

THE NORTH WEST COURT CIRCUIT (PITJANTJATJARA LANDS): A PERSONAL PERSPECTIVE

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WE LIVE IN A MULTI-CULTURAL SOCIETY. ONE IS ACCUSTOMED TO THAT, but our (or at least my) multi-culturalism is one viewed against the background of an Anglo-Saxon environment. To discover English as the second language and a community life based on a structure other than an Anglo-Saxon organisational structure came as a surprise to me. To me, going to the Pitjantjatjara Lands for the first time in 1980 was a bit like going to a foreign country. My ignorance was enormous.

I was accompanying the Circuit Magistrate preparatory to commencing duties as senior solicitor in South Australia for the Aboriginal Legal Rights Movement (ALRM). I observed the court in action. I was amazed at the number of community members who were present and I recall one occasion in particular. The room where the court sat was large. It was like a community hall. The magistrate sat at a trestle. Further trestles were provided for the prosecutor and lawyers. A dog lay asleep under the table where the prosecutor and lawyer sat. People wandered in and out of the court at will. Dogs moved about. Occasionally a man or woman would pick up a piece of wood or stick and throw it at a dog to get it to leave. Children walked or crawled all over the place. Overall, there seemed to be a level of interest and concern within the community which I had not seen in suburban Adelaide Courts to which I was accustomed.

Over a four-year period I became much better acquainted with and aware of Aboriginal issues and people. In 1984 I commenced duty as a Magistrate working in courts of summary jurisdiction. Since 1988, I have been the Circuit Magistrate running the summary North West Circuit Court on the Pitjantjatjara Lands.

Pitjantjatjara Lands

The Pitjantjatjara Lands referred to in this paper are part of the Lands which are the traditional home of the Pitjantjatjara. The Lands are located in the north west corner of South Australia and adjacent to both Western Australia and Northern Territory borders. They are vested by Act of Parliament in an incorporation of traditional Aboriginal people (known as Anangu). Estimates of the number of resident Anangu vary. The best estimates given to me are that Anangu number about 1,650. When white staff residents—school teachers, medical staff, and others—are counted together with non-Anangu Aboriginal people, the estimated population is 1,800-2,000 people. The major population centres are Ernabella, Amata, Fregon and Indulkana. The court visits each centre plus Pipalyatjara, located in the far corner of the State and close to the Western Australia border.

The Court Circuit

The North West Court Circuit sits every two months, that is, six times per year. Most of the personnel involved must travel to the Lands for the purpose of the conduct of the circuit. The personnel fly or drive to the Lands. They travel from Adelaide, Port Augusta, Coober Pedy, Marla and Alice Springs. The week is spent travelling around visiting each of the main population centres. The number of personnel and the distance means that the total cost of six circuits per annum is very substantial.

The Pitjantjatjara Council provides a lawyer who is recognised by the court as having status or "locus" to appear before the Court and make sentencing submissions, especially as to community attitudes about particular problems within the Lands and sometimes, but less often, about individuals. A police patrol from Marla also follows the court party. From one end of the Lands to another is a long drive—upon dirt roads not always well maintained. From Marla at the eastern end to Pipalyatjara at the western end by road is over 550 km.

There is no such thing as a timetable in the North West Circuit. How long one will spend at a particular court sitting is totally unpredictable. The extremes are enormous.

On one occasion I arrived at a particular community with a list of twenty or so people and thirty to forty court files only to find that the whole of the community was at ceremonies in Western Australia. Not a single person on the court list turned up. All non-appearances were proven, appropriate orders made and there was nothing further that the court could do. On the other hand, I once sat at another location until after dark finishing up at about 8.00 pm.

One of the outstanding attributes required of those participating in the North West Court Circuit is the ability to wait patiently. Inevitably, during the course of a court day, there are long delays. The lawyers take instructions only on the morning of the court sitting or on the night before. From a practical point of view, there is no point in starting the list until the lawyers have got instructions. One of the hardest parts of being a magistrate on the North West Circuit is to arrive at a community at say 10.00 am and then to sit and do nothing for several hours until the lawyers and the prosecutor are ready. Sometimes conditions can be extremely distressing, for example, this year in February at Amata the temperature reached 52°C and there was not one day of the circuit when the temperature did not reach at least 40°C.

Travel

When I started to carry out the circuit, I travelled by plane. My predecessors as magistrates usually carried out the circuit by this means. Visiting magistrates still do.

For the last two years I have travelled by road using the Court Department's four-wheel drive vehicle from Coober Pedy. This involves travelling some 1,500 km or so during the course of a circuit. All of the other personnel involved in the circuit travel similarly, that is, police, lawyers, probation officers and others. We all need to travel self-contained with our own camping equipment, food and water.

I have no doubt in my mind but that the status of the court has been enhanced by virtue of the fact that the magistrate travels by road. My knowledge of the people and my capacity to appreciate the issues which affect them has certainly been enhanced by this experience. Inevitably by travelling in this way, I have lost some of the remoteness which is often considered essential to preserve both the actuality and perception of independence and impartiality which judicial officers deem appropriate and desirable.

In the circumstances under which the North West Circuit comes to be conducted, one abandons many of the usual symbols of independence and status. We sit in whatever room or facility is available—usually something akin to a community hall. There are no such things as Chambers or separate rooms or facilities. It is often the discreet thing for me to go for a walk because the lawyer is taking instructions within earshot. There is no library other than what you carry with you. One cannot stop for long during the course of a day to consider sentencing options. There is the always present danger that if the court adjourns to think about things that people will think that it has finished for the day.

It is difficult to remand or leave matters from one day to the next because between one day and the next one might be a 100 km down the track. If one is to remand in custody (as happens from time to time in difficult cases) from say a Monday or Tuesday at Amata or Fregon to the Friday at Marla, the probability is that the prisoner will during the course of the circuit have to be transported from the Lands to Marla and then by plane to the prison at Port Augusta and flown back to be at Marla on the Friday. The disruption for the individual and the cost to the community and the system generally is enormous. None of these practical considerations can be far from the mind of the working magistrate.

A court circuit such as at North West Court Circuit relies heavily upon mutual trust and cooperation between its components. For the purposes of taking instructions, my observation is that lawyers are invariably given access to police briefs. Usually before the court circuit the prosecutor at Port Augusta and the lawyer (also based there) will meet and the lawyer will be given photocopies of the allegations. This practice can and will only happen as long as the lawyers do not abuse the trust which is reposed in them. To the credit of both sides this system has worked without abuse for many years.

One needs to guard against the possibility that the necessarily close relationship between police prosecutors, lawyers and the court does not prevent or hinder any of the components from launching appeals and challenging decisions from time to time. The magistrate must be on guard lest the practical necessity of working together prevents him from being forthright and truly independent.

The Work Load

Table 1

Court files listed to be dealt with, North West Court Circuit, 1991 and 1992

	<i>1991 NOV</i>	<i>1992 FEB</i>	<i>1992 MAR</i>	<i>1992 MAY</i>
Number of files	212	354	203	201
Number of charges (all files)	314	584	329	246
Total number of persons charged	150	178	125	147
Number of Persons who appeared	41	71	47	47
Number of files represented by appearances	61	161	96	73

The table above requires some explanation. A file relates to a single defendant. That person may have been charged with one or more incidents which arose from a particular event. Whilst many files will contain only a single charge, sometimes on the one file there may be as many as six charges. If a particular defendant has been involved in more than one incident giving rise to offences, there will be separate files for each incident.

The statistic of most concern from Table 1 relates to non-appearances. The court cannot sentence or adequately deal with defendants in their absence (except to a limited degree).

Appearances as a percentage of those who are due to appear:

November 1991	27%
February 1992	40%
March 1992	38%
May 1992	32%

The overall figure over these circuits shows that the number of defendants who appeared is less than 40 per cent. Overall, some 60 per cent of the defendants on the list who were supposed to be in court failed to attend. Unless the defendants attend, the capacity of the court to deal with matters with anything like reasonable expedition is hamstrung.

When considering the problem of non-attendance, one must have regard to cultural factors. My observation is that a community activity or a group related activity takes priority over an individual's personal obligations. If a community is engaged in a football carnival most of the community will attend. If tribal ceremonies are in progress, those participating will see it as their duty and obligation to be involved in those ceremonies rather than attend court.

Attitudes towards ceremonies appear to vary. At one location in September last year, the court was refused permission to enter the community because ceremonies

were taking place there. On another occasion when I went to the same community, court was held at a time when ceremonies were in progress. Offenders attended court with head bands and red ochre paint marks on their foreheads, arms and bodies. The court accepts and respects the value and importance of such occasions. If I am told by an appropriate person, for example, the community solicitor or council chairman, that it is inappropriate to be at a certain place, I would not go there. At times, particular roads are closed because of ceremonies. Again, in such a situation, I would choose an alternative route for travel and non-attendance at court would be excused.

The problem of non-appearances is a central problem. One answer is to deny defendants bail and rely less upon defendants attending court of their own volition. The problem of remanding Aboriginal people in custody is well known. Moreover, the relative infrequency of court once every two months and the dislocation to individuals, not to mention the cost of transporting them to Port Augusta and leaving them in custody, makes this an unattractive solution.

How Can the Problem of Non-attendance be Overcome?

The reasons for non-attendance are important. Table 2 looks at files where reasons for non-attendance are apparent. Summons not served means that the defendant has not been located. Summons not returned means that it may have been served but there is no proof of service. G4A means that the defendant has pleaded guilty in writing and is not required to be present.

About 30 per cent of non-appearances relate to files where the defendant has not been served. Inability to serve documents is understandable to some extent because the population in tribal communities is very fluid. On the other hand, the "bush telegraph" and the presence of police aides is such that one might expect a much better service of summons than is actually obtained.

Table 2

Reasons For Non-Appearance, North West Court Circuit, 1991 and 1992

	1991 NOV	1992 MAR	1992 MAY
Fail to answer bail	40	34	47
Fail to appear following adjournment	19	19	3
Summons not served / Summons not returned	33	27	31
Fresh summons to issue from last circuit, but not served	7	6	7
G4A / fail to answer summons / other	1	19	30

Disposal of Non-attendance Files

Bearing in mind that on a typical circuit 60 per cent of offenders fail to attend, what happens to the files with respect to such offenders? (See Table 3)

The three categories, bail estreated—complaint to lie on file; complaint to lie; FSOA (fresh summons to issue on application), account for significant numbers of files;

November 1991	79 out of 149	(53%)
March 1992	31 out of 105	(29%)
February 1992	75 out of 179	(42%)
May 1992	32 out of 109	(29%)

A typical "bail estreat-complaint to lie on file" is a file where a defendant is charged with a consuming liquor offence and is on bail for, say, \$200. The prosecutor knows that the fine is likely to be \$150 and is content to have bail revoked. Whilst technically the complaint may still be alive, the reality is that no-one expects the file to be processed further. Similarly, "complaint to lie" and "fresh summons to issue on application", in practice, will mean that nothing will be done to activate the file or bring the offender to court. If the offender brings himself to the attention of the court by committing further offences, these files can then be re-activated. If the offender does not come to attention, the file will remain dormant and drop out of the list of current court files.

If 60 per cent of offenders do not turn up and if 30 to 50 per cent of non-appearances "drop out" of the system each circuit, the court disposes of a substantial percentage of court files each circuit as if the matters had been finalised. The reality is that the system has failed to catch up with the offender and the system eventually "gives up". It is easy to be lulled into a

false sense of security and the belief that we are closing or completing matters when in reality the system and the offender are not making contact.

Table 3

Disposal of non-attendance files, North West Court Circuit, 1991 and 1992

	<i>1991 NOV</i>	<i>1992 FEB</i>	<i>1992 MAR</i>	<i>1992 MAY</i>
Bail revoked and warrant to issue	28		19	21
Warrant to issue	9	58	18	7
Bail estreated—complaint to lie on file	14	9	1	12
Complaint to lie	29	65	25	10
F.S.I. to next Court date	9	11	15	18
F.S.O.A.	36	1	5	10
Ex-parte leave granted—penalty imposed	1	20	4	10
B.T.C./adjourned/excused	18	15	15	5
Warrant to issue to lie on file to next Court date	2		2	5
Other	3		1	11
Total Number of Files	149	179	105	109

Characterisation of Offences

It is an offence under by-laws passed under the *Pitjantjatjara Land Rights Act* for persons (Aboriginal and non-Aboriginal) to possess or consume liquor on the Lands or to supply it to others. The penalty prescribed is a fine of up to \$2,000, although for offences of supply, a gaol penalty is possible. The penalty of imprisonment is considered to be appropriate to deal with commercial grog-selling operations primarily. Most offences against the by-laws are punished by the imposition of a monetary penalty. In addition to the "grog by-laws" there are separate by-laws designed to deal with the problem of petrol sniffing and further by-laws regulating gambling.

The volume and percentage of files which relate to By-Law offences alone is significant.

November 1991	85 out of 211 = 40%
February 1992	125 out of 354 = 35%
March 1992	55 out of 203 = 27%
May 1992	57 out of 1195 = 29%

It must be emphasised that these files are all files where the only charge laid has been the breach of a by-law.

In other words, they are incidents where the by-laws have been breached but have not been accompanied by other offences. They are offences without accompanying offensive language, resist arrest, assault police charges, and so on. A substantial percentage of the court list is made up of such offences.

Minor indictable offences (which include housebreaking and assault occasioning actual bodily harm charges) constitute about 15 per cent of the court list.

Table 4 shows the type of offences which came before the court.

Table 4

Characterisation of Offences, North West Circuit, 1991 and 1992

	<i>1991 NOV</i>	<i>1992 FEB</i>	<i>1992 MAR</i>	<i>1992 MAY</i>
By-Law only	85	125	55	57
By-Law & other offences	10	23	31	20
Non By-Law-Road Traffic	33	61	30	23
S.O.A.	34	65	27	30
Minor Indictable	31	57	35	49
Indictable	7	10	12	
Other	11	13	13	16
Total Number of Files	211	354	203	195

The most serious offences (indictable offences) constitute a very small percentage of files as a whole.

Road traffic offences and summary offences each account for about 15 per cent of the court list.

Obviously, the level of serious violence and the number of indictable charges is encouragingly low. Whilst the number of court files and the number of charges when viewed against the population might seem high, the profile of these offences is much more encouraging. Of special significance is the fact that the by-laws seem to me on the face of these figures to represent a screening mechanism which helps prevent more serious trouble from developing.

Our statistics do not distinguish between offences on the Lands and offences off the Lands. A significant percentage of offences are offences committed off the Lands or at Mintabie. Many of the driving offences are offences committed at Coober Pedy or Port Augusta by people from the Lands who go there, drink and are then apprehended but dealt with back at their place of residence on the Lands. In short, the statistics give a misleading impression as to the amount of criminal behaviour on the Lands. This profile analysis indicates that the gravity of the offending on the Lands is much lower than might be indicated by the figures. In fact, it is interesting to compare the profile of offences with the sorts of offences which arise in a white urban community. The Office of Crime Statistics (SA) has broken down the court list from a

suburban magistrate's court in Adelaide for an equivalent number of court files and the following comparison can be made.

Table 5

Comparative Offence Profile Breakdown as between Pitjantjatjara Lands and a typical suburban court list

<i>Category of Offence</i>	<i>North West (Percentages of files as a whole)</i>	<i>Suburban Court (Percentage of files as a whole)</i>
By Law Only	33%	Not Applicable
Road Traffic	15%	41.0%
S.O.A.	16%	9.0%
Minor Indictable	18%	
Drugs	negligible	6.5%
Major Crime	3%	0.8%

A comparison is difficult to make. The sample of files analysed consisted of 963 North West files over the four circuits referred to in this paper. The suburban court's statistics come from a computer printout chosen at random from the Para Districts Court and comprise 736 files. Comparisons are difficult because there is no correspondence in the suburban court with the by-law offences considered in the north west area. Road traffic offences in the suburban court include simple speeding offences. Charges of that nature are rarely laid in the North West Circuit although more serious road traffic offences such as drink driving and driving dangerously charges are laid. Drug offences are infrequent. I can recall only one or two such charges over the last twenty or so circuits which I have conducted in the Pitjantjatjara Lands.

North West Circuit Today Compared with North West Circuit Ten Years Ago

It is interesting to contrast the present state of the court lists on the Pitjantjatjara Lands with the situation a decade or so ago. Over this decade there have been significant changes in circumstances. The *Pitjantjatjara Land Rights Act 1981* has been passed. The white Australian law then was administered from the Oodnadatta Court of Summary Jurisdiction. The clerk of court was a sergeant of police. Three times a year a magistrate from Adelaide sat at the Oodnadatta Court and held court in the three major centres of the reserve area. The court now visits six times a year with an occasional extra visit. The administration of the court is entirely separate from police. The major police presence is now located at Marla adjacent to the Lands and some 150 km closer to the Lands than Oodnadatta. Police aides are located at each major population centre on the Lands and a white police officer is resident at Marla. The Pitjantjatjara by-laws regulating the control of liquor, petrol and gambling have been introduced.

An article by Ms Judith Worrall published in the *Australian and New Zealand Journal of Criminology*, March 1982 is informative:

The 103 cases heard in the four visits of the Magistrates cover seven different offence types. There were fifty individual offenders . . . all fifty defendants were males, twenty of whom were juveniles when they committed the offence. Although juveniles constituted 40 per cent of the defendants, they were charged in 50 per cent of the cases before the court. Juveniles were charged with 52 per cent of the total of 121 offences.

The contrast between then and now, at face value, is remarkable. The four visits referred to would cover a magistrate's attendance for more than one year. The four visits referred to by me represent two-thirds of a year's work.

But the figure of 970 files should be treated with caution. As was pointed out earlier there is a significant "duplication" of files from circuit to circuit because of the low level of attendance from one circuit to the next. Also, some 40 per cent of the files are "by-law only" offences which did not exist ten years ago. Other factors which may contribute to this increased number of charges is the more significant police presence at Marla and the presence of police aides in each community.

Another significant difference which shows up from Ms Worrall's study is the different approach currently adopted regarding juvenile offenders. In Ms Worrall's paper it was noted that juvenile offenders made up 40 per cent of offenders who appeared in court and that they accounted for 52 per cent of the charges. It is rare to find more than five or six juveniles on court lists today. Diversionary approaches are used much more frequently and more children are dealt with by juvenile aid panels.

Table 6

All files: Age of charges (from date of offence), North West Court Circuit, 1991 and 1992

	1991 NOV	1992 MAR	1992 MAY
less than 2 months	24	43	53
2-3	31	24	38
3-6	64	75	54
6-9	42	38	24
9-12	27	16	15
12-24	23	21	6
Over 24	4	4	5
Total files	215	221	195

Summary courts are intended to deal with case loads expeditiously. Justice delayed is justice denied. I note that in November 1991, 43 per cent of the files were more than 6-months-old. In March 1992, 33 per cent of the files were more than 6-months-old. In May 1992, 26 per cent of the files were more than 6-months-old. This delay factor is too long. A primary cause of the delay is the failure of the system to ensure that defendants are present at court. The problem of delay and the problem of non-service and non-attendance are related.

Penalties

For those who attend court, how effective is the system? Courts have four major sentencing options: fines, bonds, community service and gaol.

By South Australian legislation (see *Sentencing Act*, Sec. 11) gaol is the last resort. It is the penalty to use when all other penalty options have been considered and rejected. Special problems arise for tribal Aboriginal people. The nearest prison to the north west is located at Port Augusta. By road, Port Augusta is located 600 km from the closest north west community. Not only will the offender be locked up, but distance makes it practically impossible for the prisoner to have visits from relatives or friends. Inability to attend ceremonies or funerals can impose a special hardship on a tribal Aboriginal person.

There are times when a particular offender and offence merits imprisonment for a short time. A prisoner sentenced to say twenty-eight days may well be transported to Marla from the Lands by police vehicle, held overnight at Marla, taken by plane or by road to Port Augusta, and as a result of early release under discretionary powers, released after say fourteen days. Upon release, the prisoner finds himself 600 km from home and faced with both the practical problem of getting back to the Lands and the temptation to explore Port Augusta. For both reasons of principle and for practical

purposes, the gaol option is particularly unattractive, except for serious offences and where no other alternative is open.

Fines are not a useful penalty either as a punishment or as a deterrent. Often the financial situation of the offender makes payment of a fine a practical impossibility. When fines are paid they are often met on the offender's behalf by members of his family. The strong communal character of Aboriginal society tends to cause fines to be paid, if at all, by persons other than the offender. The value of this option is thus largely diminished.

The concept of bonds and suspended sentences is difficult to make meaningful across language and cultural barriers. The problem of supervision of offenders is great—although the Correctional Service officers make a valiant attempt. Bonds do have a role to play and especially with respect to petrol sniffers, the involvement of family members in supervision of the offender by way of bond is important.

The most useful sentencing option is that of community service.

Police Discretion to Lay Charges

Police discretion is one of the aspects of the system of justice in tribal communities which is the subject of much discussion. A good and proper example of police discretion was given to me by the community development officer at one community.

It seems that a family dispute had come to a head and the two opposing sides decided "to have it out". The person speaking to me told me of sitting by the side of a shed with a police aide and a white police officer watching what happened. The two sides turned up. They were carrying sticks and spears and confronted one another. Following some shoving, pushing and shouting, there developed some more physical hitting with sticks and the like. Whilst this happened, the police officers looked on apparently unconcerned as interested observers. This continued until one of the combatants produced a knife. The moment that happened and traditional forms of confrontation were abandoned, the police went straight in and took out the man with the knife.

Community Services Orders

The community service order scheme has been in operation in South Australian courts generally for the best part of a decade. It is only in the last twelve months or so that community service has become a viable option within the Pitjantjatjara Lands. Remoteness of the region and the tremendous costs involved in the establishment of the scheme were the reasons why community service has been introduced comparatively late.

It is interesting to note the different ways in which communities have responded to community service orders. I highlight the two communities where the scheme is most successful. In one community the major community service work project relates to collection of rubbish. A day's work is measured by three large loads of rubbish on a tip truck rather than by hours. This seems to work well. Offenders do not get credit for a day's work until

three loads of rubbish are collected. If, for example, at the beginning of the day there are four persons engaged in helping to collect the rubbish and two do not return after lunch, the other two get no credit until the three loads of rubbish have been collected. Peer group pressure is thus provided by those who come back to those who fail to return. This is a successful and pragmatic, if somewhat innovative, approach to the scheme.

In the other community, when the scheme is well established the approach may be unconventional but highly successful. Again, participants in the scheme at the moment have, as their only option, a rubbish collection scheme. There is no supervisor employed by the Department as such. Rather, the community has nominated its community development officer, to ensure that those who carry out community service work do it. His method is to take the offender in the week following the court appearance and to require the offender to carry out the work in one continuous slab of time. In other words, if the offender was given forty hours work he would be found and made to commence work on the Monday and keep working until the Friday. Delay has been one of the major sources of criticism of the court circuit. This approach is different. Certainly, there is no delay.

Sentencing Policies

Much has been written elsewhere concerning formal recognition by "our" legal system of Aboriginal customary law.

Put very generally, the North West Circuit Court as it presently is constituted, does not involve itself in customary law issues. The existing legal system has not created, and does not formally recognise as criminal misconduct, breaches of Aboriginal customary law. For the purposes of determination of guilt or innocence of a particular charge, the ordinary legal principles are applied.

When it comes to penalty, recognition is given to Aboriginal customary law. If the court is satisfied that as a result of a particular incident a defendant charged with an offence is to be punished by the imposition of a customary penalty, that is taken into account when the court determines what is the appropriate penalty for it to impose. Usually, either the community solicitor or the solicitor for the defendant will bring considerations of this nature to the attention of the court.

A greater difficulty arises where under customary law there are circumstances of aggravation which should be taken into account. That happens particularly in situations where an offender who has been drinking uses words or phrases which ought not to be uttered or used in particular circumstances. What on the face of it might appear to the court as an ordinary charge of offensive language, may to the Aboriginal community be a grave breach of custom and tradition akin to the uttering of a blasphemy. When language of this nature is used, traditional beliefs make repetition of such language inappropriate. There is therefore a great problem about communicating the gravity of the allegation to the court. This is one aspect of criminal behaviour which poses a dilemma for both systems of law. To date there has been no answer found to this dilemma.

The Role Of The Court

Most of the problems which lead to breaches of the law stem not from Aboriginal society but from white society. The statistical analysis of our court files and the profile of offences both indicate that a very substantial number of the matters to be dealt with

by the court relate to alcohol or petrol. Another major category of offences relates to offences involving motor vehicles.

With respect to the petrol sniffing problems in particular, my impression is that whilst the Aboriginal community appreciates the damage to individuals caused by petrol sniffing, there is largely a feeling of helplessness as to what is to be done about it or how it can be stopped.

Aboriginal communities look to the court to be supportive of the community and to protect its members from outbursts of violence. A magistrate who comes in from outside and who is not part of or caught up in the conflict situation can provide a much needed and welcome assistance towards the resolution of problems. My experience is that communities respect the court and desire the court system to deal firmly and strongly with offenders. There is more pressure by communities to be tough on offenders than there is to treat them leniently.

A prerequisite for a judicial officer who conducts a court in a tribal community is that the officer be open minded. The idiosyncratic magistrate and the magistrate who approaches court with a belief that they know the answers or can resolve the problems is likely to be more of a hindrance than a help.

There is an obvious danger in a magistrate becoming too close to a community. There would be a danger if a magistrate were to do no more than reflect the prevailing mood within the community at the time when sentences are passed. One of the phenomena which I have observed is that of arriving at a community shortly after a particular incident and finding that people are very angry and demanding swift and draconian punishment. Yet, after a relatively short time, a matter of a week or two, the attitude of the community might well have changed to seek little or no penalty. The court needs to be sufficiently detached to penalise according to consistent and relevant standards.

There is some disadvantage and there are some constraints imposed by the rigidity of our legal system and by the fact that its principles have been created in a totally different environment from that of a tribal Aboriginal community. The system is one which needs to be implemented in a very flexible manner and sometimes in a way which tests the strict letter of the law. As citizens, members of these communities are entitled to have the same laws as apply to the broader community sensitively applied to their particular communities. An abandonment of the system and introduction of an alternative which denies Aboriginal people the right to legal advice and representation or which submits them to swift justice at the expense of fair justice, creates a potentially less satisfactory system than presently exists. Our system, despite its shortcomings, does have its strengths. The risk of draconian solutions and of the lynch-mob mentality are real. Most importantly, my understanding not only from court observation but as a result of meetings with communities, is that the court system is respected and that Anangu desire it to be strong and effective.

Disclaimer

The statistics used in this paper have been hand collated, in particular by the Clerk of Court of Coober Pedy, Ms Carolyn Healey. The tabulations have been arranged by the author. I cannot vouch for the validity of the analysis from the view point of the professional statistician. Our system of collation is such that some numerical anomalies may be detected.

On the suggestion of the Pitjantjatjara Legal Service whom I have consulted concerning this paper, this paper has been kept as anonymous as possible. Communities are not identified by name except in a geographical descriptive context. No individuals are named. I do not seek to hide from the reality that our system of justice has its faults. Nonetheless, innovation and change have been introduced and the system is making a genuine endeavour to be meaningful and effective and is enjoying some measure of success. The introduction of the by-laws is one such success. The value of that factor is illustrated by the earlier comments made. The carrying out of circuits by road is another example of change. Community service projects are being implemented and in a manner which is pragmatic and workable. The major problem is that of non-attendance which inevitably produces delay. The answer to that lies largely in the hands of communities themselves.

Conclusions

An analysis of Court files over the circuits conducted in November 1991, February 1992, March 1992 and May 1992 suggest to me that the following conclusions can tentatively be expressed:

- n Non-service and non-attendance and failure of defendants to attend court is the major and most concerning issue. The solution lies largely in the hands of the communities.
- n The age of files is a serious concern. This problem is inevitably related to the first problem identified.
- n The court disposes of a significant percentage of files artificially. It is easy to take credit for a clear-up rate or closure of court files when the reality is that the system does not catch up with the offenders. But this is also related to the first problem.
- n The volume of serious crime—serious offences of violence or dishonesty—is small. Assumptions which some people might make about "problems" within Aboriginal communities are exaggerated.
- n A significant percentage of offenders commit by-law offences unaccompanied by related behavioural offences. The by-laws thus appear to be successful in enabling early intervention.
- n A significant percentage of those who fail to attend breach bail. This raises the issue of the validity of bail agreements generally. But the most obvious alternative to grant of bail, such as remand in custody is impractical and undesirable.
- n It is essential that the court system adjust to the environment in which it finds itself. The status of the court will be best preserved by making the system work. This involves some relaxation of the usual principles of judicial remoteness but care must be exercised to ensure that what is delivered is justice which is impartial, fair and effective.

Community service can work but needs to be introduced in a pragmatic and practical way.

References

Worrall, J. 1982, "European courts and tribal Aborigines: a statistical collection of dispositions", *Australian and New Zealand Journal of Criminology*, March.