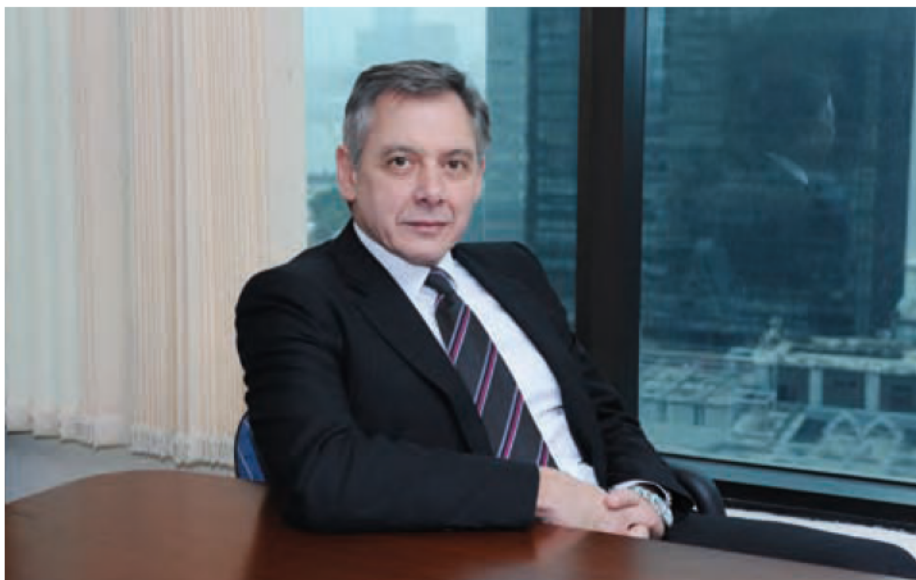




Prosecuting with public confidence and trust



Mr. Kevin Zervos, Director of Public Prosecutions, Hong Kong

Being a public prosecutor is not an easy job. There is a lot at stake, and there are a lot of stakeholders interested in or affected by what we do and how we do it. What is at stake, is our criminal justice system. And of all the stakeholders, the most important is the public. We are after all “public” prosecutors and we serve the public by providing justice to all equally and fairly. It is an onerous and mighty objective and there will be times when the handling of a case by the prosecution will not be understood or appreciated by the public and may even result in public criticism or concern. The sad reality is that it only takes one case to go seriously wrong for the public to lose confidence and trust in the prosecution service. One thing is clear, to have the confidence and trust of the public you have to earn it, and having earned it, you have to maintain it. As public prosecutors, we sometimes underestimate how important public confidence and trust is to our work. We must not fall into the trap of having “a holier than thou” attitude and forget who we are there to serve. Public confidence and trust is both a measure of and a support for the work that we do and there is a lot to be gained by forming a partnership with the public in serving the interests of justice.

Public confidence and trust is where the public feel assured that public prosecutors are doing their job properly by ensuring that justice is dispensed at all times with equal measure and in an even handed manner to all. The obvious difficulty when dealing with issues involving the public is determining exactly who the public is. I will treat the term “the public” as relating to the

people as a whole but in reality it is difficult to truly gauge the views of the public as a whole when it is made up of individuals and groups who may hold different and sometimes extreme views and the views being represented as the public’s may not be fully or properly informed views or even rational in all the circumstances.

Putting this issue aside, we need to address how a prosecutor earns and maintains public confidence and

trust. It would seem that this must depend on what the public know about the criminal justice system and the work and function of the prosecution service.

We need to start therefore by understanding the purpose of the criminal justice system. It has been said it is to preserve public order and decency; protect individuals and their property from harm; provide sufficient safeguards against the exploitation and corruption of others, especially the vulnerable; and punish those who deserve punishment by means of incapacitation, deterrence, reformation or reparation. Public prosecutors play a key role in meeting the objectives of the criminal justice system. We are required to uphold the rule of law and enforce it. This is what society expects of us. It is also important to bear in mind that we act on behalf of the public and not on behalf of the government or law-enforcement.

Public order is secured by the exercise of power and without the confidence and trust of the public those who exercise that power will fail to establish the legitimacy necessary to fulfil this role. For the public to have confidence and trust in the prosecution service, a number of key goals need to be achieved. We need to be professional at all times and ensure that the law is applied equally to all and that we get it right. We need to be fair but firm and ensure that we get just results. It is also important that we be transparent and accountable and not operate behind closed doors. Published guidelines and policy are an important means of informing the profession and the public of how we

handle and decide on cases. We need to be prepared to discuss and explain decisions and, in particular, engage the public and address public concerns when they arise. Overall we need to make the public confident that we are acting in the best interests of the public as a whole. This means we need to provide a prosecution service that is professional, fair and independent. A prosecution service needs to be competent and efficient. This is achieved through training and experience and by providing appropriate support and resources in the handling of cases. A prosecution service needs to be fair and honest. This is achieved by constantly reminding prosecutors of the role that they perform as a minister of justice and of the importance of not winning convictions at any cost. A prosecution service also needs to maintain independence and control over prosecutions. It must remain free from any interference and take a principled approach to the work that it does. This is a key feature of a prosecution service and relies heavily on the integrity and honesty of the people that make up the service.

Whilst a prosecution service deals with a number of stakeholders, the partnership that it forges with the public is especially important. The public have a right to know within reason how public prosecutions are being conducted. Members of the public are becoming increasingly knowledgeable about their rights and obligations and hence they expect and want to know more from their public prosecutors. It is therefore imperative that a prosecution service actively seeks to increase the public's knowledge and awareness of the criminal justice system and the role and work of the prosecution service. By educating the public, you will have an informed and understanding public that will better appreciate and appropriately support the work of the prosecution service. Of course, this will depend on the prosecution service doing its job properly. There is also the added advantage that it provides the opportunity to explain to the public their civic duties and responsibilities in the pursuit of criminal justice and to encourage them to report crime and assist the authorities. It is vital for members of the public to appreciate the important role they perform, and the responsibility they have, in achieving criminal justice. Taking the mystique out of the law and enabling the public to better understand it will go a long way to help the public feel assured about the criminal justice system and the public prosecutor's role in the criminal process.

How we forge that partnership with the public requires us as prosecutors to reach out and to talk

and listen to members of the public. Maintaining a dialogue with the public can be achieved in various ways. One way is through the publication of policy statements, information brochures and a yearly report. Another is through participation in public forums and events. In Hong Kong we held Prosecution Week where we engaged in a week of activities promoting the prosecution service. We produced a brochure on the prosecution service and distributed promotional items such as rulers imprinted with "Rule Out Crime" and "Rule of Law". Prosecutors attended schools and community groups and gave talks about the prosecution service and the criminal justice system. We held mock trials and seminars on criminal justice. It is imperative that the public has online access to the prosecution service. A dedicated website providing information about the service and its work, as well as more general information about the criminal justice system, is essential. An e-mail address is also essential to enable the public to promptly and effectively contact the prosecution service. There should be a dedicated unit within the prosecution service dealing with complaints and feedback from the public. It gives both reassurance to the public and vital feedback to the prosecution service about the quality and standard of work that it is providing. Media relations are also important in this regard. This brings us to the issue of the social media. It is without doubt that social networks are a source of information and a means of communication. The issue is how reliable and useful are they in this context. Official blogs are becoming increasingly common with professional people and bodies. However, care and caution needs to be taken with social networks as a gauge of public views or as a form of communication to and from members of the public. The major difficulty is that in most cases you do not know who you are dealing with, and you are unable to determine the reliability or accuracy of any information that is provided.

There will be occasions when it is necessary to gauge and address public concern or views that relate to or may impact on a prosecution. This can be done by various means. Court decisions and rulings can provide a measure and assessment of how the prosecution service is performing in its work before the courts. Interacting with the private profession and the public provides a mechanism for discussion and feedback. Reviewing individual complaints and feedback is another important gauge. Monitoring and interacting with the media provides an insight into issues arousing public concern or interest, as does the legislature through debates and enactment of laws.

In meeting the objectives of the criminal justice system, it is incumbent on a prosecution service to make sure that criminal matters are investigated and prosecuted and that law enforcement is tackling the difficult as well as the easy cases. If the laws are not being enforced, it is the responsibility of the prosecution service to speak up to make sure they are. It is also the responsibility of the prosecution service to bring to justice those who offend the law and to get the right results by fair and proper means.

Public confidence and trust is the lifeblood of a prosecution service. Without it, a prosecution service will fail to establish the requisite legitimacy and standing within the community to fulfil its role. A prosecution service needs to earn public confidence and trust and that can only be achieved through good work and by effectively upholding the rule of law fairly and equally. To this end, it is important to form a partnership with the public and increase public awareness about the criminal justice system so that it is able to better understand and support the prosecution service.



Article published with the permission of the International Association of Prosecutors (www.iap-association.org)