

# CLANT CONFERENCE

July 1999 – BALI

## SERIOUSLY SEXY CRIMINAL TRIAL PRACTICE?

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### INTRODUCTION

Richard Coates has outlined reforms to legal practice in the criminal law setting which are being undertaken or proposed in a number of jurisdictions. While many of those reforms are worth considering in Northern Territory, it is suggested here that the most pressing need for change to the way we practice criminal law in the Northern Territory is the introduction of a procedure to encourage the early identification of matters which are capable of being resolved properly by guilty plea. It is suggested this should be the *focus* of any changes to criminal procedure in the Northern Territory. Other jurisdictions, and certainly a number of suggestions concerned with case management have focused on the "long and complex trial": (eg Dr Chris Corns, *Anatomy of Long Criminal Trials*, AIJA, 1997), and, generally with the management of contentious matters.

In the Northern Territory, lengthy criminal trials are *not* the norm. Further, the practice for some time has been that the trial judge lists lengthy matters for a series of mentions to raise and resolve pre-trial issues. One of the practical difficulties with lengthy trials in the Northern Territory is obtaining the hearing time as lengthy trials compete with trials which already have been "booked in" for hearing.

The vast majority of trials in the Northern Territory are completed within one week. Many of these shorter trials, (as will be seen below), are booked in for trial yet are resolved in some other way, often close to or on the date of the commencement of the trial. Apart from the unnecessary stresses on victims, witnesses and the accused person (who may have spent considerable time in custody), the unnecessary booking up of judge time impacts adversely on other matters which await listing. It is suggested here that if we can agree on ways to manage our more ordinary cases, especially isolating pleas earlier, many of the other issues concerned with case management, as have been raised in other jurisdictions, would to a substantial degree, look after themselves. I question whether some elaborate form of new rules is needed in the Northern Territory. The temptation would be to "test" them to the maximum. Many matters are resolved smoothly and the processes appear to work well. It is suggested here that what we practitioners should focus on is an improvement in our practices concerning the more "run-of-the-mill" cases.

### **A Snap Shot of Matters listed September-October 1998 in the Northern Territory Supreme Court**

I chose September-October 1998 as a period which would represent a cross-section of matters which at some stage were listed for trial. The reason for that period being chosen was that according to the lists held in the ODPP, it was to be a busy trial period. I also had the sense that in *fact* not many matters actually proceeded.

The information included in this snap-shot study relies on retrieval of past trial lists made internally at ODPP for our purposes. In some instances the files were not available readily to check the information retrieved. I therefore apologise in advance if any matters have been omitted. The information supplied does not include dates of and content of relevant correspondence and other internal matters which some times explain the course which a party to proceedings has taken.

The material provided includes only material which would usually be available in any event on the public record. The point I am attempting to make in this paper is not the "pros and cons" of the decisions taken by the defence or the prosecution at any point in the proceedings, but to emphasise that overall, we as practitioners need to take more care with the listing of criminal matters at an earlier stage in the proceedings.

From the ODPP records currently available and retrievable it would appear that in September and October 1998 a total of 26 matters were listed at some stage for trial in that period.

**Here is how they were finally resolved:**

**Proceeded as trial with jury: 1**

**Proceeded as voir dire: 1**

**Voir Dire followed by plea: 2**

**Proceeded as plea either prior to date of trial, on date of commencement of trial or subsequently: 13**

**Nolle prosequi entered on all charges: 1**

**Nolle prosequi entered with "back-up" charges proceeding in CSJ: 2**

**No appearance of accused – matter to be finalised: 3**

**Adjournment of trial – matter to be finalised: 3**

In some cases, the vacation of the trial date was arranged early enough to enable other matters to be listed: (eg Isobel Mamarika; Trevor Bell, Margaret Sylvester), however, in most instances, the vacation of the date was too close to the trial date to allow the listing of another jury trial. What follows are the brief details which comprise this snapshot.

**BILL BAYUMUNDI RAPSIN**

Date of offence:	17 April 1997
Committed for trial:	3 February 1998
Primary Charge:	Manslaughter
Indictment filed:	3 February 1998

**Trial Listings:** On 30 March 1998, set down for trial 18 May 1998 as a back-up trial. Confirmed on 18 April 1998. Did not proceed as it was anticipated the head trial would proceed. On 1 June 1998, set down for back-up trial on 23 September 1998. 16 September 1998, back-up trial vacated.

**Final Resolution of Matter:** Nolle Prosequi filed 28 September 1998. 27 October 1998 Court of Summary Jurisdiction. Plea of guilty entered to most matters on complaint. (Convicted and fined, total of \$1980).

**Further notes:** Committal was adjourned a number of times awaiting Coroner's report and forensic statements.

### **ISOBEL MAMARIKA**

**Date of offence:** 8 November 1995

**Committed for trial:** 26 February 1997

**Primary Charge:** Attempted Murder

**Indictment Filed:** 7 April 1997

Indicted on cause grievous harm

**Trial Listings:** Listed for back-up trial 22/9/97 for 3 days. Vacated on 29/9/97 as head trial proceeding. Listed for back-up trial 27/4/98 for 3 days and *head trial* 14/9/98. Listed for mention 5/5/98 and plea 9/6/98. 1/6/98 no appearance of accused, trial date vacated.

**Final Resolution of Matter:** Plea to indictment on 9/6/98.  
10/6/98, sentenced 3 years, backdated to 31  
March '98, non parole period 18 months.

**Further notes:** Long delay between charge and committal  
appears to be due to non-appearance on the  
part of accused person. Accused on bail  
throughout *most* of the relevant period. Plea  
changed early enough to use September date.

### **TREVOR BELL**

**Date of Offence:** 8 May 1996

**Committed for trial:** 17 October 1996

**Primary Charge:** Cause Grievous Harm

**Indictment Filed:** 4 November 1996

**Relevant Dates:** On 4 November 1996, set down for back-up  
trial 14 April 1997, head trial, 25 September  
1997. No appearance on 14 April 1997. On  
27 October 1997, set down for back-up trial  
5 May 1998, head trial 1 *September 1998*.  
27 April 1998 Crown application to vacate  
back-up trial. New back-up trial date given  
for 5 August 1998 and head trial 1  
September 1998.

**Final Resolution of Matter:** 30 July 1998, plea to aggravated assault.  
Sentenced to 8 months imprisonment back-  
dated to 12 November 1997.

**Notes:** There were many non-appearances by  
accused on mention dates. Accused had  
spent a total of 16 months in custody by the  
time he was sentenced. One trial date was

vacated by Crown as witnesses could not be located.

**DARREN KENNEDY**

Date of Offence: 10 February 1998  
 Committed for trial: 20 April 1998  
 Primary Charge; Sexual intercourse without consent  
 Indictment filed: 4 August 1998, (served on accused, 29 April 1998).  
 Relevant Dates: On 5 May 1998, listed for back-up trial 18 August 1998 (4 days), head trial 23/9/98 (Remanded in custody).  
 Final Resolution of Matter: Plea of guilty to attempt sexual intercourse without consent accepted in full satisfaction of indictment. Sentenced, 2 years imprisonment, non parole period 12 months, to commence on 13 February 1998.

**RORY McLEAN**

Date of offence: 1 December 1995  
 Committed for trial: 4 December 1996  
 Primary Charge: Unlawful entry, steal  
 Indictment filed: 4 February 1997  
 Trial listings: Initially listed for trial 7/4/97 (back-up) but did not proceed as head trial proceeded. Listed again as back-up trial for 25/9/97. Vacated. Listed for back-up trial 30 April 1998 and head trial 17/9/98.  
 Final Resolution of Matter: Nolle prosequi filed on 27/4/98. Back-up charges listed before CSJ – defendant did not appear – warrant issued. Adjourned to

## Notes:

see if defendant could be contacted. Listed again 18/5/98 in CSJ – No appearance. Matter mentioned in Supreme Court 14 times before nolle filed.

**CRUSOE GURDAL**

Date of offence: 4 January 1998  
 Committed for trial: 16 June 1998  
 Primary Charge: Cause grievous harm  
 Indictment Filed: 4 August 1998  
 Trial Listings: Matter listed for trial 1/9/98 (back-up), although accused did not appear at initial arraignments. Warrant issued 6/7/98. Trial confirmed 4/8/98. 28/8/98 trial vacated as accused not yet apprehended on warrant and not appeared.  
 Final Resolution: Matter not finalised. Warrant still out for accused.

**ANDREW COOPER**

Date of offence:  
 Committed for trial: 4 December 1997  
 Primary Charge: Unlawful entry/stealing  
 Indictment Filed: 3 February 1998  
 Trial Listings: Listed for plea 9/6/98 – date vacated as change of plea indicated. Trial confirmed on 4/8/98. Listed for 1/9/98 back-up. 1/9/98, plea of guilty to two charges on new indictment. Sentenced 6 months imprisonment on each charge – concurrent – suspended forthwith, s40 *Sentencing Act*.

Notes: Was reduction in charges on indictment negotiated between Defence and Crown.

### **KENNETH DERMOTT O'BRIEN**

Date of offences: Between 21 May 1996 and 21 January 1997

Committed for trial: 24 July 1997

Primary Charge: Aggravated Unlawful Entry x 7  
Stealing x 8

Indictment filed: 29 June 1997  
New Indictment 29 June 1998.

Trial Listings: Listed for back-up *voir dire* 29/6/98 (2 days) and for *voir dire* 29/10/98 (2 days).  
Head *Voir dire* (29/10/98) vacated on 5/5/98 as back-up *voir dire* commencing.

Final Resolution of Matter: Appears *voir dire* did not proceed but a plea of guilty to all counts on the indictment on 29/6/98.  
Sentenced on 4/9/98 to three years, backdated to 23/11/97 – suspended after 12 months. GBB for 2 years from date of release.

Further Notes: This matter was made remanet on three occasions after arraignment – result: 3 months between arraignment and *voir dire* listing.  
Accused spent substantial time in custody awaiting trial.

### **NIGEL BARKER**

Date of offence: 1 April 1997

Committed for trial: 23 September 1997



Primary Charge: Cultivate cannabis  
 Indictment filed: 27 October 1997  
 Trial Listings: Listed for back-up 20/4/98 and head trial  
 23/9/98. Defence ceased to act. Accused  
 did not appear at mentions of matter. Trial  
 date of 23/9/98 vacated on 5/5/98. Warrant  
 issued.  
 Final Resolution of Matter: Not resolved. Warrants issued.

### **GARY BLUTCHER**

Date of offence: 5 February 1998  
 Committed for trial: 29 April 1998  
 Primary Charge: Aggravated Dangerous Act Causing Death –  
 Whilst Intoxicated  
 Indictment filed: 6 November 1998  
 Trial Listings: 6/7/98 listed for a back-up trial on 19  
 October 1998 (4 days). (Darwin).  
 28/9/98 back-up trial vacated/listed for plea  
 on 9 November 1998 in the Katherine  
 Supreme Court Sittings.  
 Final Resolution of Matter: 10/11/98 Plea of guilty to primary charge.  
 Sentenced to 2 years imprisonment with a 12  
 month non-parole period.

### **CUMAIYI, CUMAIYI, CUMAIYI, JINJAIR, JINJAIR, JINJAIR, NARNDU (7 ACCUSED PERSONS)**

Date of offences: 14 September 1996  
 Committed for trial: 4 February 1997  
 Primary Charge(s): Aggravated unlawful entries, grievous harm,  
 associated charges  
 Indictment filed: 3 March 1997

**Trial Listings:** Listed for back-up trials 16/2/98 (7 days); vacated; listed again for **back-up trial 14/9/98**; 11/9/98 matters listed for plea 15/9/98

**Final Resolution of Matter:** All matters dealt with by plea after further negotiation of charges. Some matters nollied. Accused did not appear on 15/9/98. Sentencing hearings occurred in October and November 1998.

### **BRONWYN RANKIN**

**Date of offence:** 21 February 1998

**Committed for trial:** 9 June 1998

**Primary Charge:** Committed for trial on murder, indicted for manslaughter

**Indictment filed:** 6 July 1998

**Trial Listings:** Listed for head trial **12 October 1998; (5 days)**. Matter proceeded as voir dire, 12-16 October.

**Final Resolution of Matter:** Currently listed for back-up trial 3/8/99 and head trial 6/9/99.

### **MARK KUIPER**

**Date of offence:** Between June '95 and February '96

**Committed for trial:** 11 November 1996

**Primary charge:** Unlawful entry (multiple offences)

**Trial listings:** Listed for back-up trial 29/9/97; head trial 15/12/97; listed for plea 13/6/97; listed for **back-up trial 14/9/98**; 11/9/98 nolle mentioned in court; 14/9/98 nolle prosequi filed.

Final disposition: Nolle prosequi.

**DANIEL HARRISON**

Date of offence: 8 October 1997

Committed for trial: 19 January 1998

Primary Charge: Sexual intercourse without consent x 7

Indictment filed:

Trial Listings: 30/3/98 back-up trial listed for 3/6/98 (3 days). Head trial listed for 23/9/98.  
1/6/98 back-up trial vacated. Listed for plea 12/8/98

Final Resolution of Matter: 12/8/98 – plea guilty to 2 counts, in full satisfaction of the indictment. Sentenced for count one; five years imprisonment, for count two; eight and a half years imprisonment (concurrent). Back-dated to 16 December 1997. NPP of 6 years.

Further Notes: The plea took place about a month earlier than the listed head trial/about two months later than the listed back-up trial.

**ERNEST CEDRIC**

Date of offence: 28 February 1997

Committed for trial: 29 April 1997

Indictment filed: 26 May 1997

Primary Charge: Unlawful sexual intercourse

Trial listings: Listed for back-up trial, 8/9/97 (4 days) re-listed for back-up trial, 6/4/98; and head trial 7/9/98. 6/4/98 – matter not reach – adjourned to 7/8/98. Head trial vacated –

new trial date, 24/8/98. No appearance at new trial date. Warrant issued.

Final Resolution of Matter: Not resolved.

### **JOHN WEBER**

Date of offence: 11 March 1994

Committed for trial: 17 July 1997

Primary charge(s): Unlawful entries

Indictment filed: 5 August 1997

Trial Listings: Back-up trial 2/3/98 (3 days). Head trial 29/9/97. 2/3/98 – failed to appear. New listing for 29/9/98. No appearance at pre-trial mention – warrant issued. No appearance – trial vacated

Final Resolution of Matter: Plea of guilty to all counts on indictment – sentenced on 3 March 1999 to 3 years imprisonment, fully suspended, conditions on bond.

Further notes: Accused's representatives withdrew from record as there were many non-appearances.

### **PAUL KANARIS**

Date of offence: 8 March 1996

Committed for trial: 22 August 1997

Primary Charge: Possess Dangerous Drug and related charge

Trial Listings: Listed for head trial *21 September 1998* (15 days). 28 August, application by Crown to vacate trial – unopposed – trial could not run simultaneously with another matter.

Final resolution of matter: Listed for trial 4/10/99

**BRETT MILES**

Date of offence: 18 January 1997  
 Committed for trial: 29 August 1997  
 Primary charge: Supply dangerous drug  
 Indictment filed: 29 September 1997  
 Trial listings: Listed for back-up trial, 27/4/98; head trial  
 19/10/98. Trial proceeded. Accused  
 appeared unrepresented. Trial concluded  
 28/10/98.  
 Final resolution of matter: Currently under appeal.

**PHILLIP JUNGALA**

Date of arrest: 1 May 1996  
 Committed for trial: August 1996  
 Primary charge: Aggravated Assault (s188(1)(2)(b),(c),(k)  
 Trial listings: Set down for head trial, 9/3/97 (3 days);  
 Matter not reached on 9/3/97. New listing,  
 25/5/98 as back-up. New listing 29/9/98 as  
 back-up. Plea entered on 29/9/98  
 Final Resolution of Matter: Plea on 29/9/98. Convicted and sentenced  
 to 18 months imprisonment fully suspended.  
 Conditions.  
 Notes: Many non-appearances through history of  
 this matter.

**CHARLIE BARA**

Committed for trial: 25 November 1997  
 Primary Charge: Murder  
 Indictment filed: 2 March 1998

**Trial listings:** Back-up trial 28/9/98. Voir dire proceeded. Ruling on 30/9/98. Trial proceeded 1/10/98. No appearance of accused 1/10/98. Trial Judge ruled a few days later that matter could not proceed further as a result of newspaper article. Listed for plea 7/4/99. Defence representatives withdrew from record. Plea withdrawn. Listed again for plea 17/6/99.

**Final resolution:** Plea to manslaughter, 17/6/99 in full satisfaction. Sentenced 18/6/99.

**Notes:** Accepted accused acted with diminished responsibility.

**MARK STEVENSON**

**Date of offence:** 12 March 1998

**Primary charge:**

**Committal for trial:** 7 May 1998

**Indictment filed:** 1 June 1998

**Trial listings:** Listed for 2 day trial 29/10/98. Vacated for plea which was negotiated on 23/10/98; plea to aggravated assault heard 30/10/98.

**Final Resolution of Matter:** Sentenced to 3.5 years imprisonment, NPP of 21 months, back-dated to 12 March 1998.

**JOSEPH LAGDON**

**Date of offence:** 25 May 1997

**Committed for trial:** 16 July 1998

**Indictment filed:** 4 August 1998

**Primary Charge:** Fabricating evidence

Trial listings: Set down for back-up trial 26 October 1998  
(3 days).  
19 October 1998 – trial vacated at Crown  
request.

Notes: Matter still in list.

### **MICHELE WATT**

Date arrested: 12 December 1994  
First arraignment: 1 June 1996  
Primary charge: Stealing  
Trial listings: Back-up trial 17/3/97; trial 5/8/97. 5/8/97  
trial vacated; back-up trial 25/5/98; *head  
trial 14/9/98 (7 days).*

Final resolution of matter: Plea of guilty to one count of stealing.  
Sentence currently under appeal.

### **VIVIAN MARGARET SILVESTER**

Date of offence: 2 August 1996  
Committed for trial: 7 March 1997  
Primary Charge: Stealing  
Indictment filed: Sometime after 25 March 1997  
Trial Listings: 6/5/97; back-up trial listed for 22/9/97  
10/9/97 Defence successfully applies for  
back-up trial to be vacated  
29/9/97 back-up trial listed for 23/3/98.  
*Trial listed for 21/9/98*  
2/3/98 back-up trial changed to head trial

Final Resolution of Matter: 23/3/98 Pleas of guilty  
Sentenced to 4 months imprisonment.  
Restitution of \$25,000 to be paid by 30  
September 1998, in default 6 months.

**SHANE ANTHONY LITTLE**

Date of offence: Count 2: 19 October 1996  
 Count 4: Between 15 Oct and 23 Oct 1996  
 Count 5: Between 15 Oct and 23 Oct 1996

Committed for trial: 4 July 1997

Primary Charge: Count 5: supply amphetamine

Indictment filed: 1 September 1997

Trial Listings: 27/8/97 back trial listed for 25 May 1998,  
*head trial listed for 26 October 1998.*  
 1/12/97 change back-up trial to back-up voir dire 25 May 1998. 2/3/98 vacate back-up voir dire 25 May 1998. Vacate head trial and relist as voir dire 26 October 1998.

Final Resolution of Matter: 27/10/98 plea of guilty to counts 2,4 and 5 in full satisfaction of the indictment (back-up charges not proceeded with).  
 Sentenced for count 2: Fine \$1500; \$20 VL; 30 days imprisonment in default.  
 Count 4, fine \$200, \$20 VL, 5 days default.  
 Count 5, 15 months imprisonment fully suspended forthwith – 2 year s40(6) period commencing 27 October 1998.

**BARBARA DRUMM**

Date of offence: 7 May 1997

Committed for trial: 2 October 1997

Primary Charge: Unlawful possession of commercial quantity of cannabis

Indictment filed: 27 October 1997

Trial Listings 27/10/97 *head trial listed for 26/10/98*



31/8/98 head trial confirmed and will  
include a short voir dire  
28/9/98 head trial confirmed  
9/10/98 Crown application for an  
adjournment of the matter until after August  
1999 (see notes below).

Defence consents – head trial vacated  
1/3/99 head trial listed for 29/10/99

Final Resolution of Matter:

Yet to be resolved

Further notes:

A head trial was fixed on the very first  
arraignment day. The date was fixed for a  
day a full year from the arraignment day.  
The listing was cancelled because a crown  
witness had gone to remote Canada.

## **CONCLUSION**

The above snap-shot of how matters were concluded from the  
September/October 1998 sittings should lead us to re-think our processes.  
There has been a deal of discussion within the Criminal Lawyer's Association  
(NT) on what mechanisms might be available to encourage the early resolution  
of matters which can be properly resolved by plea or those matters which  
should not proceed at all. In general, many of the problems could be resolved  
by shifting the resources of both defence and prosecution into the earliest  
stages of the criminal process. This is discussed in Richard Coate's paper and  
is dealt with comprehensively by the Directors of Public Prosecution and the  
Directors of legal Aid Commissions in the "Best Practice Model".

As previously stated, it is more with the 'run of the mill' cases that we should  
be concerned. To that end, the suggestion which has been taken up in Victoria  
and mentioned in Richard Coate's paper concerning "post-committal  
conferences" would serve our needs well in the Northern Territory. The

committing magistrate has knowledge of the papers, and if oral evidence has been given can make an assessment of the strengths and weaknesses of the case. This procedure would be a better use of resources at the committal stage and assist in the early resolution of matters. "Resolution Discussions" taking place with a judicial officer have been considered effective in Canada: (June Phillips, "*Procedural Reform in Canada – Charge Screening, Disclosure, Resolution Discussions*", AIJA, Reform of Court Rules and Procedure in Criminal Cases, 3-4 July 1998, p43). This could be especially useful on the circuit courts where the tyranny of distance between committal and final resolution in the Supreme Court must be significant for all concerned. Indeed for Aboriginal witnesses and accused our Justice system must appear strange – punishment meted out years after the event. The opposite to the traditional system.

Resolution conferences with the committing magistrate could occur on the spot or by use of video/telephone conferencing. Obviously there would need to be a legislative change for this to occur. The reason I urge that resolution conferences be taken up by magistrates rather than by judicial resources (including registrars) of the Supreme Court is the familiarity of the committing magistrate with the issues. The advantages of ensuring that only matters which are *seriously* trials are set down in are as follows:

- More efficient use of public resources, such as court time, legal aid, prosecution preparation
- Less stress on witnesses and accused
- Less risk of accused person spending time on remand awaiting trial
- Reduced time between commission of the offence and (if guilty plea or found guilty) the eventual punishment – perhaps especially making the process more comprehensible to Aboriginal people
- More resources "freed up" to deal with the 'long and complex' matters.

On a brighter note, there is no doubt that even without legislative change, in appropriate cases, practitioners can facilitate the early resolution of matters. For example, Matthew Buckley was charged that on 3 February 1999 he committed murder. Prosecution disclosure was made earlier this year, fruitful discussions took place between the prosecution and defence, an ex officio indictment charging manslaughter was filed and the matter was listed for plea for 22 June 1999. He was to be sentenced on 25 June 1999. Now that is seriously sexy trial management.