

TO: The Guyana Police Force, Police Officers' Annual Conference 2016

FROM: Sonia Joseph, LLM, Assistant DPP

DATE: Friday 26th February 2016 at **8:30** a.m.

**RE: PRESENTATION ON-
INVESTIGATION AND PROSECUTION ISSUES**

Ladies and Gentlemen, Distinguished Persons, Mr. Crime Chief, Mr. Commissioner, Comrades all, Good Morning.

Is this *Good-Morning* **an issue**? The birds, like dust, fly **nicely** across the *blue-white*-skies, with a white moon. But, we down here, surely, cannot count them. We can count. Are they really flying **across** or **against** the skies? Are they flying or crawling? How do we know dust flies? Is the moon square or triangular? Should we make it an issue? Do we not have enough issues? Why do we have issues? Is it just because we do **not agree**? Can we resolve these issues? **How?** Do we want to?

I was asked to **deliver** to you a presentation on "*Investigation and Prosecution Issues*".

So, the first thing I thought to myself, well, **what** are these issues that I have to **deliver**, as if they do not have enough issues. I have to give them some more. I hope the poor-things can take more.

ISSUES: The question is: Do we have **issues** with *investigation* and *prosecution*?

Of course we have issues. Why would we not have issues? Are we not **losing** nearly all the cases? Surely, we must have issues. Why? Something must be wrong, terribly wrong, with the Legal System. Are we not good investigators? Are we not good advocates? Are we not good "*anybodies*"?

In other words, there are **PROBLEMS** regarding investigating, researching, advocating: **during** pre-trials, trials and post-trials.

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S. Joseph

So what are Investigation and Prosecution Issues?

1. It is not just [**not**] getting the evidence into court but (**not**) Getting the Evidence **period**, or not getting all the evidence, whether from **observation**, from **witnesses**, from research, from **questioning** seems to be a problem for investigators.
2. For the prosecution it is (**not**) getting the evidence admitted or properly admitted, not Getting convictions, not getting **Justice** for victims, for society, our society.

Only after reviewing police files we see some of the investigation problems.

For example,

- They did not get to type, they had to handwrite, may be there is no computer or no ability to type.
- They did not have time; it was done in a rush as seen from the handwriting.
- They did not ask the right questions or proper questions.
- They did not get the **details** of what happened, step by step. Why? How do you not get details? Do they not **know** how to get details?
- They omitted crucial evidence, such as fingerprints, medical report.
- They missed the nexus, or the link from one step to another. (The chain is broken).
- They cannot obtain a *Post Mortem* Report, they have to return over and over to the doctor.

-Copied crucial documents are not **certified** when originals are not tendered, such as medical certificate, birth certificate, caution statement.

- Caution statements have illegible handwriting.

-There is improper marking of exhibits.

- They can't find the witnesses.

- There is selective charging done—who should be charged is not, and who should not be charged is charged.

- They do not send the files to the Office on time. (Sometimes at 4:15pm there is an urgent file, when everyone is about to leave); sometimes it is five years later.

THE BIG WHY, NOT THE BIG SUR, THE MOVIE

SOME EXAMPLES OF INVESTIGATION ISSUES OF THE POLICE

I thought of

1. The small-ness of the communities in Guyana, where everyone **knows** everyone or is related to everyone; causing too much informality or an **overdose** of familiarity. My father always said: "*familiarity breeds bugs.*"
2. No one wants to tell on another: everyone is friendly, and yet fearful of each other, at the same time.
3. Hence, nearly everyone turns **blind-eyes** to offences: they actually have eyes; they do not want to see, or they see, but pretend that they are blind. Hence, no one sees the knife stabbing into the body of a victim; no one sees a gun being fired on anyone; no one sees a car crashing into a pedestrian; no one sees a person or a home being robbed or a child being molested. The blood is seen only as *red substance*. Imagine a person having only red

substance flowing or bursting out from him, and it is not blood. The most crucial moment, the most important piece of evidence, we just miss it; or, we forgot it, or we lost it; we just don't get it.

4. As a result, investigations are nearly always incomplete: statements are not obtained; police are unable to get the evidence; even if they get the truth, the witness will not sign; Why? He does not wish to be identified. He is afraid of the offender as well as of the Legal System. It does beg the **why** question again. Is the witness guilty too? Has he looked into the abyss? Has the abyss looked **back** into him? (Nietzsche). After drinking the living water, did it drink him back too (and killed him a little), as Kahlil Gibran has put it in his *Prophet*?

*“...whenever I come to the fountain to drink
I find the living water itself thirsty;
And **it drinks me** while I drink it,”*

5. So, yes, you have to be careful what you **gaze** at, least you **become** what you gaze at; you have to be careful what you drink, before, lo and behold, it drinks you back.
6. Witnesses do not come forward, do not want to give evidence, do not want to be involved. But, Martin Carter says,

*we are all involved and therefore we **are all consumed**.*

7. What does this mean?
8. Is it because we are all involved in each other's business, we are cooking, eating and killing each other? We all breathe the same air in. Surely, we cannot be **uninvolved**.
9. On the other hand, there is no strictness to anything; nothing is compelling; no one compels anyone; resulting in poor supervision; nothing is serious; the

law becomes a **mockery**; you can commit and get away with murder and laugh about it; it tickles you, doesn't it? Doesn't seem to be a crime anymore, but a way of life. Is it Hobbes' *War of all against all*?

10. The police become further frustrated: why even bother?

11. Cartoonist Walt Kelly in his *Pogo* (1971) American Comic Strip said, "*I have met the enemy and he is us.*"

12. Similarly, I question: *we have seen the criminal and is he us, I ask you?*

On the other side, we have the prosecution issues.

EXAMPLES OF PROSECUTION ISSUES

1. We receive an incomplete file.
2. Some of the handwriting statements are not legible for comprehension.
3. The most crucial points are fuzzily written.
4. There is more than one date on a statement or no date at all.
5. All statements are not taken.
6. An accused caution statement is not investigated as to its truth or more-likely its lies.
7. Witnesses' statements are not further investigated, but merely accepted, as is.
8. Or, the Prosecutor does not appear to have the file in court.
9. We do not have proper research tools. I have been asking for ages for *Quick Law—Lexis Nexus*, in order to access, within seconds, the updated laws everywhere in the world, so that our arguments and submissions can take

cognizance of the continuous developing worlds with developing criminals and to be able to **not** only match them, to be above them, and still **not** become criminals like them. It has been asked over and over, *how do you fight monsters and not become monsters too?*

10. So the prosecutor is also frustrated.

EVEN MORE SO, IN COURT

11. It is noisy- there cannot be a **hearing**—when there is only shouting; so you get an instant migraine.

12. There is no taking of all the evidence because it is manually done and therefore, at a snail's pace. The Witnesses, as a result, have time to change their statements on the spot. This manual recording slows down not only the process but allows the witness to change his answer when having to repeat his testimony, in order for it to be hand-written down; In the Courts all notes are taken by hand. This delays the process. Nothing is electronically recorded. We all know that we need trained/qualified stenographers to operate with real machines, as well as real-recorders, to ensure the hard truth. (not pretty, ornamental decorations).

13. In the end, we know there are insufficient judges and magistrates to deal with the humongous matters.

14. Some may not even be fully competent in the law and in procedure.

15. Evidence that should be admitted is not, or not properly admitted.

16. Failing to expressly rule on voluntariness of a defendant's statement.

17. Applying the wrong standard of proof in a PI or in a trial; does not seem to appreciate the difference between *prima facie* evidence, *sufficient* evidence and *proof beyond reasonable doubt* evidence.
18. Giving inaccurate directions to a jury.
19. Adjourning matters **continuously** when the victim-witness is present, instead, of taking the witness evidence, and as soon as the victim-witness is absent, immediately **dismissing** the matter, suggesting some kind of foulness.
20. Then there is the other issue of the magistrate or the judge; whether they know the law, whether they understand it; whether they can apply it to the facts; or, whether they are deliberately **making** errors in the law, or deliberately **ignoring** the errors; this gives rise to further question whether this is perhaps to assist the defendant to get away, to win.
21. It also causes further adjournments and further frustrations.
22. Then there is the Defendant who tries to **bias** the case by seeking out the prosecutor at even her home; so she has to recuse herself from the case.
23. Some witnesses, the prosecutor is not able to get into court.
24. This causes further adjournments, delays, and further frustrations.
25. Getting witnesses to **speak** is another issue.
26. Getting witnesses to overcome their **fear** of defendants; their fear of speaking the truth; it is interesting that there is no fear in lying; it is so bloody easy to lie, ain't it? As my father would say: "*ain't it?*". His favourite phrase, "*ain't it?*"

27. Then there are too many files and too few prosecutors to handle the too many files; the fit does not balance; it is like pouring **square waters** into round barrels; ludicrous.
28. Also, too many matters are set to be heard on the same date (preparation for an individual case is therefore compromised).
29. Having to respond to written submissions in a short time or almost immediately, without proper preparation weakens the case.
30. Not getting police files for appeals, to prepare for the appeals, sometimes received only **after** the appeal is over.
31. Then there are **missing records** and depositions that have to be reconstructed; typing of the depositions accurately by persons who type (imagine there are persons who can actually type!); this takes more time for cases to be ready for hearing.
32. There are increasing police-files suggesting increasing crime.
33. Then there are the newspapers that seek to create *moral panics* with their exaggerated headlines, thereby getting the population more on edge and **defaming** the prosecutor. They seem always to be against the prosecutor as if there should be no prosecutors. We should not prosecute the criminal because he is **so innocent** and so good; we have good criminals: he certainly looks good like a movie star in the witness box. But we know that **looking good** is only just that, just looking.

SO HOW DO WE RESOLVE ALL THESE ISSUES?

FIRST, DO WE WANT TO RESOLVE THEM?

1. Yes, we need proper, **continuous**, training for prosecutors and investigators on investigating, on law, on morals, on truth-telling, on tolerance, on questioning.
2. Learning how to Question the issue always (It is always the *What question* and *the How—do you know question*, the **How do you know that, that is true**, and the **Description**, for basically everything in the world.). We must **question** the problem, like we question our self: *Who am I? Am I me? Am I not me? Am I other than me* or other than *not me*? Why? *If I am me, why am I not someone else?* What is the evidence to support this? Is the supporting evidence credible and reliable?
3. But more than that, **how** do we, as investigators, as prosecutors, get witnesses to tell the **truth**, to tell the complete story, **to want** to tell the story, how do we get people to come forward to be part of the legal system, to play a part in getting **Justice** for victims, for themselves? That is the crux of the problem.

CONCLUSIONS

We need to solve these problems or issues quickly if we are going to get anywhere at all in the Legal System and to avoid the Legal System being put into further disrepute. For example, when errors occur **repeatedly**, I ask whether it is deliberate, since it can no longer be ignorance. And is it done deliberately in order to assist the criminal? **Is the criminal winning?** And why? **Is it because we want him to win?** Again, Kahlil Gibran says:

*“as a single leaf turns not yellow but with **the silent knowledge of the whole tree**, so the wrong-doer cannot do wrong **without the hidden will of you all.**”*

And if that is so, what does it say about us, as a people, as a society? How do we live in a society without Justice? Has Justice no place in our Society? Is Justice *no longer* good? If there is **no Justice**, is there really a Legal System? Surely, a Legal System with no Justice, is **no** Legal System?

Have we **failed**? Are we all victims? Is that what you want? Is that what YOU want the next generation to know of us?

The crucial question in the end is: What do **YOU** want? **Do you want** to make people change their minds, make them come forward, make them tell you the correct, **truthful**, complete story, make them want to help you; help you to get justice, for society, for them? Do you want to make **that** difference in society? Do you want your child to say: "*I am very proud of my father; I am very proud of my mother*"?

How do you do that?

Ask yourself...

Hopefully, what I have said to you today is **NOT just** words.

Thank you.