time to be brought before the House and...

There are a lot of things that Government needs to take into account which I know they have not taken into account, but the biggest thing is that politicians, *politicians*, don't want an unelected body looking over their shoulders to say: Here is where I think you could do better. But I find that the country is — it would be in better shape if that were so. I've been there long enough to see, as I said, mistakes made with the legislation, and no matter what the Government is doing now they're given more time than a lot of governments were gave because simply other governments went ahead and done what they had to do. This Government will slow down and still you find that there are things that are not right with the legislation. So, it's not one that I'm going to spend all day on, sir. I'd rather go eat.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Let's go eat. Back at 5 to 2. Thank you very much.

### LUNCH RECESS

### RESUMED

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Perhaps we should turn now to Proposal 7 headed "Upgrade the Cabinet".

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Chairman, that's section 40 in our Draft, just to be helpful.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Section 14? Four? Forty. I see. Yes, Part III, "The Executive".

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Just on a point of procedure, could the Government indicate whether or not they have a black lined copy of this Draft versus two documents, the 2003 Proposed Draft and the current Cayman Islands Constitution order?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** No, sir, I'm afraid we don't. This document is something we've created, not from scratch, but we copied and pasted bits and pieces from various constitutions that have been done both for Cayman and for Turks and Caicos and Gibraltar and other places plus some of our own drafting. So, there's no — we don't have a nice convenient black lined document.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, before you go any further, if you don't mind, sir, I just want to bring to your attention, and everyone else's, that the representative from the Human Rights Committee, if you notice the pretty face has changed to another pretty face, and that is the Chair who was off Island, and she is now back and she would like to introduce herself because she doesn't want me to do it, sir.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** By all means. Welcome.

**MRS. SARA COLLINGS (REPRESENTATIVE FOR THE HUMAN RIGHTS COMMITTEE):** Thank you very much, Mr. Chair. If the leader is going to continue in those complimentary terms, I'd be happy to have him introduce me. My name is Sara Collins. My apologies for missing the opening of these proceedings as well as yesterday, but I'm pleased to be here this afternoon. I'm the Chair of the Human Rights Committee.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Thank you very much, and you're very welcome. You will probably have heard that we postponed for the time being looking at the Draft Bill of Rights or Bill of Rights, and the Government circulated a possible Draft of that in the course of yesterday. But I hope we'll come back to it either tomorrow or at latest Thursday morning. We're still trying to catch up with it ourselves.

#### **PROPOSAL 7 – UPGRADE THE CABINET**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, okay let's look at “Upgrade the Cabinet”, and there are a number of bullet points here which ... would it be best if I gave a reaction to some of these rather than taking time introducing this? You want to say something of an introductory nature.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Well, I was hoping you were going to say endorsement, sir, but we'll have to go with your comments.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I always like to be — to start out with a positive, if possible, and there are a number of things I can immediately say don't present us with a problem. The very first point about responsibility of Cabinet is acceptable to us. Second point about — we discussed some of this yesterday — a Premier, Deputy Premier and five other Ministers — seven Ministers. We discussed this yesterday and I confirm what I said yesterday, which is that this would be acceptable to us on the assumption that the number

of elected Members of the LA or Parliament, or whatever it is to be called, rises to at least 17. And I threw out the suggestion that we ought to think carefully whether 17 is enough. But we're thinking about — we're all thinking about that, I assume. That's that one.

Then just jumping over the next two for the moment, the fifth, sixth and seventh points are the following: **“The Premier and Deputy Premier should be the MPs chosen by a majority of the MPs of the winning party, or if there's no winning party, a majority of all MPs; The other Ministers should be chosen from among the MPs by the Premier; and, The portfolios (areas of responsibility) of the Premier, Deputy Premier and other Ministers should be allocated by the Premier.”**

Those three points are all acceptable to us provided that the formal appointments, both of the Premier and other Ministers, and the formal allocation of ministerial responsibilities are made by the Governor. It would need to be expressed “the Governor acting in accordance and advice of the Premier,” and the reason for that is only that the Governor is the Queen's representative and therefore the Ministers are invested with Crown's authority to act.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** That's what we envisaged, sir. No problem.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** There's no substantive difference between us on this I hope.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** No. No.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** The eighth point: **“If the Ministers do not include a Sister Islands' MP, the Minister with responsibility for District Administration should ensure that the District Commissioner liaises with the Sister Islands' MPs. The Minister should also give the MPs regular opportunities to explain their Districts' requirements to Cabinet.”**

Now, I don't see any particular problem with this. The only question I had was do you envisage that anything needs to be said in the Constitution about that point?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Yes, sir, there's been a great deal of discussion and debate about this particular point on both sides, internally as well as between us on Thursday, and we have evolved this particular proposition somewhat and



there is a provision in the working document that we have which we can obviously discuss.

Just so that you appreciate the difference between us, we understand — all of us understand the concern of the people in the Brac that if you wind up with two MLAs for the Brac who are in the opposition, whether we have parties or not, that there's a concern that the Brac may be neglected in government's —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** So, you have a minister who's charged with responsibility for the Brac but really doesn't have a connection there, and we are quite empathetic to that particular point. So, the Opposition's proposal is that you should just take the Opposition member and stick them in the Cabinet and all will be well, but we have some difficulties with that. But what we've been trying to do is to work out a formula which perhaps may meet those concerns that the needs and requirements and aspirations of the Brac people get represented to Cabinet on a registrar basis, particularly at budget time. But we don't see conceptually how we can constitutionally provide for someone who remains a member of the opposition to be seated in Cabinet. So, we've actually drafted a provision to look at today which is in here. I'll have to try to turn up the particular provision in a moment.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Ah, is it on page 32?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** It was late last night, sir —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It looks as if it might — I think I might have found it on the top of page 32.

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Oh, 28. Ah, right. Yes. **If no Minister is a Member of Parliament of the Sister Islands, both Members of Parliament representing the Sister Islands shall be entitled to attend Cabinet meetings for the purpose of making representations on behalf of the Sister Islands whenever necessary or at least every three months and shall be entitled to attend Cabinet for the purpose of making budgetary representations when the annual plan investments are being developed.** And then this thing that I found towards the top of 32 is: **If the person appointed**

**as Ministers do not include a Sister Islands MP, the Minister with responsibility for District Administration should ensure that the District Commissioner liaises with the Members of Parliament representing the Sister Islands.**

Are they the two provisions you had in mind? Okay. Well, my immediate reaction is that they don't strike me as problematic from our point of you. I think it's — I understand the concern. Would the Opposition like to say anything on that point because I know in your paper you had a particular concern about the — about the representation of Cayman Brac and Little Cayman?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Well, Mr. Chairman, we had the position of appointing a Member that — insisting that a Minister be from the Sister Islands, and we were willing to listen to the Government to hear how they could work that, or to the FCO to hear how that could work. We believe that that should be so, and for many, many reasons ... I see what the Government is saying here, but Cabinet papers can be made and — that involve the Brac or the Sister Islands and they wouldn't know what is there, in particular, if they are two members of the opposition. And so you just can't leave it up in the air for that sort of situation. They wouldn't know what the agenda is if something involved them, something pertained to them. And, sir, we — if they don't — if the Government don't want that position that we've proposed, then we need to sit down to look at how — how they will do it. I don't know, just seeing this because we just got this, this morning so we don't know that that is the best situation, that one on page — on section 45, was it? Section 44(5).

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Whether that is something that we can accept. As I say, to just say the way that they've said it here is — leaves other things that could happen. If both Members — elected Members, then it will not help them. They would just have to be at the mercy of the Cabinet.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes,.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** While

you might consider it an internal matter, and I think against the background that everyone would like to find a solution that is workable, what are your thoughts given what you're getting to understand from the circumstances? I mean do you have anything to offer?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay, Michael wanted to say something first and then —

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** Sorry, Mr. Chairman, but before you respond, I have a certain philosophical hesitation about this, and that is, why should elected Members of one constituency have greater rights than a Member of any other constituency? It says here that the Members for the Sister Islands should be entitled to attend and address Cabinet for the purpose of making representations which gives them an advantage over North Side or East End or any other constituency. I mean what's the — apart from the political clout that Bracers have, what is the rationale?

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Are you asking the Government for their views, sir? Mr. Chairman, through you, are you asking the Government for a view?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Yes.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Well, the reality is that the Brac is some 90 miles away from us and operates quite differently. Even in terms of the management of government affairs over there they have a distinct District Commissioner which reflects the fact that they are separate and apart from Grand Cayman. Otherwise, just being a district wouldn't warrant having your own District Commissioner. So, there's a historical basis for this.

A number of government departments are actually run, not under the auspices of the Minister responsible for the particular subject, but in fact are run from district administration which is under another Minister. So, there is — there is some historical basis for this. And the distance and the very different environments in which both of — or Grand Cayman and Cayman Brac and Little Cayman operate, we believe warrants, provides sufficient basis for saying that somebody should be there to advocate for the Brac and Little Cayman, regardless if you have a Minister — in the event that you don't have a Minister from the Brac who understands intimately the various issues.

So, as we say, we're empathetic to the proposition, the difficulty that we have is — and is that, conceptually, we can't see how you could possibly have an opposition member sitting in Cabinet. Obviously, they

resigned from the party, or if there is no party if they say they're being converted. Obviously, there are issues about trust with all of that, but that could work. But to continue to be an opposition member sitting in Cabinet is just not something we have seen anywhere in the world, or can bring ourselves to understand how that could possibly work.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Could I add another question because, presumably, the Minister with responsibility for District Administration — by definition member of the government who might or might not be an elected Member from the Sister Islands, all very good if he or she is, but if not, in any case — that Minister has as part of his or her duties looking after the Sister Islands; isn't that the case? So, in effect, even if that Minister is elected from a Grand Cayman constituency, that's the job.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** That's what obtains now.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. Yeah. So, this is actually what you're suggesting —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** What was envisaged in, I believe, although we're — I don't want to be speaking for the Opposition, but as I understand it, the — in their thoughts the guarantee of a seat from one of the elected Members for Cayman Brac and Little Cayman to be in Cabinet was so that that person would then be the Minister responsible for District Administration, if you see what I'm saying. That was the original thought, as I understood it, Mr. Chair.

When I asked you the question about what your thoughts were, and by the way, what Mr. Bradley — the point Mr. Bradley brought up is a point that we recognise, and we have spoken about because Members from other constituencies automatically ask the same question. But given the circumstances, we were quite happy to explore how practically we could achieve this. And while — not really to belabour the point, but it just seems great — it just seems that there's great difficulty in it practically working with — regardless of from whence he or she cometh, that is, whichever side, that there is a constitutional provision for someone to be guaranteed a seat from within the two elected Members of Cayman Brac. It is not a question of not wanting to achieve the same objective. It's just that we can't see practically how that will work. And I mean, if we think just of now, and to satisfy a now situation, I mean you might even think for a few minutes that you would get away with it, but

it certainly must cause problems down line once a constitutional arrangement ... I mean —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I agree. I mean I think if you have a party political system like you do here, it's impossible to prescribe that there must always be in the Cabinet, which is made up of the Ministers of the government of the day, someone who might not be from that party. By contrast, in the Falkland Islands, under the Constitution in the Falkland Islands there are two — there is Stanley the town and there's all the rest which is called Camp where all these little settlements of farmers and so on. And there is a provision in the constitution there that there must always be one representative, elected representative of Camp in the Executive Council. But that works because there are no political parties in the Falkland Islands so they're all elected on their own personal platforms. There are no political parties so it doesn't present a difficulty. But like you, I'm afraid I can't see how one could require, as a matter of the Constitution —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** We were just hoping for your guru senses to come up with a practical solution.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I mean — as I said earlier, at first blush, the provision you've written in on page 28 of your paper seems to me very reasonable even though it does have the downside that Michael Bradley mentioned. I mean I hope it doesn't create resentment from non-Sister Islands backbenchers.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Right. I just wanted — Mr. Bradley, when last did you visit the Brac or Little Cayman, sir?

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** About five months ago.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Any plans to visit very soon?

[inaudible comment from the Constitutional Adviser, FCO]

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** I was just going to give you a word of warning. You best be careful of your public utterances then.

[laughter]

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** No, Mr. Chairman, it's unusual but there is a Brac representative sitting in the back there, and I would find it personally of value to hear his views on this.

[A member's comment: There's one here too.]

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** Yes. And they're both on opposite sides.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, this is not playing with any words but the proposition came from the Opposition originally so, in fairness, perhaps the Opposition should simply outline that position and then the Second Elected Member could comment on it rather than him lead the discussion in that regard.

**MR. ROLSTON M. ANGLIN (MEMBER OF UDP, MEMBER OF THE OPPOSITION, ELECTED MEMBER FOR WEST BAY):** Mr. Chairman, the Honourable Leader of the Opposition has outlined the proposition and it's quite simple. If you want just a little more background for your information, obviously, for quite some time Cayman Brac and Little Cayman has presented some unique set of circumstances for the Islands. Firstly, it's for a long time been deemed a special economic area where it's duty free concessions to try and encourage development there because there has been a sagging economy. And it's, first of all, a great brain draining that the vast majority, if not all Cayman Bracers and Little Caymanians who go on to university, for example, all reside and settle in Grand Cayman or somewhere else and they don't go back home because there is limited jobs, et cetera. So, the issues isn't just about being separated by water. There's real economic and social issues that have to be addressed very differently as it relates to Cayman Brac and Little Cayman.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you.

**MR. MOSES I. KIRKCONNELL, JP (MEMBER OF PPM):** Thank you, Mr. Chairman. I would like to start by saying that our goal is to frame a Constitution for the future that will give Cayman Brac and Little Cayman a chance for a sustainable future, because as has been outlined before, our developmental cycle when you compare that to Grand Cayman is that we are at the very beginning, where Grand Cayman has moved because of its tourism industry and its financial industry into what I would say the summer of their development cycle.

We have an opportunity that if we can get a flow of information — and this flow of information doesn't really come and show from the past because we have been very fortunate that elected representatives from Cayman Brac and Little Cayman have sat on Cabinet for a good portion of the past. What we're trying to do here in these deliberations is frame a Constitution to guarantee the future of Cayman Brac and Little Cayman, and in so doing, I believe this is almost bipartisan because the Opposition and the Government want what is best to give representation to the people. And not only that, the electorate themselves, when they come to whoever the representative is they expect, and rightfully so, that they can get results from those representatives who they've placed their vote for. So, we need to find a way.

And your question directly of the worry that other districts would be offended or take offence to this, I think is not a worry that you should have because our uniqueness of where we are today and what our future looks like because of some of the things we need to happen and need to be guaranteed direct representation should help move us forward. Thank you.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right, thank you. Michael?

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** Just one final question. Is it then agreed bipartisan policy that in some way there should be involved a formula in the Constitution for recognising the special problems that the Sister Islands have and establishing some form of mode to protect their interests as a constitutional provision?

**MR. MOSES I. KIRKCONNELL, JP (MEMBER OF PPM):** Yes, sir, that's the point I was trying to push forward.

**MR. MICHAEL BRADLEY (CONSTITUTIONAL ADVISER, FCO DELEGATION):** And that's bipartisan?

**MR. MOSES I. KIRKCONNELL, JP (MEMBER OF PPM):** I think it is bipartisan, yes, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Good. All right. Well, thank you very much for that, and also Rolston. Shall we move on then, on the basis that you've only just seen this proposal as I have in terms and you'll need to study it? But I think the objective is clear.

That leaves two main questions under this Proposal 7: one is the composition of the Cabinet and whether there should be any *ex officio* Members of it. And I explained yesterday that our preference, from our point of view, would be for the Attorney General and the Deputy Governor to continue to be *ex officio* Members so that they can bring to the Cabinet table the business for which they're responsible. I also, perhaps rather unwisely, indicated that lower down the spectrum we might be persuaded, kicking and screaming, that such office holders while not being formally *ex officio* Members would have a right to attend, but I haven't authority to agree to that, it's just a possible solution that we might be able to consider. But I'm not sure it's worth taking up a great deal of time now because I know you take a different view, the Opposition take a different view from you, and it's one we're going to have to think about and come back to. So, I don't see any point, really, in going around that particular course again.

Much more fundamental than that, from the UK government's point of view — and this is another one that I'm very confident our Minister would not want to see changed — is your proposal that the Governor should cease to chair Cabinet. And you'll remember that this has arisen, or you'll know that this has arisen in other Territories and UK Ministers have not acceded to the request from either the TCI or the BVI to change the system whereby the Governor chairs. And I know, before you jump up and remind me, that in Gibraltar the Governor does not chair the Council of Ministers, they call it, and in Bermuda the Governor does not chair Cabinet, and that is purely a result of history. The Bermuda Constitution was drawn up in 1967/68, the Gibraltar Constitution before the present one was made in 1969.

Now, what the — what the thinking was at that time I don't know and haven't been able to discover, but it is true that in the other Territories the Governor continued to chair. And a few years ago (I can't remember whether it was in McKeeva's time as Leader of Government Business), the whole question was raised with the FCO Minister at the time, Bill Rammell, and he considered it and decided to make no changes, which is why the pressure from the TCI and the BVI to have a sort of autonomous Cabinet without Governor chairing was declined. So, I'm having to be straightforward with you so I don't think you'll get that. I'm confident you won't get that.

[inaudible comment from Leader of Opposition]



**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Just before you respond there is the related question of setting the agenda, and I think the two are quite closely linked. There I think Opposition is a bit more nuanced because I can see that it is a bit out of date to have an agenda solely decided by the Governor, and I think our Ministers feel the same, that it's difficult to defend that. And I think the key here is in-line with what I was saying earlier about cooperation, is for the agenda to be drawn up by agreement between the Premier, or Chief Minister, or whatever he's called, and the Governor. Each should be entitled to have on the agenda items that he wants, and this fits actually with the Governor being responsible for certain special responsibilities and the Premier and his Ministers having responsibility for the other matters, or most of the matters.

So, that I think would be our position. It's not very far from your suggestion, which is that the Premier should set the agenda for Cabinet meetings after consulting the Governor. That's not good enough for us, I'm afraid. I think if you could accept provision that the agenda would be settled by agreement between the Governor and the Premier, that means that either side can insist on having an item on the agenda, and I think that would be a sensible step forward.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Thank you, Mr. Chairman. Mr. Chairman, you've invoked history and special circumstances in relation to the two Overseas Territories which currently have the Chairman of Cabinet as their Premier, or Chief Minister, as the case may be. But what would assist us on this side is a little insight into the thinking and the rationale, leaving aside history and those various things, because if as we are seeking to get to, the Governor's role is to be essentially restricted to his special responsibilities and his authority to assent to bills and so forth; and the development, the formulation of policy is a matter for the elected Government. We are struggling on this side to understand any objection to that - Cabinet being chaired by the Premier. We have said that we have no difficulty with the Governor being in attendance, even being a Member, *ex officio* if that's felt necessary, if the UK wants to keep an eye on what the elected Ministers are doing. But we're struggling to understand why — why the Governor would need to chair in those circumstances. And as far as the agenda is concerned, we're not quite sure about this concept of agreement of the agenda because that seems to infer, or to imply that if there were disagreement the Governor could still keep off of the Cabinet agenda matters which he didn't think ought to come to Cabinet. And I think on these two points we agree with the Opposition, or the Opposition agrees with us, whichever way you want to put it, or at least that was our understanding from their paper and from what they said on Thursday. So, I leave it there and invite you to respond.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. Well, of course — of course your hypothesis about the reduction of the Governor's role to special responsibilities and assent to bills is not one which we've accepted. We're coming to that next.

I accept, and as you'll see when we come to it, that under the current Constitution, which is quite old fashioned in this regard, the Governor has all manner of responsibilities which can be looked at and redefined and, in some cases, reduced or even removed. For example, we've just agreed a moment ago that the Governor under a new Constitution would be obliged — obliged to accept the advice of the Premier on the appointment of Minister's and allocation of responsibilities. That is one.

Having a look through your working paper, it's very subtle but it does confirm what I thought having read your proposals paper a few times that what you want to do is to just create a divide, a separation between the Cabinet on the one hand and the Governor on the other, and get away from the historical, what I referred to of cooperation of the Governor, and the Governor on behalf of the Queen being advised in the exercise of executive functions by Cabinet and having it prescribed in the Constitution, the circumstances in which the Governor may decline the advice of Cabinet. You want to get away from that.

You want to do a Gibraltar. I mean, I — you're much subtler than the way that the Gibraltar Chief Minister put it to us. He wanted the Governor to be a sort of figure head, with absolutely no function other than to throw the occasional garden party or open a school or, you know, that kind of thing. And we said no. We said no. And actually the final text of the Gibraltar Constitution, the new one, is — it was accepted by the British government but it is, in my view, a bit of a mess on that in some respects, and I think it's unfortunate because it does convey the impression of a divide.

Now, that — you know, that might be okay, and the fact that the Governor has not historically presided over Council of Ministers in Gibraltar for 40 years has presented problems, to be — put it mildly, has created a lot of problems and difficulties. And one of the key parts of the policy the UK government and the administration of the Overseas Territories, leaving aside for the moment Gibraltar — which I assure you is a special case for a number of reasons — is that where such difficulties can be avoided or adduced by cooperation, by Governors and elected Ministers working together and meeting each other regularly and doing their best to govern collectively the best interests of the territory, that's what should happen.

I cannot begin to tell you the number of problems that the alternative arrangement produces save to say that just as an indication, I think at the latest count the Gibraltar section of the FCO is something like eight, nine or ten officers because it's just one problem after another,

and part of that is because of the philosophy of separation that they like to inculcate. To be perfectly honest, the current government in Gibraltar likes to pretend that it's an independent country rather inconveniently still with the union flag when it suits them. And that's — that's why I think my own personal view the way the new Constitution of Gibraltar is drafted is in many ways unfortunate, but the politicians went with it.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Mr. Hendry, that's not at all what we're trying to do here, and I think that the analogy or the comparison doesn't suit the present circumstances at all. It's not about creating a divide, it's not about separating one from the other, it is an issue of rebalancing responsibility and authority. No one is seeking to exclude the Governor from Cabinet and from involvement in the process, but the control feature is who sits in the chair. And it seems from this side that rather than being concerned about division what the UK is in fact concerned about is control.

We are certainly not proposing an independent or independence arrangement. We have recognised and understood that special responsibilities of the Governor—internal security, defence, the civil service the judiciary—remain with the Governor. But if we are to evolve this constitutional arrangement to recognise the realities of modern day Cayman, where Ministers are held increasingly responsible and accountable for everything that happens in government, we have got to reflect that in the constitutional provisions. And in this day and age to say that the UK still sits in the Chair of Cabinet, still has to agree to the agenda, is something that on this side we simply cannot accept as being either reasonable or an indication by the UK that they are prepared to move to shared responsibility for these matters. It's not about division. It's about sharing responsibility and rebalancing the authority in a way that reflects what actually happens. Elected Cabinet is responsible for the formulation of policy, domestic policy, not the Governor.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, just a point before coming to you, McKeeva, if I may just make a very brief remark.

First of all, you know, Alden, and you said earlier today that the Governor has two hats; and it is not constitutionally of course, the Governor is the Governor of the Cayman Islands and is not any part of the UK government. We know, though, because of the subtlety of the way these things are done that the Governor can be instructed from London. But it — I think it's unfair to say that the Governor chairing the Cabinet equals the UK chairing the Cabinet. I think — I think that's not right, and I know from my entire career that Governors of territories have chaired their Cabinets and put to London the views and desires and aspirations of their territories and their policies as representing, as they

should, the government of the territory of which they are the head, the head of the government. So, that's point one.

Point two: we are very close to each other, although it doesn't seem so on this point, in wanting to arrive at a new Constitution which does reflect a sharing of responsibility for government. And I'm very glad to hear that it's not your intention to seek a division but to rebalance in such a way that there seems a fair sharing of responsibility. We too want to do that. Otherwise, if we did not we would not contemplate input by Ministers into internal security and police – the National Security Council idea which you know we've already agreed with some other territories, and we'll come to that soon. But so we're in the business of looking for sharing and cooperating.

Now, I think the — you said the concern must be to keep control through the Governor. I don't think that's right. I know what you mean. I would put it in a slightly different way. I think the concern of FCO Ministers who are answerable of course to the UK Parliament for anything that goes on in the OTs is that it is easier to be able to exercise their responsibility with the Governor sitting in the chair, bearing in mind, of course, that the Governor is in practically all cases obliged to accept the advice given in the Cabinet across the board, you know. So it's really more within the area of is this — it's not exactly reserved power but is this a safeguard that would be regarded by our Ministers as necessary or sufficient? And there is a balance here because as you know under the current Constitution the Governor does have quite extensive powers to reject the advice of the Cabinet, quite extensive powers exercised very rarely for very good reasons, but they are there in law and when we come to it I'll say something more about this. But I think the — a part of the package will have to be for the reasons I've tried to explain, that the Governor will have to continue to chair the Cabinet.

You may — you may — I will quite understand if you felt — you felt so strongly about this you should make the argument to the Minister personally. All of the others have and none has yet succeeded, but good luck to you.

I have to tell it how it is at the moment, you know. Nobody's mind is closed forever, but I have to tell you what the current British government policy is on it and that that is what it is.

And on the — by the way, Alden, on the agenda point, I didn't mean to suggest that either Governor or Premier on our suggestion could veto something that the other wanted to put on, it needed to be expressed the other way around. Each should have the right to inscribe on the agenda something which they think is important. When they — they should consult together, and if one persuades the other that the item is not ready because it hasn't been prepared properly, or the Finance Minister hasn't had a look at it or the Attorney General hasn't had a look at the legal implications so it's premature, that's fine, that's different. But the substance of it is that each should be entitled to have

his item on the agenda rather than that each could be able to veto one of the other's.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Thank you, sir. The last point goes some way to meet our concern, but on the other we'll live to fight another day.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, of course you will.

[laughter]

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, I believe our stated objective and what the Government has written and what it has said is different. I would like some clarity from you, though, just to be sure. You have said that it is agreeable that the Chief Minister could set agenda?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, not exclusively, could — could have items he or she wanted on the agenda. And the Governor would have the same right.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** And that — well the Governor is the Governor.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** What our concern has been is that hitherto for, the Governor — we never had that right as elected Members, and we believe that as elected Members you should have the right to place a matter on the agenda, debate that matter, but understand that the Governor can turn down the matter because we only place — we only advise the Governor in any event. Cabinet Members only advise the Governor by way of a paper, and the Governor accepts that or rejects it. So, we were concerned that Members could have authority to have matters placed on the agenda rather than going to the Governor and saying: I would like for this to be placed on the agenda, and therefore he could say: See the door there? Go the other way. I don't want it there. It has happened to me. That's why I support this aspect of it. So, to be clear, we elected Members would have the authority to place a matter on the agenda through the —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Through the Chief Minister.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah, through the Chief Minister.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah. That's satisfactory to us, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Good. Good.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** We'll live to see the day whether the Government succeeds or not.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Good. Well, I think we can — shall we have a break now? Is it a suitable time to have a little break, ten minutes? Kurt, ten minutes?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think we've reached the end of that item now, haven't we?

#### RECESS

#### RESUMED

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Can we come to order, please? Thank you very much.

#### PROPOSAL 8 – MODERNISE THE GOVERNOR'S ROLE

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. Shall we move on to Proposal 8? Proposal 8: "Modernise the Governor's Role". If we did this extremely quickly, the Governor's not in the room — we ... oh, no, he's come so...

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** What I would be grateful for, Alden and Jeffery, is I haven't had a chance yet to look into how your proposals on this item, Proposal 8, are reflected in the

working paper. And I must say I'll have to study it after today's meeting to see that no tricks have been missed from our point of view, so I reserve the right to come back on it. But this is actually, as you can imagine, quite a sensitive area for us.

And I think the first point, **“The Governor's overriding legislative powers should be restricted, as outlined in Proposal 5 above. Note that the Governor's assent would still be required for all legislation,”** well, we looked at that earlier. But then when we come on to the next point, **“The Governor's policy-making and executive functions should be limited to his areas of special responsibility: defence and external affairs ... internal security and the police [and] the civil service...”** all of which we'll come onto in separate proposals, my concern there, and you may be able to reassure me that it's covered in your working paper, is that, first of all, there are several issues here. One is there needs to be provision for Her Majesty to assign powers to the Governor beyond those conferred by the Constitution or any other law, and I'm not sure whether you've — I mean, that is in all of the Overseas Territories' constitutions because it reflects prerogative powers basically. I don't think you've covered it, as far as I can see.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Section 32...

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Page 22 of our working document, Mr. Chair.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Shall exercise his or her functions in accordance with such instructions if any as Her Majesty, acting through the Secretary of State sees fit to address to him or her.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** No tricks there. It's all set out in the section, and the footnotes provide anything that we might have left out, I hope, from the other Constitutions.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** All right. I'll have to study that if you don't mind. But that's an important point that... I know it looks odd, and we spent an inordinate amount of time arguing the Chief Minister of Gibraltar about this. In the end, he rather gracelessly accepted that there is a residuum of prerogative powers, royal prerogative powers, which in an Overseas Territory are for the Governor,

but actually they are small. I mean, we're talking about things like recommending honours and things which are in the Queen's gift and so on and so forth. Of course 99.9 per cent of Governor's powers and functions are as prescribed in the Constitution and the laws of the Cayman Islands. Anyway, that's a relatively small point.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** When I say that there are no tricks there, I mean I think we've tried to set out the reasoning there and, of course, for discussion. But I think what we have done throughout is to try and remove the expression, and this is perhaps different from some of the other Constitutions, "in the Governor's discretion" as being unreviewable, and that has been a deliberate decision because it seems that that doesn't accord with modern public law which, as I was saying earlier today, requires really all decisions prerogative or not, Attorney General's even discretion and others, to be reviewable under public law principles of fairness, reasonableness and so on.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** And as you rightly say, there are some decisions like the grants of honours and so on that aren't really justiciable in the sense there's no objective standard by which a court could guide them. But if they were prompted by corruption and so on, of course they would be reviewable, you know, if somebody seeking honours would pay huge sums for example. That has to be reviewable, or would be reviewable irrespective of whether the decision was called a discretionary decision or not. So, we're trying to reflect not only plain language, but also take out the odd expression which has little or no meaning in public modern law. But otherwise we've explained where the differences are between other places in the various footnotes here and thereafter.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Of course the purpose of stating "the Governor acting in his discretion" in certain places is designed to — is not designed to give him an unjudicially reviewable discretion. All it is designed to do is to distinguish the situation where the Governor decides, without having to consult anybody else, from those cases where the Governor is obliged to consult or act in accordance with the advice of the Cabinet or any other — or some other person or body.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION**



**INITIATIVE):** Well, we have no problem with that except that, with respect, in many cases in the past and in the 1972 Constitution, for example, and in the 2003 Draft —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** — discretion is sometimes defined as not subject to judicial review at all, in other words, an Astor clause.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. The only Astor clauses are that, one, that a court may not enquire into whether a Governor has acted in accordance with instructions, and the other is whether the Governor has consulted or acted in accordance with the advice of Cabinet or some other person. Those are the only two. Other than that, all exercise of functions by the Governor, just as exercise of the function by ministers or other public bodies, are judicially reviewable in the normal way. Now, we can have an argument about the two special cases that I've mentioned, but our position I have to tell you is that those two special cases should remain. We've had this with all of the other territories, but only those two special cases.

But I mean that's a —

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes, the two. Well, at the moment, one can look into — just look into current Constitution because I think we — in the 2003 Draft we kept them. The first one is at the end of section 1(2) of the present Constitution, where it says: **The Governor shall do and execute all things that belong to his office according to special instructions if any as Her Majesty may from time to time see fit to give to him, but no court shall enquire whether or not he has complied with such instructions.** That's the end of 1(2). And then the other one is — is it 7(4), Susan? Section 7(4): **The question whether the Governor has exercised any power after consultation with or on the accordance of advice of executive council shall not be enquired into by any court.** Those are the only two, Sam.

Now, this is actually a different point, isn't it, in Proposal 8? It's point 4 really: **The Governor's decisions should be subject to Judicial Review in the same way as any other person or body performing a public function.** We agree with that as a general principle, but our position is that the two special cases Astor clauses ought to remain; and they are very limited, they are very narrow exceptions.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, I heard you mention those two sections but what I didn't hear from you is a justification. Might you?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** A justification? Well, a —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** What I'm saying is you went through the motion saying what they were.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** And I am saying to you I hear what you're saying they are.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** But can you tell us why that's the position.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Which draws those two outside of the realm as exceptions?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. Well, we do not think it right that instructions given to the Governor on behalf of the Queen by the Secretary of State or directly by the Queen ought to be...

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):**  
Subject —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Subject to examination by the courts.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Why is that, sir? I mean, I see you've invoked the name of the Queen, but the reality is these are instructions of the government of the United Kingdom.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** In the name of Her Majesty.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Fine.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** If you look at the House of Lords case of *Quark* which was delivered a couple of years ago, the House of Lords pointed out, or held — ruled that the Secretary of State, when acting in giving instructions to the Governor, acts on behalf of — is merely the mouthpiece of the Queen. That is lodged in my brain so that's why I put it that way. That is constitutionally what happens.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** No —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Now, this is — this is — sorry, go on.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** I'm not in any doubt about that, sir. I'm not arguing with you about that. But let us examine the reasons why we think that ought to be judicially reviewable.

One of the big concerns locally is the — because of the constitutional relationship as it presently stands, it is the ability of the United Kingdom to do thing for us but, more important, to do things to us that we'd rather she not do. We've — that is the basis for our recommendation, our proposal that the powers of the UK to legislate for these Islands either direct or indirectly ought to be eliminated or restricted. You've made — well, not made the case, but you've stated that that is not possible or acceptable, at least to the degree that we are proposing.

It follows therefore even more strongly now that we need to ensure that decisions which are taken by Her Majesty's government to legislate for us or to issue instructions to the Governor to have him do things to us, that those decisions are reasonable, fair, rational, all of the — the criteria which apply when you're deciding whether or not properties — the discretion is exercised reasonably and fairly. And so, unless we are able to get those sorts of decisions into the courts in circumstances where we believe we've been treated unjustly, we just — it's just not right, it's just not fair, it's just not reasonable from our standpoint. The UK government shouldn't be able to just unilaterally take decisions with no regard to what happens to the Overseas Territory or to the consequences to the Overseas Territory as a result of those particular instructions.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I'm not saying that the instructions themselves are not judicially reviewable, and indeed, the case I've just mentioned involved an instruction given to the Commissioner for South Georgia (who happens to be the same person as the Governor of the Falkland Islands) by the Secretary of State. And those instructions themselves were judicially reviewed in the English courts, in the English courts, and were found to be unreasonable.

All this Astor is, is in the courts here what cannot be looked into is whether the Governor complied with those instructions or not. It's not that the instructions are unreviewable, this is a question of how the Governor performs in relation to instructions that are given to him, which historically in the Overseas Territories have not been a matter for Judicial Review in the courts of the Territory, and that's, you know, that's been the position and remains the position in the Overseas Territory.

Similarly, the other one, the question whether the Governor complies or not with advice given by Cabinet or consults Cabinet, I mean that is not, in our view, and traditionally in the Overseas Territories Constitution, if you look at them all you'll find the same exclusion. That is not a thing we think should be for the courts to be dealing with.

If there's a complaint by elected Ministers that the Governor is playing fast and loose with relations with the Cabinet, and not complying with advice given when it should be done, then you can petition the Secretary of State on it, you can petition the Queen on it. But it's not a matter for regulation and the courts of the Territory. That's a political matter. That is, as I understand it, the reason for that one. So, I'm just telling you what our position is and our understanding of the reasoning for it.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Well, I hear all of that, sir, and I hear the historical basis, but the reality is that

the world and the law have moved on significantly since these provisions were crafted. And there may be good reasons why we are concerned that the Governor isn't carrying out instructions which we've been given. I mean, it may be one of those rare instances where the government — the UK government is actually instructing him to do something good to us or for us and he isn't complying with it. And why should — if the Governor, who we say is the Governor of the Cayman Islands, is not complying or is not following advice given to him properly by Cabinet, why shouldn't the courts of the Cayman Islands — why shouldn't that be judiciable before the courts of the Cayman Islands?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Because it's a matter between the Governor concerned and the Secretary of State who's instructing him or her. This is not a — this is not a judicial matter. A Governor who fails to carry out instructions from the Secretary of State on behalf of the Queen answers to the Secretary of State as to why he didn't do that. It shouldn't be a matter for the local courts to get in between those two.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** But —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It's very fundamental.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** But that is leaving out the very most important part of the equation from the Cayman Islands' standpoint. Though instructions aren't being issued in a vacuum, they're being issued in relation to the Cayman Islands.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** So why — why ought not the courts of the Cayman Islands be competent to deal with a matter involving the Governor of the Cayman Islands and the Cabinet of the Cayman Islands?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Because it's the question whether the Governor has complied with his instructions. And I mean I don't think we'll ever agree on this because it seems to me quite —

[inaudible comment]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** It seems to me quite clear that it's not a matter for the Grand Court of the Cayman Islands whether the Governor has complied with instructions from the Secretary of State in London or not. It's a matter between the Governor and the Secretary of State.

Now, if you get to know what though instructions were and you think they were unreasonably issued or there was some judicially reviewable element of the instructions themselves, not whether the Governor complied with them or not, you can do what the people did in the *Quark* case and go to the courts in the UK, take the Secretary of State before the courts for having issued the instructions in the first place. But the only question that is offside for judicial review here in the Grand Court is whether the Governor complied with the instructions given to him. It's just simply not a matter for the court.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** What's the other one again?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Yes, the other one having to do — sorry.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** What's the other exception?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Advice. That wouldn't be subject to the same arguments would it?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, advice from the Cabinet — I think it is similar, and my understanding has always been that a Cabinet advises the Governor and, in most cases, the Governor must comply with that advice. But this is a political matter between the Governor and the Cabinet, and the courts should not be getting in between the Governor and the Cabinet. If there's a complaint, as I said, of the Governor not doing as he ought to in his relations with the Cabinet, that should be a matter to be dealt with at a higher level in London, at a political level.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Well, the question —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And also, of course, there may be very great practical problems about the disclosure of relevant papers. Some of it may be — may be sensitive in both instances, instructions and advice of Cabinet. Do you want your Cabinet affairs taken off to the courts irrespective of what the subject is?

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** As I've said in this footnote, it's highly unlikely, it's almost inconceivable, that in most cases that the courts would enter into this matter for the reasons you've just said. They would say it's not really a justiciable issue and it could have — and it could create all kinds of problems of decision making. The question is one of principle. Ought any person be above the law? Why protect the Governor in that function, when the courts are unlikely to enter into it anyway, when you don't protect him in others? And as a matter of principle, everybody ought to be subjected to the law.

And in the Bill of Rights there is a provision about good public administration that in theory ought to apply to all of the Governor's decisions as well as anybody else's. The courts, of course, are highly unlikely to enter into that kind of question for reasons of restraint that they themselves have constructed, and anybody who tried to challenge it will get kicked out of court and there are sanctions such as costs which will deter others from challenging similar cases pretty readily. But it's a question of principle simply. What is the message we're trying to put out here that the Governor is protected in some functions or not? I agree that practically it won't make much difference, but it's similar to the argument we had this morning about the Attorney General's role. It's partly symbolic if we're trying to move to something that's more democratic than before. You know, let's go all the way. It's unlikely, particularly if it's unlikely to cause any particular practical problems.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** Just one parting shot.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay.

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** To say that it rather flies in the face of all of the protestations about the need for good governance and so forth, to have the individual at the helm of the

country protected constitutionally from having some of his decisions judicially reviewed. It just — it just doesn't make any sense, and it's very difficult to convince people that this is a system which actually encourages and promotes good governance and accountability.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Okay. I hear what you're saying.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And we'll think it over very carefully I assure you. Sorry, Julianna, yeah.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Thank you. On a point of clarification is there anything preventing the UK government from taking the consideration on board whereby the instructions given to the Governor, HE that those same instructions could be shared at the same time or as soon as possible after with the Chief Minister and/or Premier as it relates to the first point that was put forward by the government?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I'm not sure I know the answer to that in practice. I imagine — I'm looking to the government to correct me, but I imagine there are some instructions that he might receive that he would be perfectly open with Leader of Government Business or Cabinet about and others not. I don't know.

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** Let me comment. This is actually a rather hypothetical comment rather than one based on actual experience, but I could certainly imagine situations where there could be instructions which, save for possibly reasons of national security, could not be shared or could not be showed immediately, but there may be others where it would be perfectly fine to do so.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** But —

**HON. CHARLES E. CLIFFORD, JP (MEMBER OF PPM, MINISTER OF TOURISM, ENVIRONMENT, DEVELOPMENT & COMMERCE):** Mr. Chairman, I'm just trying to follow the logic of the position put forward by the UK because we understand that the instructions are judicially reviewable but whether or not the government — the Governor has implemented those instructions or has acted on them that the Governor's actions are not judicially reviewable. And I'm trying to follow the logic of



that because if the instructions are declared to be unfair, inequitable wrong or otherwise inappropriate, the Governor could have still acted on those instructions and then there is no remedy available to the country in those circumstances.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No —

**HON. CHARLES E. CLIFFORD, JP (MEMBER OF PPM, MINISTER OF TOURISM, ENVIRONMENT, DEVELOPMENT & COMMERCE):** That seems to be —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No.

**HON. CHARLES E. CLIFFORD, JP (MEMBER OF PPM, MINISTER OF TOURISM, ENVIRONMENT, DEVELOPMENT & COMMERCE):** — an unusual position for a country to be placed in.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No. No. There would be a remedy. The only question that's offside under this provision in your Constitution at the moment is whether the Governor acted in accordance with those instructions or not. If he acted in accordance with them and then took action, his action is judicially reviewable. Equally, the instructions in the first place are judicially reviewable but in the UK courts. The only thing that's offside for the Grand Court and the courts of the Cayman Islands is whether the Governor acted in accordance with the instructions from London. And by — and the logic is — you may not agree with me but I can see a perfectly logical difference — that the question whether the Governor obeys his instructions is nothing to do with the courts. It's a matter between the instructor and the instructed, and the consequences for the instructed for disobeying his instructions could be severe or he could be forgiven or he could be sacked, you know. But this is not for the courts. It's nothing to do with the Grand Court or the Court of Appeal of the Cayman Islands or the Judicial Committee, the Privy Council. It's not their business.

But I don't want to persist with this because I did say — I've heard what you said, I've heard your arguments, and we'll bear them carefully in mind on both points, on both of the instances, because there are much more important things here that I think we ought to come to.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yeah, Mr. Chair, just quickly. I don't want to be offside and hear the whistle so I'm going to come with an onside question.

I just heard His Excellency make a point about a matter of national — a hypothetical situation about a matter of national security, but I hope I misunderstood him.

Could you explain again, Governor, what you were saying when it came to matters of national security, what you were saying, please, because I believe I misunderstood?

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** Well, the question I heard — and maybe I misunderstood the question — which came from Ms. Julianna over there was whether those instructions could be shared with the Chief Minister or Premier. And, basically, what I was saying in a nutshell was I guess that would depend on the nature of those instructions. And, you know, it is not inconceivable that there could be some matter of national security which may by definition fall within the reserved powers of the Governor anyway, which —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Whose national security? Of the Cayman Islands or of the UK? I'm not being funny, I'm just trying —

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** Well, I mean it could be either or both. I think there's a high probability that the instruction of the Cayman Islands has got some relevance to the Cayman Islands. But I'm talking hypothetically.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** I understand that, I just want to make sure.

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** I don't have actual examples to quote.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Mr. Chairman, I wonder as a follow-up, would it be unreasonable to seek a commitment from yourself to try to ascertain whether the scenario that I put forward or the proposition is one that the UK would consider in a positive light, that is, the sharing of the instructions with the Chief Minister and/or Premier that is sent to the Governor?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, I don't think — I can't for the reasons the Governor explained. I mean, I think it has to be within the discretion of the Governor whether to — whether

and how far to disclose instructions given to him or her. I mean there are situations — I've not been the Governor and Michael hasn't and Stuart has — is obviously. But I could imagine instructions that might be given of a highly sensitive nature which relate to a security matter — the security of the Islands, some terrorist threat or something, which it would be highly damaging and foolhardy to promise to disclose to anybody other than the persons who have responsibility for the maintenance of security. Now, you must understand that.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** No, sir.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** No, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No?

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Most certainly not, sir.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, this is —

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** It seems inconceivable that there could be a matter of national security affecting the interest of the Cayman Islands and the Premier or Chief Minister of the Islands won't be told.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well —

**HON. ALDEN M. MCLAUGHLIN, JR. (MINISTER OF EDUCATION, TRAINING, EMPLOYMENT, YOUTH, SPORTS AND CULTURE):** This just gets worse all the time.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Unless he was the offender.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** There might be a question of timing, as I think the Governor indicated. You know — well, if you don't accept that, the — there is an option. There is an independence option. There is. I'm sorry. You know, when you get down to it —

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** No.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** When you get down to it there are certain things which you may not like which may be extremely distasteful to you.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** But —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But there is an option.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Right. And Mr. Chair, we're not going to follow about independence. You can keep that. But what I'd like to say to you is, I heard what you said but I'd like you to spend a couple of minutes without being offside with the independence issue, because that is offside and the whistle will blow. But let's just look at it logically.

The Governor, granted, would be — and I know that he was speaking about a hypothetical situation, so it's all of that. But let's just look at the situation like that. The Governor, granted, is responsible for internal security and whatever that situation is regardless of what it is. The elected arm of government, while we respect the fact that there should be, forgive me, separation from the operational side of things — but this is simply a matter of being aware. I mean I cannot fathom a situation where the Governor would not only be inclined but be happy to share the scary news with somebody who might be able to help. No, no. I'm not joking. And I'm not — and all I'm saying — all I'm saying, Mr. Chairman is — and, please, let's not talk about independence. I'm just trying to logically understand what could it be —

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Don't throw them in the bread patch.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** — that we shouldn't — I mean, that we would not be able to be prepped about. I just don't understand that.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, if we had something happening to us and the Governor's — between the Governor and the Secretary of State or the FCO, something where there was need for battleship, forget whatever you call it these days, to come to our aid, to our protection, I'm sure that His Excellency the Governor would have to call the Cabinet to say: Such and such is the case. You're being threatened in this way, we are going to bring the battleship in and this is where she's going to be. But the very, very fine details of whatever of manoeuvring the battleship has to do is not going to be told to us, but we will certainly be told that the frigate is on our doorstep, am I right? Or we won't be told that either?

[laughter]

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** Could I comment again?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yes, sir.

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** And here I can only really speak for myself, and I know actually what we're talking about here - a systems that will outlive any individual, and that's important. But I would expect in speaking for myself I probably will not be untypical of how a Governor would react.

In the vast majority of hypothetical cases that I have been able to imagine in the last two minutes as I've been listening to this conversation, I would be telling the government possibly in confidence, possibly initially anyway on a very restricted basis — and indeed there have been occasions, not on the basis of instructions from London, but on the basis of information that has been passed to me, say, by the police here, where I have done that. I would expect, you know, if it's something that's going to have an impact on the Cayman Islands and the welfare of the Cayman Islands, I would expect normally to — to brief the head of the duly elected government of the Cayman Islands. But I am just saying I couldn't guarantee to do that because I could also imagine hypothetically exceptional circumstances where that would actually not be appropriate, or I would not be allowed to do that. In fact, part of my instructions could possibly conceivably not be to do that, and then we get into a real logical trap if part of the instructions is not to pass it on,

you can't pass it on legitimately. So, I don't think you can — you can come up with an answer which covers every conceivable situation. But certainly as far as I'm concerned, I'm very happy to talk about best efforts because that would be how I would approach it.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** In the case, Mr. Chairman ... I guess we're just talking about hypothetical cases but where — when it happened, the radar system was being placed by the UK and the US by the airport, the Governor came into Cabinet and he informed us that this had to be done and he gave us a very brief outline of why. And when we asked for more details because the outline was brief, he said it couldn't be done but we had to understand it was being done in the best interests of these Islands and we had to accept it as such. The only thing we asked was: Will you inform the Legislative Assembly as the same way you have informed us? And the Governor called the legislature together and informed them that's what was going to take place. But in the end it was all for the good of the country, although we couldn't be told every finite detail. So, we — in that case we had to trust the Governor in telling us that as much as he could.

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** Sorry, could I just make one final point, which is just for the sake of clarity, that the sort of scenario which people have been talking about, which is an instruction from the UK on something that has a bearing on national security, we're getting very close to the question, which no doubt will be debated later and which I do not want to comment particularly at the moment, of how far it is appropriate for the elected Government to be apprised of and have any influence over the operational security matters because we're getting very, very close to that particular area. So, I think we have to be — we have to be careful about that and conscious of that and conscious of the distinction between providing information and any elements of co-decision.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Mr. Chairman, I just want to make a couple of comments and maybe somebody can answer those comments.

1) If we are not allowed to see the instrument of instructions, it follows then that we would not know whether or not the Governor has acted in accordance with them or outside them, and we will be left, the country will be left in a what the Leader likes to talk about, a tither; we could be very well damaged because we cannot have judicial review then. And I think, Mr. Chairman, you spoke about the relationship between the instructed and the instructor, and I appreciate that. But we would not be able to do the judicial review because we didn't know whether or

not he acted — the Governor acted — he or her — he or she acted in accordance with those instructions and whether those instructions were in the best interests of the country. But in the meantime the country would have had to suffer so we wouldn't be able to get judicial review.

I wonder if in the spirit of the White Paper and shared governance and the responsibilities of ensuring that the country is managed, is governed in one — in modern times and in the best interests of the people of the country, if that is considered openness as much as it should be at that stage from the — Her Majesty's government. That's — that's where I'm having some difficulties trying to come to grips with this, that it's still... Whilst I respect that there has to be some oversight responsibility (i.e., Her Majesty the government on behalf of Her Majesty), there must be some degree of cooperation that is required between those two governments (i.e., the elected Government here and Her Majesty's government) to try and ensure that this country is run in the best possible way because we have, by and large, placed in the hands of maybe two people, the Minister for State and instructions that has been given to another — another person here on the ground. So, in the spirit of cooperation I think that maybe that's really where we need to work a little closer together and see how we can come to some agreement.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I mean, I think as I understood what the Governor has said, the vast majority of cases where he receives instructions he would — he would disclose and discuss with the Leader of Government Business or Cabinet. It's only a very tiny minority of very sensitive cases where that might prove difficult, and he may be instructed not to disclose it to anybody, or he may in his own wisdom decide that if he told so and so today rather than tomorrow or next week, something very bad could happen which would be his responsibility.

Now, I hope no one's suggesting that there should be written into the new Constitution of the Cayman Islands a duty on the Governor to disclose his instructions from Her Majesty or a Secretary of State to anybody because I think if that's the demand we might as well pack up now because there's absolutely no way that will be written in. Absolutely no way. You have to — you have to — if I may say so, you have to rely on the good sense and the greater degree of transparency which is genuinely the case nowadays in government circles both here and in the UK. But there will be cases of sensitivity always and there's no point beating about the bush. If you want some, you know, some private assurances of best endeavours except in special circumstances, you know, you can think about a letter or something of that kind. But this is not for putting in the Constitution.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Mr. Chairman?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** There's no way.

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** Mr. Chairman, I hear — I think the first rounds of discussion here is about — I ain't concerned about those big ones. I'm not as much concerned about the big ones, that the West Bay Beach got to be turned into the beaches of Normandy. Those I expect him to come because he lives on West Bay Beach.

[laughter]

**HON. V. ARDEN MCLEAN, JP (MEMBER OF PPM, MINISTER OF COMMUNICATIONS, WORKS & INFRASTRUCTURE):** You know, but such as the 60s when, you know, when Russia was stockpiling missiles in Cuba and that kind of stuff, those type of things I would expect that the Governor would come and tell any Cabinet that, you know: There are concerns, England has some concerns, and I have been warned of those and what have you and instructed on what the country should do in the event of this or that.

The ones that I am really concerned about is the ones that you spoke about after that, which is that there are certain instructions that may be passed on which says do not, do not tell the elected government of the Cayman Islands. Now, if they come to the Governor of the Cayman Islands that means they involve the Cayman Islands, I would like to think. I wouldn't think they would send out a general instruction to all Governors.

And whilst I respect that there must be certain confidentialities developed between the instructor and the instructed, I do believe that in the spirit of cooperation and of shared responsibilities they should be — there should be little or none of those that should not be left up to the discretion of the Governor, or should not be shared with the elected government because what it says is that — it says to me is that there is no trust. And that is the basis under which that White Paper was developed in 1999: trust. I believe there was a number of times in there when they spoke about trust and cooperation and partnership. I just cannot fathom how partnership can be one-sided, and even in making babies you need two.

So, I — those are my concerns, and I do apologise if I took it to a point where ... but I was trying to make it as simple as possible in that, you know, we have a vested interest, eh?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah, I understand everything you're saying, and as usual there's a great deal of wisdom in what you say. But in purely — I mean I know you don't like



me talking about the position, but in a situation where the — and I don't want to overplay this because I think we're actually taking time on something which is not central. I mean I hope you don't regard it as so central that we fall out irrevocably about it, but in the situation where under the Constitution even on your proposal, the government remains responsible for defence, external affairs, internal security and the police, the appointments in the public service. The Governor is responsible constitutionally and practically for those things, and therefore, there will be occasions when the Governor cannot, on a particular day or ever, tell you about certain things even though you're the elected Government. Now, I know that's difficult because you could be criticised for things that Governors do.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** That's right.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Or that are in the Governor's responsibility, but — but —

[inaudible comment]  
[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** But, you know, there is an alternative which I won't mention the word beginning with 'i' but there is an alternative.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Say it again.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** There's a fact of life if you accept and you want to remain with the UK as sovereign power and the Governor responsible for these reserved special responsibilities there's going to be some pain attached to it. You're not going to have everything you want.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** And I think the Governor has been incredibly reasonable in saying that he couldn't — he could hardly think of a case where he would not share instructions, but there will be such cases and it will be responsible — I mean, I know that no responsible British minister would undertake a promise that

every instruction, however sensitive, time sensitive or security sensitive, would be passed over. I mean, she would be mad.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair — it might be —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** She wouldn't do it.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** It might be a he and not a she, but just saying to you, sir —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** She or he.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Yeah, just saying to you, sir, I believe we have exhausted the point.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I believe we have.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Can we move on, sir.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chair, I was going to say that tomorrow's Wednesday and the next day is Thursday, so it doesn't look like we was going to reach so far if we didn't move on.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Good.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** But I just want to say, sir, that I remember coming back from the UK on one of the meetings and making a statement to the House and informing them of what had taken place, and I made the quote that the partnership was a leaky ship and the opposition nearly ate me.

[laughter]

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** I leave that, sir. A lighter — a lighter thing for me, though, Mr. Chairman, is that one consolation I have is that the next year you're going to be a conservative government in the UK and we will know these people out here so we might get closer together the next round.

[laughter]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I'm going to have to give some more bad news, and that is I've suddenly spotted it and it made me nearly jump, which is in this Working Paper, 28(2): **Prior to appointing any person as Governor, Her Majesty shall consult with the Premier on the proposed appointment.** And again, my hands are tied on this because this very question has been decided by British Ministers, and the current system, with which Kurt and McKeeva will be well aware, is that Chief Ministers, although equivalent, are asked for their views on the qualities of a proposal.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** Mr. Chair, in making your statement could you just quickly refer to the other Territories with fairly new constitutions and as to what obtains in those constitutions, whether it is the same or whether there are —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Nothing.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** — any variations?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No, nothing is said in any of them. There is no provision like this in any constitution, any constitution. And although the same proposal was made by most, if not all of them, we had to decline.

Now, as I said, on the other question about chairing the Cabinet, if you want to press this — and I know it's one that comes up in OTCCs regularly — by all means do so. But if — this is the subject on which Ministers have decided and there is an established policy. So, I have absolutely no leeway whatsoever.

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT**

**ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** We understand.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think we're coming up to closure time, but there are one or two other things. And I'm still trying to get my head around the structure of this Working Paper, but one thing that I should leave you with, which is important from our point of view, is — and I haven't tracked down yet whether it's worked in, at the moment in the current Constitution the Governor is clearly obliged to act in accordance with the advice of Cabinet with certain exceptions. One of the exceptions, which is clearly set out, is that he can ignore advice or can act contrary to advice of the Cabinet in the interest of public order, public faith and good government provided he refers it to the Secretary of State. I haven't got the precise revision in front of me. And it could be simplified to good government as a ground for the Governor acting contrary to the advice of Cabinet, because I don't think the public — order in public faith is a mantra and I think it boiled down to the same thing in the end. Now, I haven't seen whether that's there, but I think...

**HON. D. KURT TIBBETTS (MEMBER OF PPM, LEADER OF GOVERNMENT BUSINESS, MINISTER OF DISTRICT ADMINISTRATION, PLANNING, AGRICULTURE AND HOUSING):** You say from your standpoint it has to be.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** I think it ought to be there and I think it would be dishonest of me not to say to you that the — that our Ministers will look for it and will want to know whether it's there, and if it's not there why not and what the safeguards are.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** This was sort of left open for discussion. If you look at section 31.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Page 23: **Subject to the provisions of this Constitution in any case where the Governor is required to consult with the Cabinet, he shall act in accordance with the advice given him unless the contrary is expressly stated** and so on. So I think it was left open here to state in the Constitution those provisions where he can act independently.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes. I mean I would — I would foresee... I would foresee two basic circumstances: one is where the Governor is given advice which could cut across the special responsibilities reserved in the Constitution to a Governor; and the other is in the interest of good government. Now, in either case, I would imagine it would be very rare and indeed a serious matter for the Governor to reject the advice of Cabinet, and that should only be permissible with the approval of a Secretary of State. But I think it's — I think these are reserved powers that I think fall into the — if not absolutely necessary, highly desirable in the view of our Ministers. Am I right? I think — so, I'm just telling you that now so you can think it over. It may be that you had that in mind anyway, but —

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** There — speaking for myself, I thought this would be considered in connection with the discussion we had this morning about reserved powers.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**PROFESSOR JEFFREY JOWELL, QC (CONSULTANT TO CAYMAN ISLANDS GOVERNMENT FOR CONSTITUTIONAL MODERNISATION INITIATIVE):** Which we haven't yet had which I think needs to be carefully considered. But certainly that formula — peace, order, good governance, faith and so on — did not find great favour and we thought we could certainly greatly narrow that and improve upon it. I think, again speaking for myself, I think your suggestion is a valuable one.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Thank you. Because I'm thinking in reserved powers what we're boiling down to are those in the executive field which I've just mentioned, the one about emergency powers, which I haven't found yet in your working document but I don't have a problem with the way the proposal — under Proposal 8 relating to emergency powers is formulated. I think there the Governor should consult Cabinet or the Premier unless consultation is impracticable that it must be the right principle, and that is what's stated, for example, in the Constitution of Bermuda and the BVI and so on and so forth. That seems to me perfectly right. And then there is reserved powers in the legislative area which we talked about this morning.

And these are the areas where, you know, we on the UK side will have to be satisfied are sufficient to enable our responsibilities to be discharged. And today has been quite a difficult day, not least for me because I've had to raise objections to a number of things, or at least warn you that there are difficulties with some of your proposals. And I

think tomorrow morning, if we go on to complete the package really, if we perhaps did the external affairs and internal security and the police we will have, at least as a first reading, gone through a lot of the most difficult — most difficult for us — stuff. But I am grateful to everybody for their patience and forbearance today, and I'm grateful for the Working Paper that you've handed out which we'll — I'm dying to try and get a better handle on. I feel a bit naked at the moment —

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Mr. Chairman, you've considered — you've finished Proposal 8?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Well, I haven't because I want to study the Working Paper overnight. As I said at the beginning of this, if I find anything that I need to say tomorrow morning —

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** To consider the — the...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** When we come back — did you want to make another point, McKeeva?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** No, I was looking at 7 and I didn't catch what you had said on that point 7: **The UK should consult...**

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** ... before choosing a new Governor.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yeah.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Oh. No, all I said was that there's an established policy of the British government, which you are well aware of.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** Yes.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Which has not been changed by British government. But I said, you know, if you want to have another go at it that's your privilege, but I can't — my hands are tied because there's an established policy.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** But we did make one step forward.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** While — during our tenure there.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** You did.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** That was to inform us —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** — before he is —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** — chosen or before they announce it in the UK, because —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** That's true.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** — before that what used to happen was we would only read from the papers that a new Governor was appointed for the Cayman Islands.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** We knew when the old one was going but we didn't know who the new one was, and so they changed that in the years 2001/2005. And so, I would hope that that would still be maintained, or is still being maintained.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yes.

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** I remember it with Mr. Dinwiddy I happened to be in another meeting when he was being appointed and they sent me to meet him, so...

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Yeah. No, that is still policy, isn't it?

**HON. W. MCKEEVA BUSH, JP (MEMBER OF UDP, LEADER OF THE OPPOSITION):** I wish I hadn't but anyhow.

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** So, that's fine.

Julianna?

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Just one last thing, Mr. Chairman, as it relates to the appointment of Governors. I note with interest certainly within this jurisdiction we've only had male Governors. Is that the case across the spectrum of Overseas Territories —

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** No.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** — and if so, can we expect that sometime in the near future that it will be gender neutral?

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** There has been a female Governor in Montserrat, the last one. Not the present one, but the last one. Have there been anymore? Have there been anymore?

[inaudible comments]

**HIS EXCELLENCY THE GOVERNOR MR. STUART JACK:** Julianna, our consensus is there's been one female Governor in Montserrat. There's no reason why there should be — there should — there should be — there should not be a female Governor here. There's no government policy about it.

[inaudible comments]

**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** Right. I think we're about to wind up. Thank you very much and we'll see each other again.

**MS. JULIANNA Y. O'CONNOR-CONNOLLY, JP (MEMBER OF UDP, MEMBER OF OPPOSITION):** Sorry, Mr. Chairman. I had great difficulty hearing what you just said, the last statement about — I heard you said there is no reason...



**THE CHAIRMAN (MR. IAN HENDRY, FCO DELEGATION):** There is no reason why there should not be a female Governor of any territory because there is no policy, there's no discriminatory policy. It just happens that there's only been one so far in Montserrat. The last Governor in Montserrat Governor was female.

Okay, so we'll meet again at 9:30, and thank you very much for your cooperation and forbearance.

**ADJOURNED**