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Corruption in the Prosecution office-prevention and control

Albert Camus [French Algerian Philosopher] said 'integrity needs no rules'. Is this true?

It seems that standards of integrity can vary between cultures,races,religions,ages maybe even genders. For example Judge in a country in West Africa told me would not accept bribes but would accept presents post-verdict. What is the difference?-to her there was-one was acceptable the other not also-my shock when DPP of another well-known West African country frankly spoke up at a Conference 5 years ago and said the acceptance of bribes amongst prosecutors to release prisoners was rife and was necessary in order to bolster their inadequate pay.

Not suggesting for a moment corruption confined to developing countries-albeit some element of acceptance there whilst in developed countries maybe more covert. Only recently in my country my prosecution service was rocked by a recent case where a senior crown prosecutor accepted a £20,000 bribe to drop a case and was jailed for four-and-a-half years after admitting corruption, perverting the course of justice and misconduct in a public office.

Sarfraz Ibrahim was caught in a police undercover sting operation carried out by the Serious Organised Crime Agency (Soca).

He and an associate were put under surveillance after Soca grew anxious about Ibrahim's potentially corrupt activities.

An "integrity test" was devised to see whether he and the associate were prepared to act corruptly.

Over four months, until their arrest last summer, both men were gradually tested to see whether they were honest.

A fictional scenario was created which presented them with a chance for Ibrahim to use his position to intervene in a case in exchange for money.

It centred on an assault case which Ibrahim was able to "manoeuvre" in such a way that he was eventually able to mark it "no further action".

Unknown to either man, the case was bogus and specifically created by Soca to test their honesty.

Mr Justice Treacy, passing sentence, told Ibrahim: "You did not just offend the core principles of your profession, but you committed crimes which are universally recognised as serious".

"The breach of trust is great. I am sure that you were motivated by personal gain from the outset".

He told Ibrahim that his actions had had a "potentially corrosive effect beyond this case".

Speaking after the sentencing, Director of Public Prosecutions, Kier Starmer QC, said

"This behaviour will not be tolerated in our organisation," he added; "The public has the right to expect the highest standards of professional behaviour from CPS employees and I will not tolerate anything less"

This was a man who had won awards and was highly regarded and whose photograph featured on the front of a recruitment brochure for the CPS-swiftly removed. What also emerged was that Ibrahim had significant debts-which raises the question as to whether financial checks should be conducted upon anybody in such a position as a matter of routine.

Certainly there should be clear parameters as to what is acceptable and checks and balances to ensure adherence. Whether this is a code of professional conduct or ethics or similar-there needs to be clarity and transparency and regulation if the public is to have confidence in their prosecutors.

IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors produced in 1999 and more recently adopted in an UN Resolution in 2008 emphasises the importance of prosecutors conducting themselves professionally with dignity and honesty and in accordance with the law and the rules of their profession .They should 'at all times exercise the highest standards of integrity and care'. There need for independence and impartiality is also stressed as are the concepts of fairness and objectivity. The standards also recognise certain protections and expectations for prosecutors-protection from arbitrary action by governments and from improper interference. Also included is the right to adequate remuneration and reasonable terms of employment and the existence of fair and impartial recruitment and promotion opportunities-outlawing favouritism and nepotism.

But how do we enforce these standards and avoid the risks of corruption in its many faces-be it bribery or improper influence and interference.

Ideally:

- Careful and robust recruiting practices
- Thorough vetting and background investigations
- Financial checks-to include annual income and asset disclosures-?for all ranks
- Continuing legal education to include ethics, codes of conduct
- Integrity checks?

- Short term contract or short term placements to avoid inappropriate local ties being formed-such as in some places in Far East eg Korea
- Clear rules about corporate hospitality/entertainment and acceptance of gifts
- Strong employee associations/unions to assert prosecutorial rights and expectations
- Clear and robust internal accountability chains and supervision mechanisms
- Sound disciplinary procedures which can be readily invoked in the event of breaches
- Security of personnel, buildings and data
- A strong independent oversight body/mechanism to review and investigate possible breaches of procedures etc with associated publicity.

In the UK in the 1960 and 70s police corruption in London was widespread and endemic and the then Police Commissioner for London Sir Robert Marks [just died] famously said that he wanted to 'arrest more crooks than we employ' and indeed during his term of office and after he retired, hundreds of detectives 'on the take' were forced out of office following a massive investigation which he launched. Interestingly he resigned when as a response to the level of corruption, an independent investigation authority was established to handle investigations into the police-he did not agree this was necessary-he thought it would undermine police discipline and would not be as effective. Was he right?

There are a plethora of international instruments and guidance offered to public officials including the judiciary and prosecutors to combat the temptation of 'corruption'. A judicial system which is free from corruption to enforce laws without fear or favour is the corner stone of a flourishing society-encouraging foreign investment and breeding commercial confidence.

UNCAC-The United Nations Convention against Corruption was finalised in 2003 and in 2004 the United Nations Handbook on Practical Anti-Corruption Measures for Prosecutors was produced-following significant IAP input. It is 219 pages long and will be available to IAP members on the IAP website. As we know the parties to UNCAC are currently struggling to develop a credible assessment tool-this guidance provides some practical measures which can be adopted and adapted by states to prevent corruption in the prosecution service and also to assist with the effective investigation and prosecution of corruption offence with reference where appropriate to the articles within the Convention. The guidance reminds us that a prosecutor represents the public and so must be fair and impartial-more so in those jurisdictions where there is a discretion whether to prosecute. It can be argued that the 'legality principle' removes from the prosecutor to an extent, the risk of corruption .

'Uniform Guidelines for Investigations' in the field of fraud and corruption were developed in 2003 and are set out in the handbook. The handbook also

describes the different types of activities that come within the term 'corruption' and gives examples.

Article 11 of the Convention specifically refers to the Judiciary and prosecution Services and require state parties to take measures to strengthen integrity and prevent opportunities for corruption within both professions and Article 36 recognises the imperative of independence for those bodies which are responsible for law enforcement.

The OECD (Organisation for Economic Cooperation and Development) is also a prolific source of tools and guidance on corruption. For example in 1998 the OECD Council adopted a Recommendation on Improving Ethical Conduct in Public Service-12 specific recommendations many of which mirror those referred to above-eg public service conditions and management of human resources should promote ethical conduct.

In 2004, the OECD produced a report which included a generic assessment framework to enable the provision of evidence-based initiatives on the performance of policy measures to promote integrity and prevent corruption and includes an inventory of methods and solutions used by various countries for this purpose.

In 2007 The OECD produced a review of models of specialised anti-corruption institutions-the establishment of such specialised bodies having been required by a number of treaties including UNCAC. The review sets out the range of functions which such bodies should exercise and the criteria which should apply-primarily-'independence, specialisation, adequate training and resources'. No single structure is recommended-but the main models are identified and analysed.

(Also C o E Criminal Law Convention on Corruption-coordinated criminalisation of large number of corrupt practices-monitored by GRECO-Group of States against Corruption)

The IBA has just launched its Anti-Corruption Strategy for the Legal Profession and recently conducted a poll the results of which were publicised during its recent Annual Conference in Vancouver. This poll was conducted amongst lawyers in private practice rather than public lawyers and mainly concerned cross border corrupt transactions, nevertheless the results are interesting and I think indicative. Many lawyers were ignorant of anti-corruption legislation with 40% being unaware of major conventions-UNCAC/OECD and yet nearly half stated that corruption was an issue in the legal profession within their country.

You shall be hearing tomorrow about the new UK Bribery Act 2010 which is confined to 'commercial organisations' and requires the introduction of 'adequate procedures' to combat corruption otherwise the persons responsible may be criminally liable for 'failing to prevent bribery'. One might ask whether such a concept or sanction will ever be applied to 'non-commercial' organisations such as public bodies? Traditionally many jurisdictions have

concentrated on corruption within the public sector-rather than commercial bribery and maybe the trend is now changing-but we mustn't take our eye off the public sector.

Elizabeth Howe

General Counsel IAP October 2010