

INDICTMENT

This is a Newsletter
about You, for You !



2011 a year of Firsts

With the New Year well and truly here it is a time to reflect on the previous year and look forward to 2012.

2011 has been a busy year with the launch of the Code for Prosecutors for Saint Vincent and the Grenadines, the launch of the updated Code in Saint Lucia, agreement on the constitution for the Caribbean Association of Prosecutors, and establishment of a National Prosecution Service in Dominica.

It is hoped this year that a Witness Charter will be launched and further National Prosecution Services will be up and running. I know these are imminent and with at least two sets of Prosecutors Codes ready and printed awaiting a commencement date we have an exciting year ahead.

These successes are your successes and down to the need to reform and modernise to meet the challenge of organised crime.

However these developments are just the spring board for further success. Bring on 2012 - a year for disorganising organised crime!

The Guide

To assist with this aim the Guide has been updated and now follows a case scenario to assist with the application of the law.

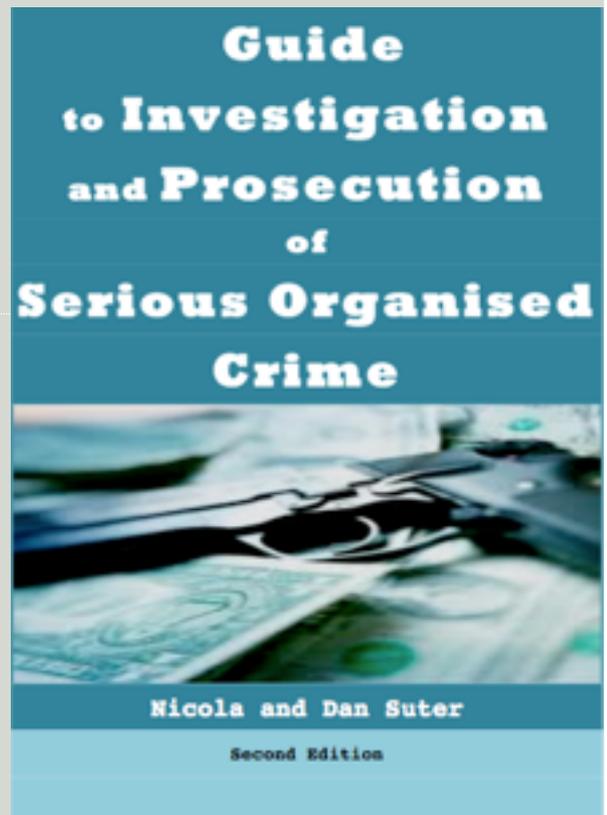
The Guide urges the need for “cradle to grave” prosecution. This means Prosecutors working alongside Investigators in a team approach.

The challenges faced by disrupting organised crime are varied and it needs the guile, experience and aptitude of both the investigator and prosecutor.

The Guide endorses these skills and provides detailed case law from the Privy Council, Eastern Caribbean Supreme Court and persuasive authorities from around the world.

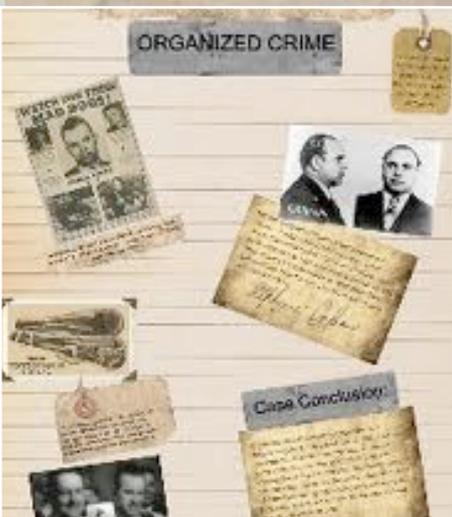
Please Use it!

Nicola and I have spent time consulting with lawyers and investigators in the region so please use the Guide and don't let it gather dust - we really believe it can be a powerful weapon in your arsenal!



If you want a copy
of the Guide contact
me at:

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Opinions expressed in this newsletter do not necessarily represent the views of the UK or US Governments

In September 2011 the DPP of England and Wales Keir Starmer Q.C. Visited the region. Here are some extracts from the CJA's diary

27th September

The DPP arrived into St Vincent and the Grenadines the previous evening with the Head of the International Division of the Crown Prosecution Service, Patrick Stevens. We had a busy first day meeting the Hon. Dr Ralph Gonsalves Prime Minister, The DPP Colin Williams and the Hon Judith Jones Morgan, the Attorney General.

The DPP also watched the launch of the Schools Engagement project with a mock trial. The students did an amazing job by really playing up their roles. There was some real talent and lawyers in Saint Vincent and the Grenadines had best beware of the competition!

We all attended a reception at the Prime Ministers residence in honour of the DPP. The DPP who has practiced in the region was able to catch up with colleagues and also pass on gratitude to those who have advanced reform in the criminal justice system.

28th September

Up at 6am for a 6am flight to Dominica. This was the DPP's first experience of the hair-raising journey to

Roseau! After arriving in one piece we went straight into a meeting with the Hon. Roosevelt Skerrit, Prime Minister. We then went to the historic launch of the National Prosecution Service (see article below for more details). There then followed a torrential spell of rain with landslips and floods. We tried in vain to get to the airport. Our plans to get to Saint Lucia for a Caribbean DPP's conference were scuppered!

29th September

Due to the good people at LIAT we managed to get a flight to Barbados and get the connecting flight to await our arrival. We made it just in time to see the launch of the updated Code for Crown Prosecutors for Saint Lucia.

30th September

We had meetings with the [then] Prime Minister Hon. Stephenson King and with the [now Prime Minister] Hon. Kenny Anthony. The DPP also appeared on an interview for the Government Information Service. Whilst we were at the meetings the DPP's voted for a constitution establishing the Caribbean Association of Prosecutors. This ended a successful trip and certainly one where the DPP was able to see all the reforms being implemented to secure solid foundations in the battle against organised crime.



DPP VISIT



Busy Agenda

Top: The DPP is presented with a copy of the Code for Prosecutors in Saint Vincent by the DPP - also pictured are the CJA and Colin John, Crown Counsel

Middle: The DPP and Commissioner of Police Carette at the launch of the National Prosecution Service in Dominica

Bottom: The DPP recorded on GIS in Saint Lucia

LAUNCH OF THE NATIONAL PROSECUTION SERVICE IN DOMINICA



Above: The DPP delivers his keynote speech

Left: The DPP with Commissioner of Police Carette, DPP Gene Pestaina and the lawyers of the NPS.



Why a National Prosecution Service

The Constitution of Dominica at section 72 states that the DPP is responsible for all prosecutions. The NPS enshrines this fundamental principle by placing the DPP in charge of all prosecutions in the Magistrates and High Court.

On 28th September 2011 the National Prosecution Service of Dominica was launched

The DPP of Dominica, Police Commissioner and the DPP of England and Wales addressed an audience of local dignitaries, including the Hon. Levi Peter the Attorney General, at the public launch of the National Prosecution Service (NPS) of Dominica.

This launch had been the culmination of a considerable amount of thought and consultation to ensure a NPS that can best serve the people of Dominica. The Attorney General, DPP and Police Commissioner, reviewed developments across the world to decide upon the appropriate model for Dominica.

In undertaking this review a number of Royal Commissions of Inquiry in other Commonwealth jurisdictions had been considered that recommended an independent public prosecution agency. Equally the implementation of the Crown Prosecution Service in Saint Lucia served as a model.

The issue the Royal Commissions' considered was whether it is appropriate that the same body responsible for the *investigation* of alleged criminal offences should also be responsible for *prosecuting* those same offences.

The basic argument against the police acting as prosecutors is that prosecutorial decision-making should be in the hands of an agency which is not only independent and impartial as a matter of fact, but also seen to be independent and impartial.

It is also suggested that conducting summary prosecutions was never a planned core function or role of the 'new police' in England or elsewhere in the Commonwealth and the transfer of that function should be regarded as a form of restoring the police to their original model rather than the loss of a prized role.

The beginning of the role of the Police Prosecutor in the Eastern Caribbean is much the same as in other parts of the Commonwealth. The police gradually and unquestionably assumed the role of prosecutor in the Magistrates' Court initially with each informant prosecuting their own cases or the local sergeant conducting the case for other police, and then, by the nomination of certain officers to prosecute from each station. The adoption by police of a prosecutorial role occurred more by way of 'accretion' or administrative convenience rather than a specific decision by any legislature to grant the police this power.

Historically, the geographic, political, and legal reality was that there simply was no other viable alternative agency capable of performing summary criminal prosecutions.

In England and Wales the Crown Prosecution Service (CPS) was created following a Royal Commission Report that there be a single unified CPS with responsibility for all public prosecutions in England and Wales.



“A real sense of optimism”

Keir Starmer Q.C. DPP of England and Wales

When considering the separation of the investigator's and lawyer's roles the Report notes that it was:

"... said to be unsatisfactory that the person responsible for the decision to prosecute should be the person who has carried out or been concerned in the investigation."

And that:

"... the case for separation is also argued on the ground that the investigator, by virtue of his function, is incapable of making a dispassionate decision on prosecution."

As a result, the Report recommended that a prosecuting solicitor service, which came to be the CPS, should be established to cover every police force. The service should be structured to recognise the importance of independent legal expertise in the decision to prosecute; make the conduct of the prosecution the responsibility of someone not identified with the investigative process; and achieve better accountability for the prosecution service.

Keir Starmer Q.C. in his keynote address was able to explain that the CPS has seen many challenges as a prosecution agency since implementation, but still retains the fundamental concepts of independence, impartiality, openness and fairness.

By launching the NPS, and merging the talent of Police Prosecutors namely, Inspector Charles Weekes, Inspector Michael Laudat, Sergeant Kent Matthew, Corporal Innocent Toussaint and Corporal Valda Powell, with Crown Counsel Clement Joseph and Ms Nestor, Dominica has achieved a legal milestone that will be a foundation for only further progress.

This was evidenced almost immediately when a substantial amount of marijuana was seized and a case conference took place in the new office of the National Prosecution Service. Directed by the DPP the conference between law enforcement personnel and the assigned Police Prosecutor ensured the matter was appropriately charged. This early case management will ensure such serious matters are prosecuted without delay and effectively.

In the words of Keir Starmer Q.C., *“Under the leadership of the DPP and Police Commissioner, without whom the National Prosecution Service would never have been launched, there is a real sense of optimism that a fairer criminal justice system will be a permanent legacy for Dominica.”*

Thank you to the CPS for permission to publish photographs taken by Patrick Stevens

NATIONAL PROSECUTION SERVICE IN SUMMARY	WHAT IS IT FOR	WHY	HOW	WHEN
	<p>The NPS is a service that allows the DPP to manage all prosecutions</p>	<p>Some lawyers say it is unconstitutional for the DPP not to have day to day control of proceedings conducted by police prosecutors</p>	<p>The best police prosecutors have been selected to join Crown Counsel. This means an experienced and professional service</p>	<p>The NPS was launched on 28th September and uses the model of the Crown Prosecution Service of St Lucia</p>

~~NO~~ Witness NO ~~Justice~~

SIGNIFICANT PROGRESS IN 2011

I reported in the last edition of Indictment the aims and purpose of this project and in this edition we can report on the following progress:

1. UK project is assisting Saint Vincent and the Grenadines with the installation of a Video Link for vulnerable witnesses to give evidence at Court and it is hoped this should be up and running later in 2012.

2. The community engagement film has been completed and we hope to have online on the British High Commission Facebook page imminently

3. The film will also form part of the school engagement programme included within the Guide at chapter 8. A copy of the Film will be provided in your copy of the Guide.

4. A local school in Barbados will be producing a video of the mock trial contained within the school engagement programme. This will be produced in conjunction with the National Task Force on Crime Prevention and we hope to have filmed on location at the Supreme Court. The video will be available for educational purposes throughout the Caribbean stressing the important role of the witness.

SHOULD ALL COMMITTALS BE ABOLISHED ?

As part of the No Witness No Justice Project one major area of concern is the delay faced by those giving evidence. It has been suggested that the problem isn't just about fear of giving evidence but, "*Why should I bother as it will take so long to get to court and then I may have to give evidence at the PI as well as the trial?*"

It is in the interests of victims and witnesses, and of the criminal justice system generally, that court procedures should be made as efficient as possible, for example by

cutting out unnecessary court hearings. Lessons can be learnt from Saint Lucia with the introduction of the Criminal Procedure Rules's (CPR's) and the abolition of PI's.

However can the region go even further? More than ten years ago, committal proceedings were abolished in indictable-only offences in England and Wales, and replaced by a new 'sending' procedure.

The Government has now decided that the time has come to complete that reform by extending it to

offences triable either way. This will enable the Crown Court (your High Court) to manage such cases from an earlier stage, and facilitate efforts to encourage defendants who intend to plead guilty to do so sooner.

Whilst the CPR's should be embraced as a much needed reform, it should never be the case that this means the end of developing a system that will minimise delay. Any incentive for defendants to plead guilty is encouraged and thereby reduce delay and the requirement for witnesses to give evidence.

THE CONSTITUTIONAL ARGUMENT SETTLED.....

FOR NOW

BY NICOLA SUTER

The Decision in *Kent Andrews et al v the Attorney General of Saint Vincent and the Grenadines* is a much needed and far-reaching authority on the constitutionality of asset recovery in the region

By definition, restraint, freezing, confiscation and civil forfeiture laws interfere with property rights. Indeed such rights are usually destroyed.

Countries in the Caribbean with constitutions protect property rights, but such protections are not absolute. Constitutional arguments will often concern whether the relevant statute in question, arbitrarily or excessively invades the enjoyment of the rights according to the standards of a society that has proper respect for the rights and freedoms of the individual.

The Privy Council decision of **de Freitas v Permanent Secretary (Agriculture, Fisheries etc)**

[1999] 1 A.C. 69 held that a court must ask itself when considering any such invasion of rights if: “(i) *the legislative objective is sufficiently important to justify a limiting of fundamental rights; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means to impair the right or freedom are no more than necessary to accomplish the objective.*”



The Eastern Caribbean Supreme Court in **Kent Andrews et al v The Attorney General of Saint Vincent and the Grenadines** *High Court Civil Appeal No.1 of 2010*, involving a civil cash seizure and restraint, is a significant decision for the region. It emphasizes that the Proceeds of Crime and Money Laundering (Prevention) Act, does not violate the principles of natural justice, due process, equal protection before the law, nor infringe the appellants rights under the Constitution. Furthermore looking at the provisions of the Proceeds of Crime and Money Laundering (Prevention) Act of Saint Vincent and the Grenadines in the round, it was held applying the

threefold test of **de Freitas**, that its provisions are reasonably justifiable and did neither arbitrary or excessively invade the enjoyment of the guaranteed rights according to the standards of Saint Vincent and the Grenadines.

Whilst the Proceeds of Crime and Money Laundering (Prevention) Act of Saint Vincent and the Grenadines does not allow for civil forfeiture, the decision confirms that there is no breach of the

fundamental rights to the constitution when applying for civil cash seizure and restraint of property before conviction. Therefore it is supportive of the view that a person in possession of the proceeds of crime can have no constitutional grievance if deprived of their use.

STOP THE PRESS



Top: Keith Allen, the LIAT pilot who pleaded guilty to trafficking cannabis into Barbados.

Middle: Victor Bourne convicted drug trafficker in New York.

Bottom: Photograph of 7 kg of cocaine seized in operation against Victor Bourne and associates.

The Guyana Times reported on 11th November 2011 that five Guyanese were arrested in Barbados following the interception of 62 kg of cocaine and 183.5 Kg of compressed marijuana on a board Guyanese vessel, "Ocean Harvest". Umbar Angad (captain); Sham Alli (engineer); Travis Payne (sailor); Rupee Angad (sailor) and Peter Gonsalves (sailor) all faced eight charges each for possession of cocaine and cannabis; trafficking in cocaine and cannabis; possession of cocaine and cannabis with intent to supply and importation of cocaine and cannabis. Barbadians, David Smith and Ralph Holder were also charged. The cocaine which has a street value of about G\$450 million and the marijuana G\$30.8 million were intercepted in "Giving Thanks", a smaller boat used to shuttle the illegal drugs from "Ocean Harvest" to a Barbadian port.

The Nation in Barbados reported on 11th January 2012 that almost 500 pounds of cannabis had been seized in a drug exercise which took place at the Crane in St Philip.

The Stabroek News on 9th January 2012 reported the Drug Enforcement Unit (DEU) of the Guyana Revenue Authority (GRA) uncovered some 100 kg of compressed marijuana and a huge quantity of cocaine stuffed inside a refrigerated container destined for Barbados.

The New York Times on 9th December 2011 reported on Victor Bourne, a Barbados born baggage handler for American Airlines at JFK Airport, who was found guilty of importing and distributing narcotics, as well as of conspiring to do so. The primary drug-ferrying route was

Flight 1384, a daily flight from Barbados. He was also convicted of offences involving financial transactions and faces a maximum sentence of life in prison.

Testimony at Mr. Bourne's trial in Federal District Court in Brooklyn during September and October 2011 revealed a culture of corruption among some baggage handlers at JFK Airport. They stowed drugs in secret panels inside planes; stole laptops, lobsters and fine clothing flown as freight; and rifled through passengers' belongings for perfume, liquor and electronics.

Trakker News reported on 3rd December 2011 that LIAT Pilot Keith Allen pleaded guilty to smuggling \$130,000 worth of marijuana into Barbados. The 34 year LIAT pilot told the court that a man had offered him \$5000 to transport the drugs from St Vincent to Barbados.

The Antigua Observer reported on 1st January 2012 that a prominent think tank stated that the Caribbean is a "blueprint" for illicit drug trafficking at a time when it is being "heavily influenced" by organised Latin American criminal groups.

The Council on Hemispheric Affairs (COHA) said that drug trafficking and related violence is on the rise throughout the Caribbean, noting that US-Mexico border controls have been "profoundly tightened, resulting in a growing spillover of drugs into the wider Caribbean. "The Caribbean's natural landscapes and diffuse geographical locations make it appealing for drug traffickers who take advantage of such terrain that features long often uncontrolled coastlines and mountainous interiors for the growth and transportation of narcotics," COHA said.

LEGAL UPDATE

There have been important decisions both at the ECSC and Privy Council that will assist both Investigators and Prosecutors

Money Laundering

In **DPP v AA Bholah** (from the Supreme Court of Mauritius), delivered 20 December 2011, PC Appeal No 0059 of 2010, (2011) UKPC 44 it was submitted that the accused should be informed of the type of criminal conduct resulting in laundered criminal proceeds. The Board concluded that proof of a particular predicate offence was not an “essential” element of the broad money laundering offence in Mauritius. However where it was possible to give the accused notice of the type of criminal activity that produced the illegal proceeds, fairness demanded that this information should be supplied.

Role of the DPP

An important decision that defines the role of the DPP in conjunction with that of the Investigator is **Steadroy C. O Benjamin v The Commissioner of Police and Attorney General of Antigua and Barbuda** HCVAP 2009/023. This decision held that the DPP is able to guide the Investigator on whether to institute proceedings by way of charge.

The DPP occupies a paramount position in accordance with the

constitutions of the region and for this reason there is no limit or restriction on the instructions that he can provide to the Investigator. The decision in

Steadroy Benjamin emphasizes that the DPP can direct the Investigator not to institute proceedings. This important power means that the instructions of the DPP, applying a reasoned approach, should be followed by the Investigator and it is for this reason that the Investigator and DPP should have an effective working relationship from the outset.

In summary as the court held in **Steadroy Benjamin (Attorney General of Grenada v The Grenada Bar Association** Grenada Civil Appeal No. 8 of 1999 (delivered 21st February 2000) followed; and **Reyes v The Queen** [2002 UKPC 11] applied): “When one considers the full amplitude of the powers conferred upon the Director of Public Prosecutions, it would take an overly austere reading of the Constitution to hold notwithstanding the power to discontinue proceedings brought by police, the Director of Public Prosecutions lacks the power - a power which arises by necessary implication - to



The Privy Council

instruct the police not to institute criminal proceedings against an individual. The nature of a constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation effects the deeper inspiration and aspiration of the basic concepts on which it is founded. A construction of the Constitution which leads to the police disregarding instructions of the Director of Public Prosecutions not to prosecute by relying on the power to institute proceedings under the Police Act would be narrow, ungenerous and not purposive.”

The Code

The decision of **Linton Lewis v The DPP of Saint Vincent and the Grenadines** (High Court Civil Claims No. 19 of 2011) emphasizes the importance of the use of a Code for Prosecutors and how the Code provides a clear basis upon which a Court can conclude a decision was rational, objective and reasonable.

Please send us articles

We are always looking for interesting news to share and experiences to demonstrate good practice to others in the region.

If you have had any great results or would like the region to know about what you are doing in the efforts against organised crime then please contact me at:

dansuter1975@yahoo.com

INDICTMENT

The quarterly Newsletter for Investigators and Prosecutors of Serious Organised

NEXT EDITION

I reported in the first edition that the next few months were going to be busy. Well the early part of 2012 is no exception with the imminent UK-Caribbean Ministerial Forum to name just one event.

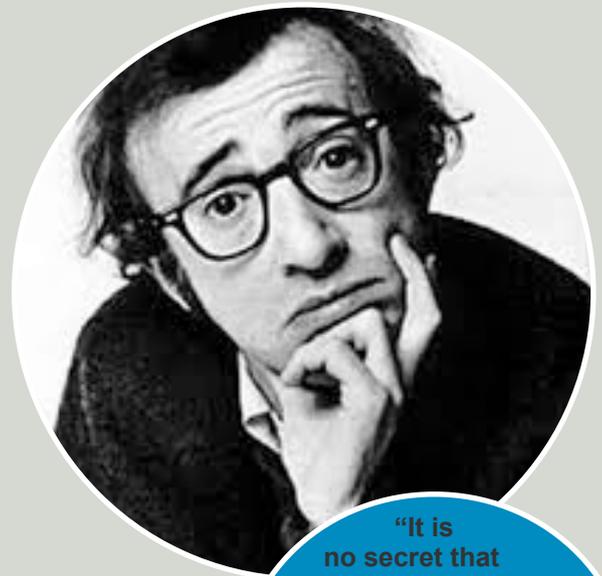
I am also part of a UK/US funded project for the installation and training of officers for videoing suspect interviews. This is a really exciting project and I hope to report more on this in the future.

Nicola Suter is preparing training for Judges, Crown Counsel and Defence Attorney's on Confiscation. As you know to make criminals pay we have to strip them of their ill gotten gains. This training will provide the region with much needed experience of how a Confiscation Hearing will be heard.

THE GUIDE

I hope to have sent the second edition of the Guide to all parts of the region before the next newsletter.

Please feel free to contact me with your comments and any improvements. I want this Guide to be about your good practices and procedures and how they can be developed where necessary.



"It is no secret that organised crime in America takes in over forty billion dollars a year. This is quite a profitable sum, especially when one considers that the Mafia spends very little for office supplies."
Woody Allen

THANKS

A personal thanks to all those who assisted with the DPP trip, the launches and the DPP's Conference: DPP's of Saint Vincent and the Grenadines, Dominica and Saint Lucia; Commissioner of Police of Dominica; Clement Joseph, Colin John; Giovanni James; Fran Reid, Karl Burrows and Dan Carruthers

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