

**LETTERHEAD OF Hong Kong Bar Association**

6<sup>th</sup> November 1998

Miss Margaret Ng,  
Room 116, New Henry House,  
Ice House Street,  
Hong Kong.

Dear Margaret,

**Legco Panel on Administration of Justice and Legal Services: Meeting  
17.11.1998 & D.P.P.'s 'Year to the Day' Release**

On 3.11.1998 the Special Committee on Criminal Law and Procedure met. I chaired the meeting in the absence of Lawrence Lok. We discussed the proposed agenda items for the Legco Panel on 17.11.1998 and the D.P.P.'s 'Year to the Day' release. I have been asked to write to you setting out members' views.

Agenda Items for 17.11.1998

Creation of New Post in DOJ

Members felt that they could not really make any really useful comments on the proposal to establish a new rank of Chief Court Prosecutor. It is for the DOJ to demonstrate that there is a need for the new post. It is perhaps surprising that a new post is being created now when we are told that crime rates have fallen over the past couple of years. It also occurs to me that the Panel may wish to be satisfied that the creation of the new post does not mean that Government Counsel will be relieved of some of their duties supervising the work of lay prosecutors. Our comments on the next agenda item are relevant on this point.

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### Prosecution Policy

Members read the booklet “Prosecution Policy: Guidance for Government Counsel” a few months ago shortly after it was published. The Special Committee approved the contents and gave the DOJ credit for publishing the booklet. However, we all noted that the title indicated that the ‘target’ readership comprised professional officers working in the same office as the D.P.P. and who might be expected to have some idea of policy in this area anyway. The Special Committee was concerned that the booklet was read and understood by law enforcement officers who made decisions to commence proceedings in the magistrates’ courts and also by lay prosecutors who implemented those decisions. I wrote to the D.P.P. asking him what steps he had taken to make sure that the booklet would be read and, even more important, understood by members of these groups. He replied saying that lay prosecutors have been given copies of the booklet and that he intended to speak to the Police about it. I attach copies of the correspondence.

We think that the Panel might wish to question DOJ closely about how prosecution policy as outlined in the booklet is implemented at the ‘grassroots’. I think every member of the Special Committee could relate at least half a dozen horror stories of prosecutions that should never have seen the light of day but, for a short time at least, ‘lived’, rather like Frankenstein’s creature. In the short time (not so short, some of them) these legal chimerae stalked the courts they seriously inconvenienced members of the public who were caught up in their toils. Will the new Chief Court Prosecutor make sure that prosecutions started by law enforcement bodies really do pass muster under these guidelines? (You may also want to ask DOJ whether Immigration and Customs and Excise and other law enforcement bodies know about the booklet. The D.P.P.’s letter to me seems to suggest that he was focusing on the police only.)

### ‘A Year to the Day’

Some subconscious urge makes me want to refer to this publication as ‘A Year and a Day’ which was the limitation period under the common law for homicide cases. Is the D.P.P. under threat of pains and penalties if he does not produce such a document within 366 days of his appointment?

The Special Committee believes that, as is often the case with statistics, the information provided by the D.P.P. about briefing out does not present an accurate picture of what is going on.

We reckon that there are about 50 magistrates dealing with summary offences each day (10 courts each with minimum of 5 magistrates working on criminal cases: some places have 10-12 courtrooms, some only 4 or 5). That means that there are about 250 court days each week. A maximum of 1000 court days each month. 12000 court days a year. The figures given by the D.P.P. about briefing out are hardly impressive in this context. What would be interesting to know is not how many court days were taken up with Government Counsel prosecuting before magistrates but how many court days were taken up by lay prosecutors. The impression that

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members of the Special Committee have is that briefing out has dropped. I think that members appreciate though that with the growth of the very junior bar that it may be the case that the DOJ is simply distributing the same number of briefs on a wider basis.

On the figures for briefing out in the CFI I think that you may recall that about 18 months ago the DOJ sought to 'reclaim' the CFI for its own counsel. The effect of putting relatively junior counsel in the CFI to prosecute straightforward cases of drug trafficking and sexual crimes has been that the senior juniors who used to do this work are now prosecuting what are often more complex crimes in the District Court. It might be worth seeing if DOJ will admit that the cases which it retains in the District Court are those where it is known that guilty pleas will be entered. This means that the bulk of the trial work in this court is being briefed out.

It is a feature of most of the statistics in the papers that no distinction seems to be made between prosecutions and prosecutions leading to a trial and prosecutions which are disposed of with a guilty plea acceptable to the DOJ and the court. In this connection you might like to ask the DOJ more about the 75% average conviction rate in all courts. What would be interesting to know is what is the conviction rate after trial. (As I recall, such statistics can be collected. I have seen them in the Lord Chancellor's report on the Crown Court in England & Wales.)

Yours sincerely,

Philip J. Dykes, S.C.  
Vice-Chairman  
Special Committee on  
Criminal Law and Procedure

Encl.

cc: Ms. Audrey Eu, S.C.

**LETTERHEAD OF DEPARTMENT OF JUSTICE**

本司檔號 Our Ref.: **PROS/P/3/2**

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29 June 1998

Mr Philip J Dykes SC,  
Vice Chairman,  
Special Committee on Criminal Law and Procedure,  
The Hong Kong Bar Association,  
LG2 Floor,  
High Court,  
38 Queensway,  
Hong Kong.

Dear Philip,

**Re: Prosecution Policy - Guidance for Government Counsel**

Thank you for your letter of 5th June 1998. It awaited me on my return from leave.

Court Prosecutors have all been supplied with copies of the booklet. They are expected to be familiar with its contents.

The police - and other law enforcement agencies - have been sent copies of the booklet. In light of the concerns expressed as to scrutiny of cases, I will ask the Director of Crime and Security, when I meet him on Friday, to ensure that police personnel are aware, in particular, of paragraphs 13 - 18 of the booklet.

Yours sincerely,

(I Grenville Cross, QC, SC)  
Director of Public Prosecutions

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5<sup>th</sup> June 1998

Director of Public Prosecutions,  
Department of Justice,  
Prosecutions Division,  
5<sup>th</sup>-7<sup>th</sup> Floors, High Block,  
Queensway Government Offices,  
66 Queensway,  
Hong Kong.

Dear

Re: Prosecution Policy - Guidance for Government Counsel

The booklet "Prosecution Policy: Guidance for Government Counsel" was discussed recently at a meeting of the Special Committee on Criminal Law. Members noted that it was a very comprehensive document but wondered what steps have been taken by the Department of Justice to see that its contents are known and understood by decision-makers in the prosecution process who are not Government Counsel. In particular, the Committee would be interested to know whether police officers who have charge of routine prosecutions in the magistrates' courts are required to be familiar with the contents of the booklet. Based on their own experiences, members felt that the thorough scrutiny of cases described in paragraphs 13-18 of the booklet does not take place in most cases that are tried by magistrates.

Members would also like to know whether they can assume that lay prosecutors, who are obviously not Government Counsel, are familiar with contents of the booklet.

Yours sincerely,

Philip J. Dykes, S.C.  
Vice Chairman  
Special Committee on Criminal Law  
and Procedure