CRIMINAL LAWYERS ASSOCIATION OF THE NORTHERN TERRITORY

In association with

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Twelve Months in the Magistrates Court

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CRIMINAL LAWYERS ASSOCIATION OF THE NORTHERN TERRITORY
BALI - 26 JUNE TO 2 JULY 1999

Theme : "A Just New Century – or just a new century?"

"TWELVE MONTHS IN THE MAGISTRATES' COURT"

(or how, where, when which what and why and ...
the good, the bad and the ugly)

H B Bradley

There appears to be much hype about the dawning of the new millennium so far as law reform is concerned. I do not believe there is any magic in the clock ticking over one last time 18 months from now. Planning for the future is no different now than it was two years ago nor three years hence. We need to hold firm those things which we do well and to improve on the things which are not done so well. Often the difficulty is in the assessment of what is right and what needs to be improved. Mandatory sentencing is one such topic where the community is divided. Among the broader urban community, there is probably considerable support for the idea of tougher sentencing, yet here in this forum it may be difficult to find many supporters of mandatory sentencing in its present form. The Government has its job to do in determining the policy in a democratic fashion. Lawyers have a right, indeed an obligation, to properly advise the Government of the views of the profession.

I highlight the above, not because I intend to speak in any way to the substance of this or any other law, but because it is an example of the way different people can perceive the way a court is functioning. The best judges of that are you, the regular court users, and I urge you to use this conference opportunity to let me and the other Magistrates attending know where the functions of the court can improve and how.

The topic I have been asked to speak on today is to comment on my twelve months or so in office in the Magistrates' Courts of the Northern Territory.

I suppose that, for those of you not lucky enough to be Territorians, I should say a little about the institution which I have joined. I certainly did not appreciate the breadth and depth of the jurisdiction or the penetration that it has into the lives of ordinary Territorians; those in trouble, those seeking redress and those only wanting to get on with the business of life. I suspect a good number of you too will be surprised.

I am immensely proud to be part of the court and so I thought I would reflect a little on what journalists are taught as the ....

HOW, WHERE, WHEN, WHICH, WHAT AND WHY

How did I get there?

In 1997, after 27 years in my firm, and after having managed it for the last 15 or so of those years, I decided it was time to retire from full-time practice. I refer to this as my "previous life". I had planned my life around travelling, mixed with some private, commercial and statutory appointments to support myself and my family in the ensuing years. I initially refused an offer of this appointment by the Attorney, but after some urging and upon reflection, it occurred to me that to see the other side could be an interesting and rewarding experience; particularly so in the Magistrates' Court which, as you will see later, I believe to be the heart and soul of the administration of justice for ordinary folk. I was duly appointed and commenced duty on 9 March 1998.

What's there?

The Magistrates' Courts are made up of 10 Magistrates and 2 Judicial Registrars. 7 Magistrates and 2 Judicial Registrars sit in Darwin – 1 Magistrate, Alisdair McGregor sits in Katherine and 2 further Magistrates,

Warren Donald and Cathy Deland, sit in Alice Springs. We are supported by a very dedicated and efficient team of Registrars, Deputy Registrars, Clerks, Orderlies and Monitors.

Where do we sit?

There are permanently manned courts in Darwin, Katherine, Alice Springs, Tennant Creek and Nhulunbuy. In addition, the Magistrates from each of the three main centres – Darwin, Katherine and Alice Springs – travel to approximately 20 circuit courts as far afield as Groote Eylandt, Lagamanu and Hermannsburg. These circuit courts are often conducted in very unusual surroundings, and while there is no relaxation of the rule of law, or the process of justice, the proceedings sometimes happen in circumstances which ordinary lawyers would not regard as being necessarily comfortable.

What do we do?

The major jurisdictions of the Magistrates' Courts are:-

- Court of Summary Jurisdiction;
- Local Court;
- Small Claims Court;
- Work Health Court;
- Family Matters Court;
- Juvenile Court;
- Mining Warden Court;
- Coroners' Court.

In addition to these courts which sit regularly, Magistrates sit on 12 Tribunals, including such things as the Firearms Appeals Tribunal, Legal Practitioners' Appeals Tribunal and the Escort Agency Licensing Appeals Tribunal. I have not yet had the pleasure of sitting on the latter.

Again, in addition to those tribunals, there are more than 30 statutory provisions for appeals to Magistrates, or usually the local court, from administrative decisions in parts of Government service. Some examples of these are appeals against the decision or order of the Anti-Discrimination Commissioner, appeals against the provision of an order by the Chief Inspector of Caravans, various appeals under the Consumer Affairs and Fair Trading Act and for review of decisions of the Director of Fisheries, etc. The list is very significant.

Further, there are more than 40 pieces of legislation making provision for application to be made to a Magistrate or one of our courts for various forms of relief. Most of these provide the extended general jurisdiction to the court. Some examples include Crimes Victims Assistance legislation, application for warrants, application for permission to renew a licence and applications for the destruction of certain animals or the seizure of goods, etc.

All in all a significant jurisdiction.

How much do we do?

The Magistrates' Court does the bulk of all the litigation in the Territory – approximately 97%. The following table consists of figures extracted from a national report on Government services in (1998)[1]. When looking at the figures it should be carefully borne in mind that, for the most part, the level of complexity for matters in Magistrates' Courts is much lower than the matters over which the Supreme Court presides. For procedural and financial reasons also, Magistrates are able to handle a high volume of work which can be turned over very quickly. The table also shows the efficiency with which the court operates. I have no doubt we can improve, but whether that is possible without a drop in standards is the most important issue.

[1] "Report on Government Services" Volume 1 (1998), Steering Committee for the Review of Commonwealth/State Service provision

TABLE OF STATISTICS

ITEM	MAGISTRATES' COURTS	SUPREME COURT
CRIMINAL LODGEMENTS	19454 98.5%	344 1.5%
CIVIL LODGEMENTS	7416 94.9%	417 5.1%
CRIMINAL HEARINGS	1607	53
CIVIL HEARINGS	826	9
% CRIMINAL CASES COMPLETED UNDER 6 MTHS	86%	53%
% CIVIL CASES COMPLETED UNDER 6 MONTHS	66%	45%
COST PER LODGEMENT – CRIMINAL	$180	$12259
COST PER LODGEMENT – CIVIL	$257	$5187

As I have said, I did not fully appreciate the magnitude of the task that Magistrates undertake when I accepted the position. Having done so I am extremely proud of the court and all of its personnel who are able, day after day, to keep this most important element of our community functioning.

THE GOOD THE BAD AND THE UGLY

Having then described the depth and breadth of the job which Magistrates undertake, I thought I would respond to the topic by identifying some of those

things which have struck me over the fifteen months of my time in the job. I must say at the outset that I have found the job rewarding and extremely challenging. My term is not fixed and I have no plans for immediate retirement.

At the time of commencing duty my enthusiasm was somewhat hastened along by the experience of a week's unemployment and the total lack of familiarity of being able to stay at home with my wife Sue and encroaching on her patch. As it turned out, after a few skirmishes, I ran for cover and started two or three days early by using the ruse of having to organise my office.

What then have I noticed during my time here? It is obviously much more than the whisper quiet submissions of Steve Southwood, the subtle delicacy of the submissions of Jon Tippett, or the uncomplicated brevity of Colin McDonald. Obviously one starts to see practitioners a little differently from the bench, although I admit to some considerable anxiety as to how they now perceive me! Perhaps during this conference you will enlighten me.

The Good

As indicated above, the breadth and depth of Magisterial work is very considerable. I have to say that the wide variety of work is a source of great pleasure. It would be nigh impossible, I believe, for a Magistrate to maintain both his sense of humour and work satisfaction if he were to be allocated to any one single or narrow area of work. My week, and those of other Magistrates, is almost always a mixed bag of criminal and civil work. Long cases are rare and it is usual, even for contested hearings, to last less than one week. The bulk of our work is in the nature of short applications, pleas and hearings.

There is a sense of freedom which I had not anticipated which enables me to make the decision which I think is right, rather than to be required (perhaps forced) to simply espouse the cause of another (the client). In my previous life, and no doubt in the lives of most of you present today, your task is, within

the limits of professional, ethical and judicial processes, to push your client's case to the maximum. In such circumstances some losses can be a relief and some wins worrisome.

Part of this freedom of which I speak is the sense of freedom that is provided to me and other Magistrates by the existence of the appeal process. It is very comforting to know that, at the end of the day, if some error, whether it be of a gross or minor nature occurs, then the same can be corrected elsewhere.

One matter which occurs to me in relation to this, is that it is not always necessary to appeal. There are times,I know, when I simply overlook a fundamental provision or forget the nature of a particular submission when making a decision in the hustle and bustle of a court day. In some such situations matters are capable of correction under the provisions of section 112 of the Northern Territory Sentencing Act. That section provides that where a court has, in connection with criminal proceedings, imposed a sentence that is not in accordance with law, or failed to impose a sentence that it was required to have imposed, it can re-open proceedings, give the parties an opportunity to be heard, and correct the error. I know of at least one case where I have been corrected by the Supreme Court in circumstances where the matter could have been handled under section 112. Other Magistrates have commented to me that they too know of occasions where appeals were not necessary or required in order for matters to be rectified. I urge members of the Criminal Bar to consider this aspect in the future when appeals are considered to correct simple mistakes or oversights; your client will achieve his result quickly and with less expense.

There appear before Magistrates each day a kaleidoscope of people, stories and events that are a picture of the life of our community. The picture is sometimes sobering but always interesting. The stories that people present as the reasons for having got themselves into trouble are many and varied, and whilst I am still very junior in the game, I am already hearing some stories for the 10th or 20th time. Michael Ward, previously of the Northern Territory Magistracy and subsequently a Magistrate in the ACT told me recently that

after 20 years on the Bench he offered to discharge, without penalty, any defendant who could come up with a novel excuse. His challenge was apparently never put to the test.

It is possible also, and I have appreciated the opportunity, to participate in law reform, both in so far as legislation itself is concerned such as recent amendments to the *Evidence Act*, and also in the process of the administration of law. With the assistance of fellow Magistrates, we contribute on topics which are of proper interest to us. It is perhaps necessary for me to say here, to dispel any existing doubts, that the role of Magistrates should and will always be limited to proper matters of law reform and the administration of justice. At no time is it the role of the Magistrate to provide any person, department or Government with legal advice. This does not, in my view, prevent Magistrates from speaking out on matters of law reform. Indeed some members in the audience today have complained bitterly that I have not done so in some situations but law reform and the urgings for it should I believe take place in a measured and unemotional environment when the mind, as well as the heart, is engaged.

I have been favoured, both by the current Attorney and by his predecessor, with a willingness to listen to any matters I have raised on either of those issues and, of course, to do with matters relevant to the operation of the court and its staff. Government has been and is a supporter of the court and I find this to be a favourable aspect of my appointment. Obviously, one does not get anything near all of what one would want in a perfect world, both because of differences of opinion and financial constraints. However I have found both the Government and relevant departments to be cooperative and responsive to the concerns of myself and other Magistrates.

One of the matters which I have supported is a scheme which enables Magistrates to complete written judgements within a reasonable time. Outstanding judgements are now monitored and additional time out of court will be given to Magistrates where they are unable, because of the pressure of work, to complete a difficult written decision within the space of 2-3 months.

At the present time there are only three decisions outstanding over 3 months and I am confident that this will completely disappear in the near future.

Court User Groups, already in place when I came to the Court, are still operating on a regular basis and we are hopeful of achieving changes to Rules and Practice Directions as a result of those meetings. I am willing, and indeed keen, to receive as many constructive submissions on the operation of the court as possible. One of the matters presently under consideration by Prosecution and Defence groups is a new procedure for criminal callovers. I am hopeful that at the next Criminal Court Users Group we will be able to look at the basis of a new process to ensure that the Court's time is most effectively used.

My particular interest over recent months has been my participation in the Juvenile Court and sentencing options available to that court. Without in any way participating in the current debate on Mandatory Sentencing I am delighted to be able to say that my concerns for children appear to be reflected by a broad spectrum of community organisations, corporations and individuals. Following my exposure to schemes in South Australia and other states, I have asked a number of people about the prospect of broadening sentencing options for young offenders to enable the court to require them to carry out a variety of programs which might be supervised by Correctional Services, but conducted by community groups, sporting associations and employers. I am hopeful that, over the next few months, a scheme will be established where the court can sentence an individual to a rehabilitative program for a period where, after an assessment of the individual's needs, he or she is directed into a program for the required period which is most likely to provide them with a basis for advancing their own life. It may be for example that a lad will express interest in football, in which case he may be required to attend training in a particular sports club for a period of 6 or 12 months. It may be that others are very interested in bush activities, in which case an organisation such as the Bow Hunters Club may take an interest in them. Community service might also be an element of a program. After the completion of such courses, individuals seeking employment may be able to

be offered employment for three month's work by employers some of whom have already indicated to me that they are prepared to give young people a go where they have undertaken a satisfactory rehabilitation program.

After obtaining the support of a number of private institutions and organisations around the community, I took the proposal to Government and I am delighted to say that all four of the Government Ministers I approached were enthusiastic and opportunities are now being opened up.

I cannot leave the area of appreciation without expressing my admiration for the work done by the individuals in the legal aid services who front up day after day, enthusiastically espousing their client's cause. These people probably conduct 70% of the criminal work of the court and, with few exceptions, I find them co-operative and, it seems to me, extremely hard working under very trying conditions. These comments are directed to all such officers, but particularly to those in the Aboriginal legal aid services, who overcome the barriers of culture and language, to deliver a service to people who all too often are displaced and confused.

All of these good things are available to me and I get paid !!

The Bad

With the job of course comes its responsibilities and whilst many of you may not have noticed, my consumption of alcohol has somewhat lessened since my appointment, and I have not been guilty of drinking and driving after more than two or three glasses of wine - something which I cannot say I did not sometimes take a punt on in my previous life. Overall, however, I have not limited my activities on a social or community basis, and I think it is important, perhaps more important for Magistrates than Judges, to continue to be part of all segments of the community to ensure that we cannot be criticised for being couped up in an ivory tower.

Time away from home is always unwelcome for me and I find that the two weeks or so that I spend in Alice Springs each year, and the occasional circuit court take me away from home and family more often than I would wish.

There are some matters which sometimes make life difficult in court - such things as unrepresented clients and underprepared counsel. Counsel who appear before the Supreme Court seldom in my experience do not have with them the necessary legislation or cases upon which they rely and they usually know the basis or purpose of the orders they seek. Not always so in the Magistrates' Courts. I know and acknowledge that I have been guilty of this myself if my previous life, but I nevertheless urge you all to be better prepared notwithstanding that you are only appearing before a "beak". Being properly prepared usually helps more than the court.

Unrepresented clients are in a different and difficult category. In both civil and criminal matters we constantly find that people are not represented. Any judicial officer in such a situation must take extra care. This needs to be done without in any way appearing to take sides or to prejudice the other side's case. I note also that the texts show that opposing Counsel in such situations have a separate obligation to ensure that the court is properly and fully informed of relevant matters.

The Supreme Court has recently made it clear that Magistrates need to be very careful in dealing with unrepresented clients. Often, in a busy court, it is easy for a Magistrate to overlook a procedural item, particularly where there appears to be no injustice being committed. I repeat.... thank goodness for the appeal process.

Unrepresented clients also present quite unpredictable results; often the toughest looking plaintiff will quietly consent to settlement proposals, while the mild mannered Clark Kent type can turn out to be the most determined of litigants with no idea really what legal remedy he is entitled to. Often they leave it to the court to resolve their case. In these circumstances we must do

what we think is best and, particularly in the Small Claims Court, justice is often metered out with a broad and blunt blade.

I do recall that last year, fresh with enthusiasm, I heard a small claim where both parties were, as is usual in that jurisdiction, unrepresented. It was the typical neighbourhood dispute involving two families who failed to get along and they came to court with claims and counter claims involving the construction and location of a fence, the placement of a decorative rock, the damage to, or removal, of a chicken pen, the parking of a caravan too close to a side fence and finally the tragic death of some young chickens as a result of damage having been occasioned to the said chicken pen. Rather than embarking on what I saw as a two to three day case, I attempted to mediate and resolve the matter. I can recall feeling very proud of myself when, after the mediation had taken place, I arranged for a series of orders by consent which included the giving of written apologies, the withdrawal of complaints and trespass notices and finally,the *coup de grace* to tie up the whole deal, was the purchase by one party of two five day old chickens for the children of the other. Having left the court, I felt proud to have saved the court so much time and to have mediated a settlement without increasing the apparent rancour between neighbours. The end of the story is, of course, that some eight months later one of my fellow Magistrates had to re-litigate some of the issues when the neighbours once again fell out. I am still not sure whether the lesson I should take from this experience is not to try to mediate between parties who wish to have a fight, or whether I should continue with a sense of idealism which may, all too often, be disappointed.

Perhaps one of the more difficult things to cope with is outstanding judgements. Knowing that the parties are awaiting a result and yet wishing to do both parties justice and fully explain the reasons for the conclusions I have reached sometimes takes longer than one would wish. I recently had a Mining Warden's Case outstanding for almost three months, and the feeling of relief upon delivering it was substantial. Although Magistrates are often out of court while parties negotiate, such times are usually short and it is not possible to get oneself back into the complexities of a written judgement in

the time available. Generally speaking, one needs at least two hours to be able to get your mind around the decision again and proceed in a sensible fashion towards the desired conclusion.

It is also sometimes daunting to know that, when you enter the court not knowing what awaits you, the people in front of you (not always lawyers), know a whole lot more about the issues than you. Often it takes a few minutes before you fully appreciate the issues which are to be determined on the day, and it is easy to look silly during this time.

Counsel of course, and I believe that none of you are free from this failing, are inveterately bad judges of time. All too often an hour can take a day, and one day three. There is no way of knowing in advance whether or not the estimate has any relationship to reality and it is simply one of the matters with which the Court must live. I accept it in the same way as I accept having to wait in the wings for parties to negotiate; as I accept the necessity of wearing a tie every day of my life, initially uncomfortable, but now a part of life.

Listing is a delicate balance of setting down more matters than a court can handle, knowing that some of them will not proceed. We do not possess a crystal ball and there is a constant need to list things as early as possible to ensure that justice is able to proceed promptly in what is, after all, the summary courts of the Northern Territory. If we list too little, the Magistrates' time is wasted ; if we list too much, the parties can be seriously inconvenienced. As I indicated above, a new system of pre hearing call-overs is under discussion and perhaps it has even progressed somewhat during the course of this conference. I look forward to hearing from Prosecution and Legal Aid Services at some stage in the near future.

The Ugly

There is little that is ugly about the job. Perhaps the matter I have noticed most is my incapacity to respond to ill-informed and sometimes completely wrong rumours and statements. The free hits that people make are hard to take, particularly when derogatory and intemperate language is used. I have

been brought up to believe that except in extreme cases, members of the bench should not seek to explain events or respond to criticism. In such cases the tragedy is that often a wrong impression can thereby be reinforced. During my time there have been three such events which have occurred but I know and accept that there will be little sympathy for members of the bench who complain.

CONCLUSION

I have led a fortunate life with a supporting family during my growing and adult years, a good partnership during my previous life and now to some extent I feel part of the family of the court. I am confident that I will continue to enjoy my time there.

Thank you ladies and gentlemen.

H B BRADLEY
21/6/99