where there are more bailiffs than one, the duties of the office shall be appointed between them in the manner directed by the magistrate, presumably the Chief Magistrate.

FEES AND COSTS

To my mind, the amounts mentioned in Table B of the schedule to the Act under Solicitors' Fees are unrealistic. It provides, for example, that the amount payable to a solicitor on commencing an action is no more than $3.00. Clearly, no solicitor these days charges only $3.00 for commencing an action. It is also provided that, at the discretion of the magistrate, a solicitor may be paid $5.00 for attending court and taking judgments when an action is contested. On attending court and conducting the Defendant's case when an action is contested again, at the discretion of the magistrate, the solicitor may be paid between $5.00 and $15.00. These sums may have been huge amounts way back in 1958 but inflation and certainly the value of the solicitor's professional contribution in the court, is not reflected in these miserly amounts.

JURISDICTION

Although the District Court has jurisdiction to hear and determine all personal actions for the recovery of any debt or demand for amounts up to $5,000.00 (see section 3 of the District Courts (Procedure) Act), that is not the case under the Landlord and Tenant Act (Chapter 189) where the jurisdiction is limited to rents not exceeding $3,600.00 per annum.(see sections 27, 28, and 29) That is only $300.00 per month so that even where the rent claimed by the landlord is, say, only $325.00, he cannot make that claim in the District Court, if the amount claimed is calculated by reference to a rent that is more than $300.00 per month. He has to go to the Supreme Court. It would seem to me that the jurisdiction of the District Court could be increased to rents of up to, at least, $3,000.00 per month.

THE DISCRETION AS TO BAIL AND AN APPROACH AS TO SENTENCING

By: **Fred Lumor, S.C.**

INTRODUCTION

The parameters that I have set in this presentation will take account of the time allotted for the subjects of bail and sentencing, two very difficult and involved but fundamental issues that attend judicial decision making frequently in the criminal jurisdiction. The presentation will take the form of raising different concepts or approaches for discussion rather than dogmatic statements.

PART I

DISCRETION AS TO BAIL

I. The duty to grant or to withhold bail for centuries is as grave as it is important.It is summed up succinctly by the learned authors of Archbold's Criminal Pleading, Evidence and Practice, the 2000 Ed. p. 29 at para. 3-1:

> *Refusal or delay by any judge or magistrate to bail any person bailable is at common law an offence against the liberty of the subject. It is almost a violation of the Habeas Corpus Act 1679, and the Bill of Rights 1688. But the duty of a magistrate as to admitting a defendant to bail is judicial, and not merely ministerial, and therefore an action will not lie against him without proof of malice for refusing to admit to bail a person charged with an offence, and entitled to be admitted to bail.*

Subject to the Belize Constitution and municipal statutes, these two acts apply to Belize by virtue of the Imperial Laws (Extension) Act, Chapter 2, 2000 Ed. since both pre-date 1st January, 1899. Withholding bail for reasons amounting to malice on the Ramesh Maharaj principle entitles the victim to compensation against the state and may also amount to misconduct. **See Articles 5(5) & (6) of the Belize Constitution.**

II. **Discretion**

I have made attempts to find a precise definition of the familiar word "discretion". It is incapable of definition as it was described as "shifting sand". I found the following passage quite intriguing in the case of *Goldmite vs. Pressdram Ltd. [1977]2 ALL ER 557 at 5b 2 per Justice Wien:*

All the arguments in this case have turned on how my discretion should be exercised. I have been invited by counsel on both sides to lay down principles for the guidance of others who may have to decide this somewhat difficult question. I decline to lay down principles for the guidance of others for that would mean that by so doing I would curtail the discretion that any judge might have in the future. The very essence of a discretion is that it is a discretion to be exercised in all the circumstances of a particular case. The discretion has to be exercised judicially and not capriciously, but if one were to lay down principles for the guidance of others it would have the inevitable effect of diminishing the ambit of the discretion that must be open to every judge ....

Although "discretion" does not invite a precise definition, at least there is a vast albeit sometimes confusing legal material that set out principles or guidelines for its application in appropriate cases:

It is an aspect of the common law and constitutional requirement of a fair hearing. It is the essence of natural justice that it should be observed generally in the exercise of discretionary power. ... All discretionary powers have limits of some kind, and whether those limits are widely or narrowly drawn, the discretion ought to be exercised fairly, just as it must also be exercised reasonably. (Administrative Law, Wade and Forsyte 8th Ed. p. 491 & 525)

Discretionary power, once exercised, is beyond the review of an appellate court if it is exercised judicially or fairly, taking into consideration all relevant and appropriate matters placed before the court. An appellate court would intervene of course if it is shown that the decision is the "wrong exercise of discretion" or that irrelevant and improper matters were taken into consideration. For this reason alone a careful and informed judicial mind must be brought to the exercise of discretionary powers. In the daily life of a magistrate sitting on the bench, bail comes up for decision making so often that there is always the temptation to approach applications in a pedestrian manner, which must always be avoided.

III. Principles Applicable to Bail

Twenty-five years ago the Chief Justice of Belize was confronted with complaints that magistrates readily exercise discretion to grant bail without hesitation. It is not any different today, with complaints that magistrates do incarcerate persons accused of a crime readily. His Lordship Dennis Malone, Chief Justice, in June, 1978 prefaced a practice direction he sent to magistrates called "Guides to Bail" as follows:

There have been complaints that magistrates too readily grant bail. I am not suggesting that you do, as the complaints I

ing Chief Magistrate however suggested that a circular on the subject of bail might be of assistance to the magistrates and that suggestion seemed to me a good one. Hence this circular which by its example seeks to deal with those instances when to grant or withhold bail presents the thorniest problems.

I propose to structure our discussion on the circular or the guidelines of the former and late Chief Justice and also on a very resourceful and useful judgment of the Court of Appeal of the Kingdom of Lesotho, Southern Africa, reported in *[1998] 1 LRC 59 – Bolofo and Others vs. Director of Public Prosecutions.*

1. Constitutional Duty

a) *A decision to grant or withhold bail is often most difficult as it is a judicial decision which frequently poses a conflict between several fundamental and important principles. On the one hand are the principles of the liberty of the subject and the presumption that a defendant is innocent until proven guilty. On the other is the need to safeguard and protect society.* Malone

b) As you are aware the United Kingdom in 1998 passed the Human Rights Act as part of its Treaty obligations as a member of the European Union. The Law Commission therefore examined the impact of the Human Rights Act 1998 on the decisions taken by the police and the courts to grant or refuse bail in criminal proceedings in a report captioned "*Bail and the Human Rights Act, 1998*". The Law Commission examined the following, namely the:

- detention of accused persons between the time when they are charged or appear in court and the time of termination of proceedings;
- detention for fear a defendant will fail to surrender to custody;
- detention for fear of interference with witnesses or the obstruction of justice; and
- detention for pre-sentencing inquiries.

The Commission concluded that detention on these grounds is compatible with the European Convention on Human Rights. I hope these issues do not have an abstract taste in your thoughts since the Convention is no different from Chapter 11 of the Belize Constitution – Protection of Fundamental Rights and Freedoms. The Law Commission however noted the following:

Appropriate training is recommended for decision makers to ensure that decisions are taken so as to avoid contravention of rights – such as the grant of conditional bail, the requirement to give reasons for decisions relating to bail, challenges to the legality of pre-trial detention and the frequency of further challenges to bail. Halsbury's Laws of England, Annual Abridgment, 2001 p. 179 at para. 772

This seminar is therefore welcomed.

c) The case of Bolofo vs. DPP also placed great emphasis on fundamental rights and freedoms enshrined in the constitution as a primary consideration in the exercise of bail discretion:

These provisions can only be meaningful if all involved in the administration of justice perform their duties in a manner consistent with the ethos and the values that underpin them. This obligation rests on those who are part of the cohesive unit that administers criminal justice. Those involved include the following: the police officer that exercises the power of arrest and first detention; the judicial officer who is seized with responsibility to decree continued detention of the accused or his release on bail and the terms and conditions upon which this is to occur and regulate the conduct of the trial; the Director of Public Prosecutions who determines whether and when a prosecution should be instituted and upon which charges and who exercises a discretion as to whether to oppose bail or not .... op. cit. p. 71-72

2. Bail Procedure

a) Unless good reasons can be established for refusing bail, there is a right to be released pending trial. And where bail is denied, pre-trial detention must not be prolonged beyond a reasonable time.

The task of a court considering bail against the basis of the constitution is to:

examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty and set them out in their decisions on applications for release. (European Human Rights Law by Keir Starmer)

The discretion to grant adjournment at criminal trials was judicially considered in the case of the *State vs. Solomon (1982) 33 WIR 149, 158* on the basis of the constitution where it was stated that, "Fairness at a criminal trial must be evenly balanced ... What is fair to the accused must also be fair to the prosecution, and vice versa."

b) If bail is denied, an opportunity to take review proceedings must be made available through adjournments at reasonable intervals. The Summary Jurisdiction (Procedure) Act stipulates adjournment intervals which are rather ignored than observed due mainly to the overwhelming number of cases pending before the courts. There cannot be fair hearing if there is no equality of arms in adjournments:

Indeed continued detention without a speedy trial is an arbitrary form of punishment unacceptable in a civilized state. Regrettably this court's experience of the criminal justice process in the Kingdom indicates that lengthy delays are the rule rather than the exception .... It is not at all uncommon for accused persons to spend several years in detention before verdict .... Bolofo p. 72

c) Whilst there may well be circumstances in which urgency compels informality, the correct approach – especially where evidence is tendered by an applicant – is to place facts before the court on oath explaining why an adjournment and continued detention are necessary or why bail should be refused.

d) Applications for bail are strictly not criminal in nature. The process is investigatory and inquisitorial. The court seeks information which will enable it to exercise a judicial discretion whether it is in the interests of justice to grant bail or not:

Since the concept 'in the interests of justice' is not a factual matter, it follows that there can be no question of there being the onus of proof. The onus of proof is nothing other but an aid used by a court to determine which party has to suffer defeat if insufficient grounds were submitted for a finding on a factual issue.
Accordingly where the presiding officer has to exercise a discretion in a bail application it would, in my view, be wrong of him to simply sit back and, figuratively speaking, hold the scales, waiting for the state to present [sufficient] reasons why an accused should not be released on bail. He therefore has to ensure that he has sufficient information to enable him to exercise his discretion in a judicial manner. Therefore, in my opinion, he is required to act in an investigative or inquisitorial manner. Bolofo p. 73

3. Conditions upon which Bail must be granted

Malone states that, "The fundamental test that governs a decision whether to grant or to withhold bail is whether the probability is that a defendant will or will not appear at his trial."

He goes on to say that:

> *It must be obvious to anyone that the test is often difficult of application for the reason that there may be no evidence in the sense that we understand evidence and there may be much speculation. The law, however, assists in the application of that test by directing you to take recount of the following considerations:*
>
> *i) that in certain instances (eg. a charge of murder), it forbids the grant of bail.*
> *(Compare to Article 5(5) of the Belize Constitution. The Constitution places no limitation on bail. It allows for bail to be granted on reasonable conditions for all offences.)*
>
> *ii) the nature of the accusation.*
>
> *iii) the nature of the evidence in support of the accusation*
>
> *iv) the severity of the punishment which conviction will entail*
>
> *v) the character and behaviour of the defendant.*
>
> *vi) whether the sureties are independent or indemnified by the defendant.*

And added

> Each of these references is a separate and distinct reference. By that I mean that the decision to grant or withhold bail does not require the absence or, as the case may be, the presence of all the references. The decision may be founded on any one or more of the references.

Compare these considerations to the elaborate and instructive considerations set out admirably in the judgment of Bolofo at pp. 74 & 75 as follows:

1. *Is it more likely that the accused will stand his trial or is it more likely that he will abscond and forfeit his bail? The determination of that issue involves a consideration of other sub-issues such as: (a) how deep are his emotional, occupational and family roots within the country where he is to stand trial; (b) what are his assets in that country; (c) what are the means that he has to flee from the country; (d) how much can he afford the forfeiture of the bail money; (e) what travel documents he has to enable him to leave the country; (f) what arrangements exist or may later exist to extradite him if he flees to another country; (g) how inherently serious is the offence in respect of which he is charged; (h) how strong is the case against him and how much inducement there would therefore be for him to avoid standing trial; (i) how severe is the punishment likely to be if he is found guilty; (j) how stringent are the conditions of his bail and how difficult would it be for him to evade effective policing of his movements.*

2. *The second question which needs to be considered is whether there is reasonable likelihood that, if the accused is released on bail, he will tamper with witnesses or interfere with the relevant evidence or cause such evidence to be suppressed or distorted. This issue again involves an examination of other factors such as: (a) whether or not he is aware of the identity of such witnesses or the nature of such evidence; (b) whether or not the witnesses concerned have already made their statements and committed themselves to give evidence or whether it is still the subject-matter of continuing investigations; (c) what the accused's relationship is with such witnesses and whether or not it is likely that they may be influenced or intimidated by him; (d) whether or not any condition preventing communication between such witnesses and the accused can effectively be policed.*

3. *A third consideration to be taken into account is how prejudicial it might be for the accused in all the circumstances to be kept in custody by being denied bail. This would involve again an examination of other issues such as, for example, (a) the duration of the period for which he has already been incarcerated, if any; (b) the duration of the period during which he will have to be in custody before his trial is completed; (c) the cause of any delay in the completion of his trial and whether or not the accused is partially or wholly to be blamed for such a delay; (d) the extent to which the accused needs to continue working in order to meet his financial obligations; (e) the extent to which he might be prejudiced ....*

4. *Whenever possible the Director of Public Prosecutions' opposition should be premised upon evidence properly*

placed before the court. There will always be exceptions such as, for example, cases of great urgency. These would permit of exception, but the approach adopted by Mon[illegible] J referred to above is a salutary one deserving a general application.

5. *The court must never allow itself to abrogate its responsibilities in this respect. It, and it alone is to balance the scale, weighing the conflicting interest of the community on the one hand and that of the accused's fundamental right to freedom on the other. The attitude of the Director of Public Prosecutions is a relevant consideration; however, evidence is required in order to enlighten the court as to why he has adopted such a view.*

PART II

AN APPROACH AS TO SENTENCING

I. The exercise of judicial sentencing discretion is guided by common law sentencing objectives and statutes. Whilst the objectives of sentencing are traditionally stated as retribution, deterrence, denunciation, rehabilitation and incapacitation, tension does arise between these objectives. They are guide-posts to the appropriate sentence but point in different directions i.e. The tension between juvenile justice or young first-time offenders as opposed to young offenders who conduct themselves like adults and commit crimes involving violence of considerable gravity. Sentencing may focus on protection of the community by giving effect to retributive and deterrent elements of sentencing rather than rehabilitation.

II. **The Objectives of Sentencing**

1. Retribution – is the notion that a guilty person should suffer the punishment he deserves as an important aim of sentencing. It may exclude particular reference to the circumstances of the individual offender and prospects of rehabilitation.

2. Deterrence – focuses attention on specific deterrence to discourage the offender from committing further crimes and general deterrence to discourage others by the example of the punishment from committing crime. The community is protected by the message that crime would be appropriately punished.

3. Denunciation – places emphasis on the imposition of sentences the severity of which makes a statement that the offence would not be countenanced by society. It is akin to deterrence and aims at assuaging victims of crime.

4. Rehabilitation – emphasizes change in the offender's behaviour in the interest of the community. It tackles the factors that lead to the commission of crime and seek to accurately identify them and focus attention on treatment or assistance to remove the causes of unacceptable behaviour.

5. Incapacitation – is the notion of denying the offender the opportunity of committing further crimes through incarceration. It is justified by the concept that society is to be protected from those likely to engage in repeated serious violent criminal conduct. Full-time imprisonment is the gravest sanction and the punishment of last resort.

III. **Social Values and Sentencing Policy**

It should not be lost on us that though the common law jurisdictions lead to each other, the Magistrate is at the frontier of the criminal justice system, should be slow in accepting the sentencing guidelines or practices of foreign jurisdictions, especially of the United Kindgom. Chief Justice Malone alluded to this in his "Guide on Bail" 25 years ago:

> *There is the need to safeguard and protect society. Recent developments in the United Kingdom, Canada and the United States of America have increasingly laid emphasis on liberty as against keeping persons in custody. Those developments have been effected by changes in the law. Those changes have not however been made here. Accordingly we must follow our law and not the laws of other countries....*

The United States of America recently again moved towards incarceration having one of the largest inmate population in its prisons with the introduction of the mandatory prison sentencing for three felony convictions: "three strikes you are out."

The social or cultural philosophies inherent in the sentencing practice of a country as opposed to the other are seen in the clear manifestation of juvenile discipline. Europe and America declared whipping or smacking of children as a form of child abuse. This declaration was taken to the forum of the United Nations and adopted as a convention. Sooner or later the United States was overwhelmed with juvenile crime especially in the use of firearms and homicide. The protection given to children was removed through domestic legislation and children as young as nine years of age are arraigned and tried in open court as adults and subjected to adult retributive sentences:

> *On analysis, the sentencing policies of the courts of any country are governed by the philosophy adopted in respect of penology, such research as may have been conducted into for example, the causes of crime and the effectiveness of particular sentences and the application of both of these to the actual*

circumstances arising in that country at any given time. The philosophy underlying penology involves considerations of the reasons for punishment and the balance to be held between, for example, the need to reform or to protect the public from the activities of the offender, the requirement that the sentence should mark the gravity of the offence so that the public may be reassured that the criminal justice system sufficiently reflects its concerns as to retain its confidence and, of course, there is the need to deter both the offenders personally and potential offenders generally, though the public often have an exaggerated idea of the efficacy of deterrent sentences. per Hytner JA in R v Todd [1996]2 LRC 716 at 720 (Isle of Man).

IV. Form

Sentencing may take the forms of imprisonment, fine, probation, bond, community service, and mandated rehabilitative order. Penal statutes create offences declaring a particular conduct a crime and institute an appropriate punishment as sentence. The question of approach to sentencing is difficult and complex since the legislature traditionally set maximum sentences leaving the courts with the discretion to impose appropriate sentences that adequately "fit the crime." The imposition of sentence by the courts often-times invites the intrusion of the Executive and the Legislature in the following circumstances:

1. In the face of public agitation against escalation of crime the Court is the first victim accused of lack of response in not imposing deterrent sentences.

2. The Legislature may amend existing legislation through the introduction of mandatory minimum sentences or enhanced sentences for particular crimes.

The attempt to stifle and constrain judicial discretion is as misguided as it is short sighted. A major feature of common law sentencing principles is the wide discretion which resides in the sentencing judge to determine punishment to be imposed on the offender. The judge makes efforts to make the punishment deserving of the crime and the circumstances of the offender as near as may be. It is a discretion that takes account of factors relevant to the offence and offender.

Attempts to legislate away sentencing discretion compromise the flexibility and evolutionary nature of the common law discretion, which is capable of adapting to changes in society:

> *The rationale for vesting discretionary power in judges is based upon long experience of the processes of decision-making, which shows that there are certain classes of cases which are only capable of being justly determined by the exercise of a discretion rather than by the application of rigid, minutely defined rules laid down in advance. No amount of a priori theorizing about sentencing can prevail over that simple empirical conclusion derived from centuries of judicial experience.* per Sir Guy Green, CJ in R v Radich [1954] 1 NZLR 86 at 87 (Tasmania)

V. Sentencing Practice and Guidelines

Though it is far-fetched that similarity of conduct and antecedents of offenders would be the same, consistency remains a primary object of sentencing. Sentence should be within the range of sentences appropriate for particular offences guided by the gravity of the offence and the subjective circumstances of the offender:

> *It is clearly in the public interest that in general courts ... should develop a reasonable level of uniformity in sentencing for particular offences. Substantial disparity of sentencing between one court and another leads to feelings of unfairness and consequent loss of confidence in the courts.* R v. Todd op. cit. p. 720

Appellate courts formulate for trial courts guideline judgments that go beyond the facts of a particular case setting sentencing scales. The purposes of these guidelines are to foster consistency in the legal system by bringing sentences in line with public expectations and to deter potential offenders by raising awareness that particular offences will attract particular levels of sentence. Unfortunately there are few guideline judgments in Belize at the moment. A plea to the Attorney General's Ministry that a consultant be hired to produce for consideration of the bench a sentencing manual is timely. In the meantime, periodic conferences of magistrates on the subject should be useful. A common approach to sentences in respect of certain offences can be adopted in these conferences.

To aid the sentencing procedure, instant information by electronic means should be available to courts giving them access to the Police Criminal Records Office. The antecedents of offenders should aid proportionality in sentencing and avoid the imposition of minimal sentences or excessive, arbitrary or capricious punishments.

VI. In closing it may be useful to look at two guideline judgments, one decided in Malaysia and the other by the Supreme Court of Belize.

1. Public Prosecutor v. Muhari bin Mohd Jani and Another [1966] 4 L RC 728:

   Two police officers had in their custody the deceased. The police officers caused injury to the suspect in the process of interrogation during a period of nine and a half days. The two police officers were charged under the laws of Malaysia with the offence of causing voluntary hurt to the deceased for the purpose of extort-

ing from him information which might lead to the detection of the offence of housebreaking of a particular office. At their trial they pleaded guilty. The punishment for the offence is a term of imprisonment which extends to seven years and a fine. The trial judge sentenced the two policemen to 18 months imprisonment. The prosecution did not appeal but the brother of the deceased filed a motion in the High Court in which he sought a review of the sentence on the ground that the sentence was manifestly inadequate having regard to the grave nature of the offence.

The guidelines in the judgment are quite instructive:

Discretion: *There is thus a discretion on the part of the court to determine the term of imprisonment which it may impose on a convicted person for the offence but the purpose of discretion is certainly to allow the sentencer to select the sentences which he believes to be the most appropriate in the individual case, considering both the facts of the case and any reports on the offender's character. The purpose of discretion is surely not to enable individual judges and magistrates to pursue purely personal sentencing preferences.*

Retribution, Public Interest or Opinion: *In sentencing generally the public's interest must necessarily be one of the prime considerations ... public interest should never be relegated to the background and must of necessity assume the foremost importance. There is however, another aspect of retribution which is overlooked: it is that society, through the courts, must show its abhorrence of particular types of crime, and the only way in which they, the courts, can do this is by the sentence they pass. The courts do not have to reflect public opinion. On the other hand, courts must not disregard it. Perhaps the main duty of the court is to lead public opinion.*

Deterrence: *The result of third degree methods or of actual torture or beating such as in this case must be that innocent persons might well be convicted, confessions being forced from them which are false. In almost every case in which a confession is recorded, in criminal courts, it is alleged by the defence that the police have resorted to methods such as these. It is seldom, however, that an offence of this nature is or can be proved. It clearly is the duty of the courts when a case of this kind is proved to pass sentences which may have a deterrent effect.*
Members of the force who do their duty in accordance with the law will receive our and the public's support and encouragement, but those who treat suspects in a cruel manner can expect to receive only very severe punishments from the courts.
There is another compelling consideration to take into account. Police officers are custodians of the law and they have to uphold,

not breach, the law. By subjecting members of the public to acts of violence, they in fact infract the very law that prohibits the infliction of violence by any person on another and they incalculably undermine and subvert the confidence and trust placed by the public in our force. The judge should have considered the grave injury done to the police force and to the public's trust in it. The judge .... also erred in principle when she said that the offences were committed by the two respondents while they were performing their official duties and treated that as a mitigating factor. Over zealousness which involves such blatant breaching of the law with the use of violence can never be a mitigating factor.

Proportionality: *The sentence of a sentencer must not be such that it is out of proportion to the gravity of the offence on which the offender has been convicted.*
The prescribing of a maximum penalty in respect of an offence not only marks the limits of the court's discretionary power as to sentence, it also ordinarily prescribes what the penalty should be in the more serious types of cases falling within the relevant class of the offence meriting the maximum punishment prescribed.
The principle of holding in abeyance maximum sentence for the most serious likely instances of the offence should mean that an offender who pleads guilty does not receive the maximum sentence. His plea of guilt provides him with mitigation, so the sentencing court must leave room for the passing of a more severe sentence in a case where the offence is just as grave and the offender pleads not guilty.

2. Police Constable No. 235 Frank Thompson v. Alberto Bartley, Supreme Court (Appeal No. 7 of 1984) Moe, CJ (unreported):

Bartley was charged before the Magistrate in the Orange Walk District with possession of 940 pounds of Indian hemp and four drums of aviation fuel without the permission of the Director of Civil Aviation. He was convicted on his own plea on the 7th of May, 1984. The Magistrate sentenced him to a fine of $15,000.00 plus $5.00 costs and in default of payment he was to serve an imprisonment of two years. He was fined $1,000.00 for the possession of aviation fuel and in default he was to serve six months imprisonment. The prosecution appealed against the sentence mainly on the ground that the sentence was unduly lenient.

The Magistrate stated as reasons for the sentence that:

a). The Respondent entered a guilty plea.
b). He was previously convicted for possession of drugs but in respect of small quantities. The first conviction in 1975 and the second in 1980.

c). The Respondent dealt in drugs on a commercial scale for the first time.

d). The Respondent expressed remorse about his act.

Chief Justice Moe set aside the sentence and imposed a term of imprisonment for nine months and a fine of $25,000.00 and in default, two months imprisonment. He ordered forfeiture of the van in which the drugs were carried. The Chief Justice gave the following sentencing guidelines which raised issues of the prevalence of the crime, public interest, gravity of the offence, the antecedent record of the offender, and deterrence.

> *This appeal provides me with an opportunity to deal with a matter which is causing much concern. It appears that Magistrates have been treating offences against the Dangerous Drugs Ordinance Chapter 85 as less serious than they really are; firstly, less serious than the legislature has indicated they are to be regarded and secondly, less serious than the community as a whole would wish. It is true that one cannot say in advance what the sentence is to be in any particular case but I must stress that the courts, both superior and inferior, have a duty to reflect those concerns.*
>
> *In determining sentence, the gravity of the offence itself is to be considered; the maximum penalty for the offence under review is a fine of $100,000.00 or imprisonment for five years or both such fine and imprisonment. The prevalence of the offence must be taken into account – the offence under review has increased at an alarming rate and magistrates in every judicial district are dealing with many of these cases. The previous convictions of the accused for the particular offence are to be considered. In this case, the Respondent had two such convictions. The circumstances surrounding the offence, which may be aggravating or mitigating, are to be considered. It has to be borne in mind that the court's duty encompasses not only punishing the offender, but also deterring him and others from committing similar offences. In 1980 in the Inferior Court Appeal of Austin and Godshall v. A.I.P. Herrera I took the opportunity to demonstrate the kind of sentence which may be imposed in the circumstances of that case when the maximum penalty had been set at $10,000 fine and imprisonment for one year. Since then the legislature has found it necessary to stipulate*

> *general guide to Magistrates as to the kind of sentence appropriate in the kind or circumstances of this case.*
>
> *In my view in the instant case the amount of 940 pounds of Indian hemp has to be taken into account. The amount was already parceled into 32 sacks, driven to an airstrip where an airplane arrived. The fact that it was an exercise on a commercial scale as counsel for the Respondent himself implied in his plea had to be taken into account. These would be in addition to matters already pointed out. It is evident that the Magistrate did not give consideration to all these matters which he ought to have taken into account nor bore in mind certain principles applicable when imposing a sentence. I agree that the sentence in this case was unduly lenient.*