

**Practice Direction No.1 of 1999.**

**DUTY OF PROSECUTING COUNSEL AFTER VERDICT OR JUDGMENT IN  
CRIMINAL TRIALS**

A practice has grown up in which counsel for the Crown addresses the Court on sentence after giving the accused's antecedents. This has included suggestions about the factors the court should consider in deciding the appropriate type of sentence, the frequency a particular offence occurs and reference to the level of sentence in previous cases of a similar type.

Such a practice is wrong and must cease forthwith.

It has long been the position that prosecuting counsel ought not to struggle for a verdict against a prisoner but that they ought to bear themselves rather in the character of ministers of justice assisting in the administration of justice. That role continues after verdict and it is inconsistent with that role to make any address that might be seen as attempting to influence the Court in the sentence to be passed.

The duties and responsibilities of advocates may be found in the Code of Conduct for the Bar of England and Wales, set out in the appendix to Archbold, with which all lawyers should be familiar. The duties of prosecuting counsel are clearly stated in part 1 of the section on standards applicable to criminal trials. Section 1.8 deals with his duty on sentence;

"In relation to sentence, prosecuting counsel:

- (a) should not attempt by advocacy to influence the Court with regard to sentence: if, however, a defendant is unrepresented it is proper to inform the Court of any mitigating circumstances about which counsel is instructed;
- (b) should be in a position to assist the Court *if requested* as to any statutory provisions relevant to the offence or the offender and as to any relevant guidelines to sentence laid down by the Court of Appeal;
- (c) should bring any such matters to the attention of the Court *if* in the opinion of prosecuting counsel *the Court has erred*;
- (d) should bring to the attention of the Court any appropriate compensation, forfeiture and restitution matters which may arise;
- (e) should draw the attention of *the defence* to any assertion of material fact made in mitigation which the prosecution believes to be untrue; if the defence persists in that assertion, prosecuting counsel should invite the Court to consider requiring the issue to be determined by the calling of evidence in accordance with the decision in *R v Newton*" (my italics).

Counsel for the Crown has also made reference to matters in the social enquiry report. Such a report is prepared for the Court. Copies should be supplied to defence counsel or the accused himself if not represented unless he is a child in which case the parents should be provided with a copy. The report is nothing to do with the prosecution and a copy should not be supplied to counsel for the Crown. If the Court should require confirmation or wishes to hear the prosecution view of anything in the report, it will ask.

This direction applies to all prosecutors including police officers appearing in the Magistrates' Court.



*Gordon Ward*

Gordon Ward  
CHIEF JUSTICE

**NUKU'ALOFA:** 12<sup>th</sup> February, 1999.