

THE JAMAICAN BAR ASSOCIATION

President: Donovan C. Walker
Vice President: Sherry-Ann McGregor
Secretary: Althea McBean
Treasurer: Jacqueline Cummings

78-80 Harbour Street
Kingston, Jamaica W.I.
Telephone: (876) 967-3394
967-9034
Fax: (876) 967-3783
E-mail: jba@flowja.com
Website: www.jambar.org

29th March, 2014

By Fax 922-6223 and By E-mail.

The Gleaner Company Limited
7 North Street,
Kingston

Attention:- Mr. Garfield Grandison – Editor-in-Chief

Dear Sirs,

Re:- Comments attributed to The Director of Public Prosecutions as published by the Gleaner in its Editorial on 26th March, 2014.

The comments attributed to Ms. Paula Llewellyn, the Director of Public Prosecutions for Jamaica (“DPP”), as reported in the Editorial of the Gleaner Online published on March 26th, 2014 captioned “*Editorial – Resisting Temptation*”, if in fact those reports are accurate, are quite unfortunate.

Coming on the heels of the decision of Resident Magistrate Judith Pusey that Kern Spencer and Coleen Wright have no case to answer and dismissing the case against them (described in the media as “the Cuban Light Bulb Case”), the DPP is reported as making several and repeated public comments that there was an “*abundance of evidence*” against Spencer and Wright and in the circumstances “*justice was not served*”. Further, after the ruling the DPP, while stating that her office respects the ruling of Resident Magistrate Pusey, goes on to remark that she disagrees with that ruling.

Under Section 94(3) of the Constitution of Jamaica, the DPP is vested with the power (inter alia) “... *to institute and undertake criminal proceedings against any person before any court other than a court-martial in respect of any offense against the law of Jamaica...*”. Further, the rule of law presumes that an accused person is innocent unless and until proven guilty. Where guilt has not been proven, that person cannot be retried for the same offence and the prosecution enjoys no right of appeal in Jamaica. ...2/

While the DPP is constitutionally charged to undertake such public prosecutions, and we expect in the discharge of such duty the DPP will be robust, thorough and fair, the DPP must be ever-mindful of her own conduct and remarks lest she appears to become or becomes overzealous, unduly prejudicial and lacking in objectivity and it be presumed that she is bringing the justice system, in which she holds a constitutional office, into disrepute.

In other words it is to be expected that the DPP will exercise its powers responsibly, dispassionately and in a circumspect manner.

We certainly agree with the Gleaner Editorial that as regards the media and the public there is an ***"...absolute right of individuals to disagree with the decisions of the courts and to question the application of the law by the judiciary, once such debates are not contemptuous of the court..."***. However, we cannot agree that in the public discharge of that office the DPP should make utterances and remarks that, while not reaching to a standard that can be regarded as contemptuous, may serve to or have the ultimate effect of undermining the justice system and rule of law. We must comment adversely on the DPP's post acquittal remarks (particularly in the absence of any allegation of an irregular or perverse ruling from the bench). We remind the DPP that the office must be seen to ***Prosecute***, not ***Persecute***.

When the immense power and resources of the state brings criminal charges against a citizen (as, in this case, is the DPP's constitutional right) and once our system of Justice has "spoken", in this case with the upholding of a no case submission by the Learned Resident Magistrate, the case is at an end. The citizen has a **right** to be released and get on with his/her life.

When the DPP continues, after the ruling to "free" a citizen, to comment publicly and consistently over many days in so many media outlets, we are compelled to remind the DPP of her constitutional charge set out in Section 94 as well as the "Standards of Professional Responsibility and statement of the essential duties and rights of Prosecutors" as published by the International Association of Prosecutors, where at Section 3 it is stated that ***"...Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall carry out their functions impartially; remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest..."***. We find her post acquittal pronouncements to be unfortunate, requiring clarification by the DPP.

As always, the Jamaican Bar Association is prepared to work with the DPP and all stakeholders in the justice system to examine and implement urgently needed reforms at all levels to improve the timely delivery of justice, to include, if necessary, changes in the DPP's office and functions (whether legislative, administrative and systemic), and we remain ever committed to such tasks.

We trust the above provides clarification of our position on the reported/alleged conduct of the DPP as regards the matter at caption.

Yours sincerely,
JAMAICAN BAR ASSOCIATION

Per:- *Donovan c. walker*

DONOVAN C. WALKER
PRESIDENT