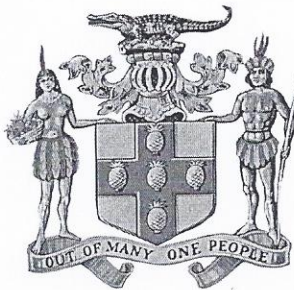


The Role of the Office of the Director of Public Prosecutions in the Administration of Justice in the 21st Century



**By: Ms. Paula Llewellyn, CD, QC
Director of Public Prosecutions**

**Presented at the Jamaican Bar Association in association with the
General Legal Council Legal Seminar at the Norman Manley Law
School on the 4th October 2008.**

***First presented at the Jamaica Fullbright-Humphrey Alumni Association
Lecture Series at the PCJ Auditorium on the 21st April 2008.**

TABLE OF CONTENTS

<u>ITEM</u>	<u>PAGE</u>
Introduction	1- 2
Establishment of the Office	3- 4
Socio-Economic Context – 2008	4- 7
The Decision to Prosecute	7- 8
The Public Interest	8 - 14
The Decision not to Prosecute	14- 18
The DPP and the Police	18- 20
The DPP and the Media	20- 21
The Relations between the Office of the DPP and Media Houses	21- 24
The Present Position of the Office/ <i>Internal and External Challenges</i>	24 - 25
<u>Our Mandate for the 21st Century</u>	25- 35
- Inspiring the confidence of the Communities we serve	25
- Development and Implementation of a Human Resource plan	26-27

ITEM

PAGE

- A training strategy	27
- Engagement of Former Prosecutors	27-28
- Management Systems	28-30
- The Work of Units	30- 33
- Automation of Filing System	34
The Management of Culture Change	34 -35
Recent Legislative Committee	36- 37
Conclusion	38

Introduction

Respected Communications Consultant Mr. Martin Henry in an insightful article in the Sunday Gleaner dated April 20, 2008 entitled **“Victory for the rule of law”** discussing the Dabdoub/Vaz judgment by the Honourable Chief Justice Mrs. Z. McCalla outlined an extract from the 19th century classic **The Law of the Constitution** by English Jurist A.V. Dicey as follows:

“The rule of law which forms a fundamental principle of the [English] Constitution, which we inherited, has three meanings:

- 1. “The absolute supremacy or predominance of regular laws as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. [We] are ruled by the law, and by the law alone.**
- 2. “Equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. [It]**

excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals.

- 3. “The law of the constitution [is] not the source but the consequence [or result] of the rights of individuals, as defined and enforced by the courts.**

Very importantly, Mr. Martin Henry, Journalist, emphasized that “at its core, the rule of law means the supremacy of the law and the presence of a general social respect for the legal code by which people widely feel bound.” I endorse this sentiment. I believe, however, that respect must be reciprocated by the organs of the state in our relationships and the discharge of our duty to the justice system and to the people of the country.

How can this respect be enhanced? What role can the Office of the Director of Public Prosecutions in the 21st century play in discharging its duty to ensure that there is a mutuality of respect between our office and the people that we serve?

Establishment of the Office

The Jamaican (Constitution) Order in Council 1962 in section 94 established the office of the Director of Public Prosecutions (the DPP) and her jurisdiction. The DPP is equivalent to a Judge of the Supreme Court of Judicature by virtue of section 94 (2).

By virtue of section 94 (3) (a-c) the DPP has the power to initiate, authorise, take over and terminate prosecutions in all the courts in the island. Section 4 of the Criminal Justice (Administration) Act empowers the DPP to discontinue criminal proceedings during the trial process.

Section 94(6) expressly guarantees that the DPP **shall not be subject to the direction or control of any other person or authority.**

It is important to point out, however, that section 94 related to a time and context where the world was a different place. In the 21st century, the world is interconnected because of the information highway known as the internet, development and movement of professional skills across borders and of course, globalisation. The Office therefore wields extraordinary power which can exert significant influence on the liberty and the lives of citizens. Since

1962, there has been an explosion of media outlets, the phenomena of the talk show and of course, who can forget, the increased forthrightness of Human Rights Organisations both here and abroad have ensured that members of the public from every strata of society know their rights and are prepared to assert these rights either through the courts or by “blocking the roads.” These developments, I believe, therefore demand that the public’s clamour for transparency and accountability from all institutions has to be answered positively by all of the State’s institutions including the Office of the Director of Public Prosecutions (DPP).

The prosecutors within the Office of the DPP should not expect to be exempt from public scrutiny nor should they be shielded from being accountable to the public. Independence of the Office can co-exist comfortably with accountability. But what is the context in 2008 within which prosecutors have to perform their functions? What context does the administration of justice and all its stakeholders have to operate within?

Socio-Economic Context - 2008

Since 1962 there has been a significant rise in the crime rate, the frequency and callous disregard for law and order not only from civilian offenders but from members of law enforcement. The

consideration of the rate and escalation of crime on the one hand reflect frightening murder statistics which caused “**the Economist**” to refer to Jamaica as ‘the murder capital of the world’ and on the other hand, we have a frightening escalation of police fatal shootings of civilians.

In the middle we have the judges, defence attorneys, witnesses and then we have the Office of the DPP which has to interface with all these stakeholders to effectively undertake its constitutional duties. In our decision-making and the exercise of our discretion we will always therefore be on the horns of a dilemma where “you are damned if you do and damned if you don’t”. It was Theodore Roosevelt, one of the United States of America’ great Presidents who said:

“In a moment of decision, the best thing you can do is the right thing to do. The worst thing you can do is nothing.”

In Jamaica, crime can be likened to the multi-headed hydra of Greek mythology where you cut off one head and several more grow back in its place. We cannot afford to do nothing.

For the Easter Term of the Home Circuit Court commencing March 26, 2008, there was a total of 303 cases listed for trial of which at least 164 of those cases were Murder. There were at least 64 sexual offences matters listed, 31 Rape and 25 Carnal Abuse cases.

The most recent figures for the Michaelmas Term show that we have passed 400 cases listed in the Home Circuit Court. There was a total of 415 cases of which at least 169 of those cases were Murder. There were at least 107 sexual offences matters listed, 48 Rape and 48 Carnal Abuse cases.

The Michaelmas Term closes on the 19th of December 2008 and unless all stakeholders put hands and hearts together to make sure that the challenges including the culture of delay is overcome, then we will only be able to dispose of a quarter of that list. These statistics relate only to cases in the Supreme Court for Kingston and Saint Andrew.

These statistics undeniably demonstrate the need for the Office of the DPP to strengthen or renew its capacity to be able to cope with the volume and complexity of cases submitted as well as the multiplicity of different types of crimes due to the globalization

and the evolution of different types of crime both locally and internationally. We have to transform and shift the paradigm in relation to our managerial best practices, further opening the lines of communication as well as enhance prosecutorial efficiencies to meet the needs of the 21st century. This is not a situation where it may be done but that it must be done if the Office of the DPP is to strengthen the prosecution process to bring offenders to justice, inspire the confidence of the communities we serve, drive change and delivery in the criminal justice system and maintain a reputation for fairness and provide an excellent career opportunity for attorneys.

However well resourced and efficient other stakeholders in the system may be, if the prosecuting arm of the state is unable to operate efficiently, transparently and with a high level of accountability then the credibility of the entire justice system will be compromised and the public frustration will engender a cynicism which will give fodder for the “don man” culture and “jungle” justice. The Office therefore has to formulate certain strategic objectives to assist us in carrying out our function based on the demands of the 21st century.

The Decision to Prosecute

The exercise of the power of the DPP in the public interest is manifested in the decision to prosecute or not to prosecute. It is my proposal that we, in the near future, will seek to develop a manual which will seek to codify the guidelines prosecutors use in making the decision to prosecute or not to prosecute.

Of course, the age old caveat that each case has to be assessed on its own particular facts and the relevant law will always be the constant companion of any decision that is made. However, it would perhaps assist in guiding new Crown counsel and eventually, if made public, help to enhance public confidence in the exercise of prosecutorial decision to prosecute.

This manual may also assist in making a cynical public aware that by and large there is some consistency in the exercise of prosecutorial decisions made. Of course, we have cases where the variations in fact and law are so extreme that it is my view that the public would have a right to know the main reasons behind the particular decision. This approach has to do with an enlightened view of what the public interest is about. It is quite simply "*the interest of the public*" in any given scenario.

The Public Interest

As far as I am concerned the public interest embraces a multiplicity of persons from diverse sectors, strata of society, station in life and different interests. The public interest includes victims of crime, accused persons, witnesses, law enforcement personnel, Human Rights Organisations and everyone else who forms members of the public, dare I say, even Politicians.

Prosecutors in the 21st century have to be aware that their role is a delicate balancing act where they have to be sensitive to the public interest while retaining their independence in decision making. At the same time, one's decision cannot be driven by sympathy, prejudices, public sentiment or a talk show host's opinion or a poll but by prosecutorial ethics, fairness and courage. This demands that the decision to prosecute has to be taken in the context of all the available evidence and the relevant law. Clearly not a job that many people would seek after.

The role and obligation to act in the public interest was recognized by Justice Avory in R v. Banks¹. He pointed out that:

“It is true prosecuting counsel ought not to press for a conviction...They should “regard themselves”

¹ [1916] 2 KB 621

rather as “ministers of justice” assisting in its administration than as advocates. ”²

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, both tend to undermine the confidence of the community in the criminal justice system.³

Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.⁴

The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While many public interest factors militate against a

² Ibid at 623

³ Para 2.2 Prosecution Policy of the Director of Public Prosecutions (Cth), Australia

⁴ Ibid para 2.8

decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution (for example, the seriousness of the offence, the need for deterrence). In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.⁵ In my experience, it has occasionally occurred that there is the rare case where though the chances of a successful prosecution may appear to be very slim at the outset and the prosecution is faced with insurmountable hurdles, nevertheless the public interest dictates that the process not be prematurely terminated but that the prosecution puts up what it has so that the issues and the challenges are fully ventilated in the public domain. Perhaps in hindsight, some may think that the *Janice Allen case* may have been one such matter.

In Para 2.10 of *the Prosecution Policy of the Director of Public Prosecutions of Australia* the Factors which may arise for consideration in determining whether the public interest requires a prosecution were considered. I would endorse this compilation. These include:

- (1) The seriousness or, conversely, the triviality of the alleged

⁵ Para 2.9 Prosecution Policy of the Director of Public Prosecutions (Cth), Australia

offence or that it is of a 'technical' nature only;

- (2) Any mitigating or aggravating circumstances;
- (3) The youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender, a witness or victim;
- (4) The alleged offender's antecedents and background;
 - (5) The staleness of the alleged offence;
 - (6) The degree of culpability of the alleged offender in connection with the offence;
 - (7) The effect on public order and morale;
 - (8) The obsolescence or obscurity of the law;
 - (9) Whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;

- (10) The availability and efficacy of any alternatives to prosecution;
- (11) The prevalence of the alleged offence and the need for deterrence, both personal and general;
- (12) Whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (13) Whether the alleged offence is of considerable public concern;
- (14) The attitude of the victim of the alleged offence to a prosecution;
- (15) The likely length and expense of the trial;
- (16) Whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;

- (17) The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (18) Whether the alleged offence is triable only on indictment; and
- (19) The necessity to maintain public confidence in such basic institutions as the Parliament and the courts.

The applicability of and weight to be given to these and other factors will depend on the particular circumstances of each case.

The Decision not to Prosecute

In the case of **Leonie Marshall and the Director of Public Prosecutions** Privy Council Appeal No. 2 of 2006 the facts were that on the 13th December 1999 Patrick Genius, a man of 26 years was shot by police officers, sustaining wounds from which he died. A Coroner's Inquest was held and the Inquest jury subsequently brought in a verdict which read "person or persons criminally responsible", but the then Director of Public Prosecutions ("DPP"), Mr. Kent Pantry, CD, QC decided not to bring the prosecution. The mother of the deceased Leonie Marshall, the appellant in the

appeal, brought an application for judicial review of the DPP's decision, arguing that he was to give reasons for his decision not to prosecute. The Jamaican courts refused her application and she appealed with the leave of the Court of Appeal to the Privy Council.

However, their Lordships declined to determine the issue of whether the DPP would even in such a case be required in law to give reasons, however advisable it might be as that this is done as a matter of good practice. Their Law Lords pointed out that the point did not arise in the present case, since their Lordships considered that the DPP had very solid grounds for deciding against prosecution.⁶

Where the decision is based on an assessment of the evidence and the prospects of securing a conviction, the courts will still accord great weight to the judgment of experienced prosecutors on whether a jury is likely to convict: *R v Director of Public Prosecutions, ex parte Manning* [2001] QB 330, 349, para 41, per Lord Bingham of Cornhill CJ. In relation to decisions to prosecute, their Lordships pointed out that the considerations are slightly different and the threshold for review may be to some

⁶ *Leonie Marshall and the Director of Public Prosecutions* Privy Council Appeal No. 2 of 2006 p. 8 para.

extent lower.⁷ The reasons are set out in para 23 of the judgment of Lord Bingham CJ in *Ex parte Manning*, supra:

“23 Authority makes it clear that a decision by the director not to prosecute is susceptible to judicial review: see, for example, *R v Director of Public Prosecutions, ex p C* [1995] 1 Cr App R 136. But, as the decided cases also make clear, the power of review is one to be sparingly exercised. The reasons for this are clear. The primary decision to prosecute or not to prosecute is entrusted by Parliament to the Director of Public Prosecutions as head of an independent, professional prosecuting service...”

My Position

The decision not to prosecute in the Patrick Genius case was correct in law. However, it attracted a lot of negative sentiment from the public. Perhaps given the nature of the circumstances of the case, more open lines of communication in explaining the decision not to prosecute may have enhanced public understanding. Speaking for myself, I would have no difficulty in giving reasons in an appropriate case as a matter of good practice

⁷ Ibid p.9 para. 18

when a decision is taken by my office to discontinue the prosecution of a matter. It should not depend on a public outcry or judicial review but simply one's sensitivity to the public interest and an awareness that under Section 94 of the Constitution, the DPP's office is a public office and therefore serves the public interest.

The DPP's office in the 21st century, though independent and "not subject to the direction or control of any other person or authority", must be answerable to the public of Jamaica. With independence and great power come the consequence and the obligation to accept responsibility and to be transparent and accountable.

This was recently demonstrated in the case of Joel Andem which was heard in Home Circuit Court on the 17th April 2008. I decided to discontinue the prosecution of the murder case against Joel Andem because of insufficient evidence. This case had been on the list for approximately four (4) years. A *nolle prosequi* was entered when Andem and his co-accused appeared before Justice Kay Beckford on behalf of the Director of Public Prosecutions.

Acting Deputy Director of Public Prosecutions Dirk Harrison gave the reasons on my behalf that two of the Crown witnesses, Shem

Rowe and Alfred George Scott, who had referred to someone called 'Joel' in their statements, had been shot and killed. He indicated that the Crown would have difficulty proving the case against Andem because the Crown could not prove that Joel referred to in the statements was the accused Joel Andem.

He also pointed out that Scott had given his name to the police as Oniel Green, so credibility would also be an issue and the Crown would be challenged to place reliance on that statement. This then would be a paper trial where the Crown's case against Joel Andem would not have reached the required standard necessary to prove identification as a matter of law given the statements that would have been put into evidence. The Crown would have needed to have at least one of those two witnesses alive to identify Joel Andem in the court trial as the same "Joel" they referred to in the statement. The strict law on identification would have it no other way.

This then is a very good example of the Office of the DPP giving reasons for not proceeding with a prosecution thereby satisfying the public's interest in knowing what these reasons were. The trial of his two co-accused will proceed in light of the fact that the identification evidence against them is much more cogent.

The DPP and the Police

Given the nature of the ever evolving complexity of crime, the law enforcement personnel who investigate criminal cases must work in harmony with the prosecutor and vice versa. However, given the nature of the role of the prosecutor as a “minister of justice”, the prosecutor has to remain sufficiently distant to effectively challenge their view of a case.

It is the prosecution who after all, as a matter of protocol, rules when the police are to be charged. I would like to see more involvement of prosecutors from the stage of scenes of crime up through the preparation of the case to assist in enhancing the integrity of the investigation. However, we are under-resourced at the moment and it would not be feasible at this time. I would also wish to see a system put in place by the police whereby there is immediate arrest as a matter of course of suspected law enforcement offenders with stop orders at the airports if necessary to prevent that potential police offender from escaping the inevitable consequence of being charged after investigations. This of course would obtain in a case where the evidence is abundant and where any police investigator would reasonable cause to suspect that a crime has been committed by the offender. The

nature of the charge could still be confirmed by a ruling from the DPP's office.

It would mean then than in the same way a civilian can be arrested and charge once he is suspected of having committed an offence then that fate would also befall a law enforcement officer. Of course, this would depend on the particular facts of the case but this is a work in progress. The police investigators in respect of the investigation and preparation of the cases have their challenges too in terms of resources but I have still been privileged to have prosecuted cases where the investigation was of very high quality notwithstanding these challenges. We can depend, however on the media to highlight any failure on behalf of law enforcement to do their duty professionally and we at the DPP's office have to be prepared to work even harder to assist them to maintain a high degree of professionalism, for example, participating in continuing legal education for the police and ruling decisively and in a timely manner when there has been professional malfeasance by the police.

D.P.P and the Media

The media has a responsibility to facilitate the protection of the rights of the people of Jamaica. This responsibility extends to

reporting or keeping the Jamaican people abreast with what is happening in our society. The public through the media is clamouring for accountability and transparency and the media helps to facilitate this.

However, it is important that in agitating for accountability and transparency within the different sectors of society that media houses recognize a requirement for accountability and accuracy in their reporting. Ian Boyne a noted Sunday Gleaner Columnist pointed out in a newspaper article titled, “*Press freedom threatened?*”

“The press must realize that its vaunted and much-proclaimed inalienable right to freedom is not an end in itself, and is not disconnected from its responsibility to protect the rights of the people.”⁸

Media houses therefore must make sure that accuracy and research is never sacrificed on the altar of expediency or the altar of the almighty advertising dollar. When reporting on matters touching and concerning the administration of justice, though constrained by space, I would ask media practitioners to remember that a sound bite as opposed to a full report may unfortunately create a wrong

⁸ *The Sunday Gleaner Focus*, April 6, 2008

perception of a particular issue. I would, however, always applaud the right of the public and the media to enquire, to seek and to obtain the knowledge of issues in the public interest.

Relations between the Office of the DPP and Media Houses

It has been noted in various publications and by various commentators throughout the years that the relationship between the media and the Office of the DPP has not been the most positive. It is my view that negative publicity can undermine the level of public trust in the prosecutorial service. In keeping with our 21st century thrust to be more transparent and accountable, the old “cloistered virtue” approach of the legal profession cannot continue. A positive media strategy on the part of the DPP which facilitates the public’s need to know does not mean that our independence or confidentiality in respect of certain matters will be compromised or undermined. I believe that a sound communication strategy would assist in building a mutual respect and understanding on the part of the media and the Office of the DPP which will as was noted in a recent study:

- (1) provide appropriate information to the public thereby assisting citizens to understand and to determine the effectiveness of the justice system;

(2) It would assist the Office of the DPP in promoting, defending and explaining itself to the public.

Therefore, I intend that certain senior prosecutors including myself be given the leeway as spokespersons for the office. I will be proposing that these prosecutors be given training in how to deal with the media.

I would also endorse a website which would be updated to disseminate information and also structure a system which can facilitate the easy flow of press releases in the appropriate matters or as the need arises.

It has to be understood that the culture of the public service and the players of the justice system did not in the past facilitate savoir faire in matters of the media. Therefore, it is only accurate and fair reporting that will inspire mutual respect between prosecutors and the media.

And finally, I do not believe that it assists the public interest for the relationship between **prosecutors and the media to be adversarial**. However, I believe that the media needs to be encouraged certainly in relation to the reporting of court matters to

be as accurate as possible in the circumstances and to refrain from allowing a sense of sensationalism to overtake the facts no matter how mundane they may be.

Therefore, as the Office of the DPP seeks to develop an accountable and transparent prosecutorial system by adopting and displaying a more transparent management style and by promoting efficient, effective and fair prosecution services, the Office has to in the 21st century recognize, welcome and positively deal with scrutiny from the press in the public interest.

The Present Position of the Office -*Internal and External Challenges of the Office*

- Understaffing – several vacancies at every level and resulting need to have experience enhanced through training (proposals for the increase of the establishment have been made).

- Backlog in the disposal of rulings submitted to the office (systems are presently being put in place to address this issue).

- Inadequate case management system.
- Inadequate computerisation and lack of staff training in technological applications (that situation is to be addressed in the near future).
- The need for further enhancement of the physical and technical infrastructure of the DPP's office (Beautification Committee now in place).
- A greater need to protect witnesses from physical harm or intimidation (more interface with the Witness Protection Programme).
- Reluctance of witnesses to give evidence in court which is crucial in the successful prosecution of the offender.
- Improper gathering and preparing of evidence in some cases which hinder the effective operation of the prosecutorial function.

Our Mandate for the 21st Century

Inspiring the confidence of the communities we serve

Being visible, open and accountable for our decisions; being responsive to the needs of the community and providing a valuable public service; being seen as the decision makers who decide which case should be brought to court and bringing them to justice.

Development and Implementation of a Human Resource plan to fill existing gaps and increase the retention rate of prosecutors⁹

The staff has a complement of 31 prosecutors and 27 administrative officials. The provision of the human resources has not kept pace with the tremendous increase of workload over the years. One recent study of the Office of the Director of Public Prosecutions that indicated that, “It is essential for the ODPP to establish a critical mass of well-trained professional lawyers and highly competent administrative personnel. The efficiency of the prosecution service will depend on the quality, commitment and morale of the people who work in the organization. The need to attract and retain experienced lawyers is crucial.”¹⁰

⁹ The Justice System Reform Task Force Final Report June 2007 Recommendation 4.25

¹⁰ “Assessment of Jamaican ODPP”, Department of Justice Canada JUST Inception Phase, page 20

I have made recommendations to the Ministry of Justice to increase the establishment to 40 prosecutors and 3 paralegals (who are case workers who provide support in doing the more mundane tasks of tracking down witnesses, liaison with police officers, ensure that administrative work is carried out with respect to Section 31D of the Evidence Act which allows the statement of witnesses to be tendered into evidence in certain prescribed circumstances, for example the witness being deceased or cannot be located after all reasonable steps have been taken therefore requiring that steps be taken to ascertain with a view to satisfying the court of these prerequisites). I have received approval from the Ministry with respect to the increase in the staff complement and as such the Office recently received seven (7) new additional Crown counsel. We have interviewed and identified three (3) paralegals (one paralegal will be assigned to the Mutual Legal Assistance Unit and the other two (2) to the Home Circuit Administrative Unit). This will help to enhance our operational efficiencies in the 21st century and we will seek to continue to find innovative ways to have sufficient Crown counsel and to retain staff.

A training strategy will also be established

The Office will be seeking to enhance managerial best practices, seek to dialogue with interest groups and enhance training strategies for all levels of staff including management modules for senior staff, professional and technical training and also customer service training for administrative and other members of staff.

Engagement of Former Prosecutors

The Department has already engaged the services of former experienced prosecutors which consist of a pool of 10 former prosecutors which will be engaged in the Easter Term to assist with the prosecution of some of the more complex cases for trial and to provide mentorship for some of the junior inexperienced Crown counsel.

The infusion of more experienced prosecutors will allow for some of the more complex cases to be dealt with and will allow for more mentoring and training of the junior counsel which will enhance the development of their prosecutorial skills.

Due to the backlog of cases, the Chief Justice, the Honourable Mrs. Justice Z. McCalla, in her wisdom has provided for the continuation of three (3) Circuits each term that is, Saint Catherine

Circuit, Clarendon Circuit and Saint Ann Circuit. This will require that there are more prosecutors present to carry out the work in these courts. The engagement of these prosecutors will facilitate the continuation of Circuit by providing the Department with greater manpower while allowing other prosecutors to be in office to clear the backlog of the one hundred and fifty (150) police rulings which threaten the timely delivery of justice. This we intend to do by September 2008.

Management Systems

We are also implementing a system to track the development of prosecutors, enhance their technical and professional training and entrench a system of mentorship that will also ensure an office where everyone is treated on merit where people of ability can rise to the top and where personnel are renowned for their commitment, skill and dedication to justice. The companion to this human resource development is one where Crown counsel is motivated but will know that they are accountable in terms of disposal that is, quantitatively and qualitatively, of cases.

I recognize that not only do I have to bring to fore my ability as a prosecutor in order to nurture and assist with the development of

young prosecutors but I also have bring to bear a skill set as a manager and as a leader with a clear vision for the way forward.

Marcus Buckingham in his article entitled, **“What Great Managers Do”** pointed out that:

“A managers most precious resource is time and great managers know that the most effective way to invest their time is to identify exactly how each employee is different and then to figure out how best to incorporate those enduring idiosyncrasies into the overall plan.”¹¹

Therefore, to excel at managing others, I have to bring “insight to my actions and interactions. It is about constantly tweaking my environment so that the unique contribution, the unique needs, and the unique style of each employee can be given free rein.”¹² Training in this area will be a given for all senior lawyers in the Office of the DPP. The 21st century demands that lawyers in the public service can no longer rely on longevity of service to equip them for management and leadership positions but must take steps to get training in management best practices.

¹¹ Buckingham, Marcus, “What Great Managers Do”, Harvard Business Review March 2005 p. 9

¹² Buckingham, Marcus, “What Great Managers Do”, Harvard Business Review March 2005 p. 9

The Work of Units

Apart from representing the Crown in the RM Courts, the Supreme Court, Circuit Courts islandwide and the Court of Appeal, which is our most obvious core function, Counsel are assigned in ten (10) Special Units which cover a range of particular areas of law/administration. These areas also require chamber work and often Court appearances. These Units are as follows:

- (1) Extradition
- (2) Mutual Legal Assistance, Financial Crimes & Financial Services Commission
- (3) Human Rights & Intellectual Property
- (4) Corruption Prevention & Coroners Matters
- (5) Labour Relations & Industrial Disputes
- (6) Privy Council
- (7) Home Circuit Administrative Unit (The Box)
- (8) Environment
- (9) Gun Court Matters
- (10) Clerks of Court Liaison Unit
- (11) Legislative Reform Unit

The Extradition Unit

This Unit handles all the requests for Extradition from Jamaica made by countries worldwide. There are several Court sittings at the Resident Magistrate, Full Court and Court of Appeal levels which frequently attract intense international and local interest.

The Mutual Legal Assistance, Financial Crimes & Financial Service Commission Unit

This Unit manages the mutual assistance in criminal matters regime for Jamaica. Since its inception in 1995, the Unit has responded to over 280 requests from countries worldwide and made 32 requests on behalf of local law enforcement agencies. This function of the unit requires quick response as many requests are urgent, requiring immediate Court action such as applications for restraint orders to freeze tainted money transferred into Jamaica.

This Unit also manages the Forfeiture, Money Laundering and Financial Crimes portfolios. All of these require quick responses and often involve a lot of drafting, research and time spent going through large volumes of transactions and paperwork to appreciate

the nature of the crimes committed. The prosecution of these matters also consumes a lot of preparation and Court time.

Corruption Prevention & Coroners Matters

This unit handles all files that come to the office for rulings concerning breaches of the Corruption Prevention Act and the Contractor –General Act. Unit members prosecute in difficult cases which may be submitted to the Resident Magistrate’s Court in the concerned areas. They also vet and sign off on coroner rulings by Crown Counsel and provide advice to Crown Counsel and members of the JCF in coroners matters.

Labour Relations & Industrial Disputes

This unit handles all files that come to the office for ruling in labour disputes. It also advises Clerks of Courts on trial matters and prosecute in difficult cases which may be submitted to the Resident Magistrate’s Court and also handle matters at the appellate level.

Privy Council

This unit answers queries from solicitors in the United Kingdom who have charge of appeals from this jurisdiction and research and prepare matters for counsel in office who go to the Privy Council.

The Home Circuit Administrative Unit

This Unit is the “engine room” of the Home Circuit Court. It manages assignment of cases to Courts and the exhaustive efforts necessary to get cases ready for trial. On average this unit manages approximately 150 cases per term.

Legislative Reform Committee

When Bills are sent to the Office for comments, unit members review and provide skeleton comments.

Automation of the Filing System

Presently in the Department there is a manual entry of files into a book or books by the particular persons vested with the responsibility. There is no general audit or record of all the files kept in the office. This sometimes results in challenges in the retrieval of files or affects our ability to be accountable with respect to the files we have.

Steps are therefore being taken to implement an automated filing system in the registry which deals specifically with police rulings. I have spoken to the Permanent Secretary in the Ministry of Justice with a view to implementing the said automation. This will assist in preventing a backlog of police rulings in the future.

The Management of Culture Change

For the Department to remain responsive to its stakeholders those of us who make decisions, direct and manage its affairs should be innovative and flexible¹³ to incorporate new ideas, beliefs and vision and for the vision to be shared it must be communicated to inform “priorities, strategies, (and) plans”.¹⁴ It is proposed that by focusing on the workforce that is, by selection, performance appraisal and training of the workforce, paying particular attention to the content of training courses we will be able to effectively utilize the human resource management tool to manage and reshape our organizational culture.¹⁵ This becomes critical as there is a posited link between organizational or institutional culture and the performance of the organization or institution.¹⁶ The Office of the DPP has to be a driver of change and delivery of high quality

¹³ Shirvastava, Nachman 1989, 52 cited in Morgan-Greaves, Claudette, An examination of the inhibitors in the legal culture to the management of changes in the Jamaican Legal system page 32

¹⁴ Pearce, J., David, F. “Corporate Mission Statements: The Bottom Line” academy of Management Executive, 1987, 1(2) pp. 109-116 cited in Morgan-Greaves, Claudette, An examination of the inhibitors in the legal culture to the management of changes in the Jamaican Legal system page 32

¹⁵ Brown, A. Organisational Culture, Pearson Education 1998, UK as cited in Morgan-Greaves, Claudette, An examination of the inhibitors in the legal culture to the management of changes in the Jamaican Legal system page 32

¹⁶ Schneider, W. “Why Good Management Ideas Fail – Understanding Your Corporate Culture” (1998) as cited in Morgan-Greaves, Claudette, An examination of the inhibitors in the legal culture to the management of changes in the Jamaican Legal system page 32

prosecution service. At this time, some may say that I have assumed the mantle of transformational leader as we seek to revamp our mission statement for the future.

Recent Legislative Developments

Against the background of frightening crime statistics, Parliament under the direction of the Prime Minister of Jamaica, the Honourable Mr. Bruce Golding, is proposing a raft of legislative amendments now at the Bill stage and being submitted to the Joint Select Committee of Parliament. The main Bills which touch and concern the Office of the Director of Public Prosecutions are:

- (1) Amendment to the Bail Act which provides a right of appeal to the prosecution;

- (2) Amendment to the Jury Act - Recently, the Most Honourable Bruce Golding, Prime Minister of Jamaica has made a proposal for an amendment to the Jury Act to allow for conviction for capital murders by a qualified majority of jurors. Presently, all the members of the panel have to agree for there to be a conviction (a unanimous verdict), whether the case is a capital murder, for which the death penalty is a possible punishment, or non-capital

murder, for which the normal penalty is life imprisonment. In such instances where the jury fails to reach unanimity, the jury is dismissed and a retrial ordered.

- (3) The establishment of a DNA database;
- (4) The provision for video link evidence which will provide protection for vulnerable witnesses giving evidence in sexual offence and murder cases for example.

These and other measures that affect the rights of the accused have sparked heated debate in certain sectors. I would whole heartedly support these measures because ways have to be found to support and encourage witnesses who find themselves under siege.

I agree with friends from the Human Rights organizations and the Private Bar that we have to ensure that rights created by the Constitution are maintained and protected. However, this has to be balanced against the reality that the safety of witnesses for the prosecution is in crisis. People are intimidated and afraid to give evidence in court. I always believe that every citizen has the right to live and the right to go about his or her lawful business unmolested. Therefore, I will join with any other stakeholder to

ensure that a healthy balance is maintained between all competing rights.

Conclusion

The Office of the Director of Public Prosecutions works in partnership with the police, the Ministry of Justice, the Defence Bar, the Courts and other agencies both locally and internationally to dispense justice fairly and efficiently and to promote confidence in the rule of law. We are an experience-driven specialist chambers of committed persons who is seeking to do its best to promote public confidence in the rule of law through the consistent, fair, thorough and firm presentation of cases in court. The interest of justice demands that we continue to strive with integrity and excellence to overcome the challenges in our quest to deliver service above self. Jamaica in the 21st century depends on it. We will do our best.

Paula V. Llewellyn Q.C.