

Fly In/Fly Out Justice – An Imperfect Journey¹

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This Paper discusses some of the writers' experiences as Magistrates in the remote indigenous communities of Cape York and the Torres Straits in Far Northern Australia; highlights the issues which bring members of those communities into contact with the justice system; details both the benefits and limitations of existing strategies in place to meet the challenges for the courts, stakeholders and the community; and charges all of those involved in the provision of services enabling access to justice to members of remote indigenous communities with the responsibility to argue for enhancement of those services.

¹ The views expressed in this paper are those of the authors and should not be attributed to the Magistrates Court of Queensland.

Our experiences as Magistrates presiding in Magistrates Courts in the remote indigenous communities of Cape York and the Torres Straits commenced in 2002 when we were based in Cairns, from where these communities are serviced on a fly in/fly out basis once a month.

Attached is a map which indicates each of the seven (7) Cape York indigenous communities (Coen, Pormpuraaw, Aurukun, Weipa, Kowanyama, Lockhart River and Bamaga) as well as Cooktown. A separate map indicates the islands of the Torres Straits (from where defendants travel to the Magistrates courts held in the communities of Thursday Island and Badu Island).

The majority of the outlying populated islands in the Torres Straits can now be connected to the Thursday Island Courthouse by video-link, thereby saving defendants, in selected cases, long and potentially treacherous journeys by dinghy or expensive air flights.

The court at Cooktown deals with matters arising also in each of the communities of Hopevale and Wujal Wujal, from where defendants are required to travel.

The approximate population in each of the Cape York and Torres Strait Island communities visited by the Magistrates Court is as follows:-

Aurukun	1200	
Kowanyama	1200	
Bamaga	900	
Coen	400	
Lockhart River	600	
Pormpuraaw	700	
Thursday Island	2300	(Torres Straits 25000)
Badu Island	1200	
Weipa	2000	

Official statistics indicate that the number of defendants appearing in each of these courts each month on criminal matters is as follows:-

	Adults (Charges)	Young Persons (Charges)
Aurukun	75 (80)	6 (19)
Kowanyama	55 (67)	3 (5)
Badu Island (3 monthly)	21 (30)	3
Bamaga	17 (25)	2 (3.5)
Coen (2 monthly)	14 (22)	0
Lockhart River	17 (25)	1 (2)
Pormpuraaw	29 (39)	.5 (1)
Thursday Island	43 (76)	3 (7)
Weipa	40 (60)	2 (4)

Official statistics indicate that the number of child safety applications lodged each year in each of these communities is as follows:-

Aurukun	11
Kowanyama	9
Bamaga	2
Coen	0
Lockhart River	2
Pompuraaw	3
Weipa	9

Official statistics indicate that the number of domestic violence applications lodged in each community each year is as follows:-

Aurukun	50
Bamaga	43
Coen	15
Kowanyama	67
Lockhart River	6
Pormpuraaw	36
Weipa	52

Having circuted to these communities over many years, it is difficult, if not impossible, to understate the actuality of the problems existing within each community. These problems arise from historical factors, long term neglect and discrimination. Finding solutions to the many endemic deprivations suffered by the communities is not an easy task and will not be attempted in this paper.

There have, of course, been a number of studies and reports which have identified most of the relevant issues. From our perspective it would seem that the following issues are relevant in explaining the large numbers of community members appearing before the justice system:

- Poverty
- Inadequate and crowded housing
- Substance Abuse/Misuse
- Violence
- Domestic violence
- Limited educational/career opportunities
- Lack of parental supervision
- Limited voluntary employment opportunities
- Limited sustainable economic activities or infrastructure
- Limited community-based programs/activities/resources
- Boredom
- Peer Pressure
- Neglect
- Remoteness / Isolation
- Chronic disease
- Physical/Sexual/Psychological/Abuse

- High mobility/Lack of assertive tracking of community members for medical follow-up
- Limited continuity of service providers
- Lack of safe places
- Limited resources for non-clinical needs
- Early Mortality resulting in diminution of family members available to younger members/Stressors on remaining family members
- Crisis Behaviour/inability to sustain cooperation and compliance/treatment failures
- Intra and inter-clan disputes
- Conflicts of interest within Community Justice Groups
- Conflicts of interest between CJG members and Community councils
- Alcohol Management plans

Once before the justice system, however, further complications operate against the expeditious and equitable treatment of defendants by reason of:-

- Language difficulties and lack of interpreters
- Limited awareness of cultural nuances
- Limited awareness of historical factors, family connections
- Conflicts of interest within CJGs
- Impact of family connections within CJGs
- Intra-aboriginal community bias
- Inexperienced legal providers
- Limited court time/resources/ ie to adopt more culturally appropriate sentencing such as those practiced in a Murri court

Existing Strategies

Federal and State Governments and the courts have recognised the increasing needs of indigenous persons appearing in the justice system. There have been a number of well known investigations and reports delivered concerning the problems faced by the communities and their interaction with the justice system. Prominent examples are The Royal Commission into Aboriginal Deaths in Custody², The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families³, the Aboriginal and Torres Strait Islander Women's Task Force on Violence⁴ and the Fitzgerald report on Violence and Alcohol related issues in Cape York.⁵

Interestingly, the following quotation appears in the Cape York Justice Study of 2001 *"There needs to be an impartial and just judicial system, which supports, as a first preference, the diversion of offenders to community-based alternatives to imprisonment, and a more accessible, efficient and humane legal system with sentencing options that are appropriate to the circumstances. The justice system must*

² National Report of the Royal Commission into Aboriginal Deaths in Custody, 1991

³ Bringing them Home: The "Stolen Children" Report, 1996, Australian Human Rights and Equal Opportunity Commission

⁴ Report from the Aboriginal and Torres Strait Islander Women's Task Force on Violence, 1999

⁵ The Cape York Justice Study, 2001

*strive to be more sensitive and responsive to the needs and circumstances of Indigenous people.*⁶

Partly in response to these reports and generally as a result of the obvious and well recognised difficulties faced by indigenous persons in the criminal justice system, there have been a number of responses and strategies, including:-

- The signing of the Queensland Aboriginal and Torres Strait Islander Justice Agreement (Justice Agreement) on 19th December 2000. The stated outcome is that by 2011 there will be a 50% reduction in the incarceration of indigenous people.
- “Towards a Queensland Government and Aboriginal and Torres Strait Islander Ten Year Partnership” formulated as a long-term strategic policy development designed to improve the quality of life for indigenous Queenslanders. The guiding principles include participation by local indigenous in development and delivery of services, recognition of culture, acknowledgement of the impact of past policies and practices, respect for cultural values, equality before the law, improved coordination of government and communities in development and delivery of programs and services and recognition that justice policies and services should promote empowerment and self-determination.
- The Meeting Challenges, Making Choices initiative was endorsed in April 2002 as the Queensland Government’s response to the Cape York Justice Study. This response supported the local Community Justice Groups (CJGs) work in their community to address local justice issues. Legislation has been introduced which supports statutory CJGs in their justice and alcohol management role, particularly in their work to develop local Alcohol Management (Supply Plans)
- Negotiation Tables and Government Champions. Directors-Generals of various government departments have been nominated as Government Champions for each of the communities.
- Cape York Strategy Unit.
- Training of Indigenous Justices of the Peace to convene Magistrates courts in remote areas.
- The expansion of Youth Justice Conferencing statewide.
- Expansion of the Drug Court for adult offenders to North Queensland.
- Legal Aid Queensland, in association with the Department of Families and the Department of Corrective Services, launched a video-conferencing family contact program with the assistance of Commonwealth funding from Networking the Nations.
- Government and the courts have recognised the increasing needs of indigenous persons by the introduction of Murri Courts in Brisbane, Rockhampton, Mount Isa, Caboolture and Townsville, reflecting a desire on the part of the courts and the government to allow indigenous persons to become more included in the justice system process.
- The provision of video-link facilities between Thursday Island and the outlying islands of the Torres Straits.

⁶ The Cape York Justice Study, 2001, page 68 Recommendations

A Typical Court Circuit

In relation to the Cape York communities, two Magistrates travel for four (4) consecutive days once a month, visiting a different community each day. Coen is only serviced once every two months while some of the remaining communities are serviced for 2 days in some months if the workload requires it.

A typical Cape York circuit would see the two (2) Magistrates leaving Cairns once a month on a Tuesday morning at approximately 6.00am by light aircraft, travelling to a community (Lockhart River) to drop off one of the Magistrates and then continuing on to another community (Aurukun) to drop off the second Magistrate. At the end of the Aurukun list, the pilot then flies the Magistrate from that community back to Lockhart River or vice versa to pick up the first magistrate and then all fly to Weipa where everyone is accommodated each night of the three (3) night circuit. The Magistrates then fly in and out of the remaining communities for the rest of the week, leaving Weipa at approximately 7.00am and returning each night to Weipa, sometimes as late as 8.00pm. Both Magistrates then return to Cairns on Friday evening.

Court days can be long and exhausting and are usually rushed. Breaks are few and lunch is truncated, if held at all. Apart from defendants appearing in criminal matters the court also hears Child Protection applications and domestic violence applications as well as being required to dispose of summary and committal hearings. (In relation to the latter, however, we notice that a large number of summary trials become pleas of guilty and solicitors elect not to cross-examine any witnesses in relation to charges set for committal hearing, even when those charges continue to proceed to hearing in the District and/or Supreme court).

When endeavouring to complete the list of matters before the court, even with the best of intentions, the sentencing of defendants often feels like a factory. There is inadequate time to test assessments or submissions from the Community Justice Group and/or the Departments of Corrective Services and Communities. Many sentences involve serious charges and properly require much more time than we have to give. Consequently, these matters are usually adjourned to Cairns the following week, and where defendants are already in custody, they usually remain in custody until the sentencing occurs. This is less than desirable, in addition to which it offends against the principle that the sentencing of offenders should occur in the community in which the offending occurs.

It is also not uncommon that, by reason of restrictions faced by the pilots of the court aircraft, due to Civil Aviation regulations, that matters are adjourned in bulk to either Cairns in the next week or to the next sittings of the court in that community.

Although the magistrate will usually try to meet with representatives of the Community Justice Group either before commencement of the sittings, or at some stage throughout the court day, invariably that meeting is short or does not occur at all, usually by reason of the pressure of court commitments.

It is to be noted that the coordinator of the CJG (a non-indigenous person in most cases) is the only member of the CJG who occupies a paid position. All other

members undertake their duties voluntarily. It can be an onerous position given that these members attend for up to two (2) consecutive days in some months.

The court process is further compromised by the lack of interpreters. Magistrates have also had concerns with the level of experience of certain of the legal representatives for defendants. This particularly occurred when the legal services were amalgamated in early 2005. These concerns were expressed universally by magistrates in the region and resulted in representations being made by The Chief magistrate on our behalf. The Federal Attorney General also intervened. Certain improvements are said to have been made.

Magistrates have also made representations to other agencies concerning the lack of community programs and supervision of community-based orders available in certain communities. This potentially compromises the sentencing process. For example, in communities where community service orders could not be supervised, they were not enforced. One way in which we tried to address the issue was to make the order and insist on the supervision/program being made available. There remained, nonetheless, the very distinct risk that if the order could not be complied with because it was impossible to do so, then there was no effective penalty given, giving rise to a false sense of encouragement to disregard later court orders.

Similarly, in relation to supervision on probation orders, we were of the view that having a telephone contact once a month with a corrections officer was an insufficient level of supervision in the absence of a face-to-face contact or limited face-to-face contacts, such that effective rehabilitation was unlikely to be achieved. This is so particularly given the language/communication barriers that exist between indigenous and non-indigenous persons and indigenous persons and those in authority.

Intensive Correction Orders (a prison sentence served in the community with strict conditions) were often unavailable as a sentencing option because there was no capacity to supervise the order. When defendants inevitably failed to complete orders, or offended again without having the rehabilitative content of such orders actively supported, the vicious circle continued, spirally inevitably towards imprisonment.

The same problems are mirrored in our experiences within the juvenile justice system. This is of significant concern because obviously if recidivism can be addressed early in a person's life, then better outcomes for the young person and ultimately the community will result.

These criticisms are by no means directed towards those working at the coal face. They are as hampered and frustrated by the limited programs and capacity for supervision as anyone and invariably, they have been the authors of submissions and pleas for improvements in the communities in which they are the regular attendees. They continue to become disheartened when what they perceive to be their first-hand experiences of the difficulties in providing services to the communities; and their informed opinions as to how to reduce the difficulties, are not seen to be acted upon.

None of the experiences and issues raised here should come as any surprise. They have been the subject of discussion and debate over many years. These issues have also been continuously raised by the members and councils of the communities,

Community Justice Groups, and in many studies and enquiries about justice issues in indigenous communities. The Cape York Justice Study, for instance, specifically made recommendations concerning many of these issues in 2001.⁷ These included, amongst many other recommendations, such things as:

- Communities to be encouraged to specify more appropriate rehabilitation and diversionary options;
- Develop the capability for CJG's to provide advice and assistance about relevant cultural and historical issues, particular circumstances in their community, background information about the offender. Gives the example of "circle sentencing" as a desired process;
- Expand the number and length of circuits in the Cape to take account of the additional time required for innovative sentencing practices;
- Make greater use of appropriate community-based orders and greater availability of community development officers to supervise orders;
- The case for strengthening community based orders is particularly strong for juvenile offenders;
- Adequately resource and make readily available rehabilitation programs;
- Educate and train Community Justice Groups and Justices of the Peace who convene JP Courts so that they may be more effective in ensuring greater community input into the judicial process.

The Court Environment

It is not surprising that court environments may be considered by many to be intimidating. Many aboriginal people consider the experience of attending a Magistrates court in a remote region to be isolating and alienating. It is interesting to consider the comments made in June 1996 by the Criminal Justice Commission in its report and compare the current situation 10 years later.⁸

Court Locations

The Criminal Justice Commission report recommended the location of Magistrates courts in remote communities at venues other than a police station. The perceptions of lack of independence are obvious.

Unfortunately, the court at Lockhart River is held in a little ante room within the police station. To leave and enter you pass through the main office and communications room. Aurukun is a bigger centre but the court is contained within the Police station. This is the same at Yarrabah near Cairns and was the same at Palm Island. The main sign outside the latter building, before it was destroyed, had the usual blue sign with the word "POLICE" and in smaller words "Court House."

The Coen sittings are held in a community room which has some separation from the police station, as is the situation in Weipa. The Pormpuraaw Justice Centre is also located some distance from the police station. The Kowanyama Justice Centre is located next door to the police station.

⁷ The Cape York Justice Study, 2001 at p69 & 70 under Recommendations

⁸ Criminal Justice Commission, Aboriginal Witnesses in Queensland's Criminal Courts, June 1996.

The police, however, collect the Magistrate and court clerk from and return them to the airport in each of the communities of Lockhart River, Bamaga and Pormpuraaw. Some defendants are usually present at the courthouse/police station to witness this occurrence.

In the other communities, the Community Justice Group coordinator is usually available to transport the court staff. This is clearly more appropriate.

Whilst Justice Centres were built at Kowanyama, Bamaga and Pormpuraaw, they are still configured in a traditional style and would be difficult to reconfigure for the purpose of conducting circle sentencing or allowing the involvement of elders and community justice group members in such a sentencing process in a meaningful way. Pormpuraaw is the only justice centre that could possibly be adapted, if people were willing to sit in the courtyard adjoining the court room.

Court Room Set Up

The Criminal Justice Commission report also suggested that in appropriate cases, consideration be given to the removal of robes and wigs. In our experience, practices vary with individual magistrates but most would take some guidance from the Community Justice Group. Some community members believe it brings some formality and prefer robes to be worn. We do not ourselves believe strongly in the issue of the wearing of robes ourselves unless the community particularly feels strongly about it one way or the other.

The report also recommended the use of existing legislation to provide special measures for witnesses who are likely to be disadvantaged in giving evidence. There have been special witness rooms set up in larger court houses but these do not exist in remote communities. The aids provided, such as screens, are limited in effectiveness if they exist at all, and for some reason prosecutors are at times reluctant to make use of other aids such as support persons. Any improvements in this area have been marginal. So often we have been faced with Aboriginal women, who have been provided with no explanation/preparation about what to expect in the court setting, attending with or without a support person and being placed in the difficult situation where they are going to be asked about sensitive matters in the presence only of white males. The inevitable result is that they are unable to give evidence. This occurs, in our experience, at a concerning rate.

Aboriginal witnesses will also often speak very softly and the CJC report noted the poor acoustics of many rooms. We await the outcome of requests for the installation of voice enhancers in court houses and are confident of a satisfactory outcome.

Use of aboriginal staff or liaison officers

The CJC report made a recommendation for increasing the number of Aboriginal court staff in “client-contact” positions. This has occurred on an ad hoc basis from time to time in some centres but not on the Cape.

It also recommended that a pilot scheme be established for Aboriginal court liaison officers to familiarise witnesses with the court environment and court processes. This also has not occurred on the Cape.

We understand that in 2007 liaison officers are to be introduced into the existing Murri Courts by way of a Senior Liaison officer and six (6) liaison officers (2 for Northern and Far North Queensland Murri courts). Unfortunately, there is no Murri court in either Cape York, Cooktown or the Torres Straits.

We see a great need for such officers who could advise magistrates and court staff about services, coordinate service provision for initial hearings, coordinate meetings with the CJGs, respond to urgent “in custody concerns”, and liaise with other courts and services and provide advice about cultural concerns and about the complexities of cross cultural communication (Saville-Troike 2003)⁹.

We note that in most other states some such innovation has been introduced, usually in the context of establishing a Murri Court. What such officers can do is illuminating. It is pleasing to see that there are moves in this direction in Queensland and we can only hope in time that the provision of such officers will extend to the Cape, Cooktown and the Torres Strait island courts.

In Victoria the Aboriginal Justice Officer (AJO) is a court employee who sits with, and as a part of, the court advising the bench before, during and after court cases. They can make their own inquiries about matters, which inquiries are located in and intimately connected to the Aboriginal community in the regions. Local community services, including non-aboriginal groups, are drawn into the court process by the AJO who confers with the defendant and his or her solicitor and discusses matters with the local police and other services such as Juvenile Justice workers or Corrective Services staff.

The AJO has a paralegal and outreach role and is actively involved in gaining feedback from the local community about the operations of the court. Local knowledge ensures a specialist understanding of the potential for conflicts of interest. The AJO negotiates with the legal service, organises court lists and extended family attendances at hearings, liaises about outstanding fines etc. The AJO speaks to those involved in disability and child and adolescent mental health services and community health services.

“The AJO position is unique in that the role involves considerable connection with the defendant additional to his or her engagement with the solicitor instructed. The AJO has commences a process of developing a case history about a defendant in consultation with family, solicitors and defendants themselves. The innovation involved in incorporating an Indigenous person in the court processes as a specialist

⁹ Saville-Troike, M.; 2003, *The Ethnography of Communication. An Introduction*, Oxford, Blackwell Publishing – taken from a paper “Koori Court Victoria – Magistrates Court (Koori Court)Act 2002 by Dr. Kate Auty, Regional Co-ordinating Magistrate, Victorian Magistrates Court North East Victoria and Daniel Briggs, Aboriginal Justice Officer, Koori Court, North East Victoria

results in a greater level of understanding about some matters particular to the local Aboriginal community and defendants.”¹⁰.

We would clearly welcome such appointments.

Community Justice Groups

The introduction of Community Justice Groups was a very welcome initiative. It naturally had teething problems and each community has had different experiences.

Of concern to us has been the relatively low level of resources and training offered to the groups. Apart from coordinators who are paid, the groups survive on the presence and unpaid work of Elders and other volunteers. We have also been concerned that the Groups are often asked to do too much in areas for which they are not paid and in which they are not trained. Examples include the conduct of community or individual mediations, explanation of court processes, the preparation of pre-sentence/bail reports or the supervision of community based orders.

Conflict of interest issues arise from time to time and may not be understood. Further conflict within groups has routinely seen them to become dysfunctional or to cease to operate at all.

We would like to see greater involvement and participation of the community justice groups and particularly Elders in all of the below-mentioned activities given the importance of possible outcomes affecting each of the complainants, offenders and the community as a whole. There is also an unfortunate and inexplicable trend for the majority of paid coordinators to be non-indigenous.

Once CJG members were properly resourced and paid, we would see that the many, varied and important functions which they could fulfil should include:-

- interviews with defendants and meetings with other CJG members, prior to court callovers, for the purpose of gathering information and preparing submissions in relation to the sentencing of defendants (as provided by the Penalties and Sentences Act) and the hearing of Bail applications;
- attendance at court each week/month (depending on the court location) for the presentation of such submissions;
- the conduct of mediations between complainants and offenders in relation to charges before the court;
- meetings with defendants the subject of Good Behaviour Bonds, Community Service Orders, Probation Orders or Intensive Correction Orders where a condition of such an order is that the defendant attend upon the CJG as directed;
- supervision of offenders at outstations and camp projects, either as conditions attaching to grants of bail or conditions attaching to community-based orders.
- Provision of information to defendants and witnesses alike about the court processes, the functions of the CJG and its members and the various

¹⁰ Dr. Kate Auty, Regional Co-ordinating Magistrate, Victorian Magistrates Court North East Victoria and Daniel Briggs, Aboriginal Justice Officer, koori Court , North East Victoria page 11 as delivered to the “At the Cutting Edge – Therapeutic Jurisprudence” conference Perth, May 2005.

responsibilities and roles of the legal representatives and service providers, not to mention the sentencing function of the court

Some of these activities are already conducted by Community Justice Groups but often on an ad hoc basis and very much subject to the goodwill and hard work of a few. There is much that needs to be done to support the valuable contribution that the groups can make.

Given that there are no other mediation services operated by any other organisation available within any of the indigenous communities, it is crucial that the CJG members be trained appropriately in mediation and dispute-resolution skills generally.

The training conducted to date has been observed by all magistrates to be inadequate with the result that either

- (i) the majority of CJGs are not conducting mediations at all, even when matters are adjourned by the court for the specific purpose of enabling this to occur; OR
- (ii) such mediations as are being conducted are not conducted in such a way as to provide any of the possible/anticipated outcomes.

The Magistrates would welcome involvement and consultation with the CJGs and the trainers in relation to these issues, given the significant advantage to the court of a functioning, well-trained efficient CJG cognisant of the importance of fulfilling their role as envisaged by the legislators and familiar with the expectations of those administering the justice system.

Whilst we see the issue of funding to CJGs for the purposes outlined above, we would also propose that funding be made available for the following purposes:-

- The funding of CJGs in the outer islands of the Torres Straits, all of which (excepting Badu Island), are not visited by circuit Magistrates Courts at all, but whose community members regularly appear before the Magistrates Court at Thursday Island. The court would be much-assisted by input from Elders of those communities in relation to matters specific to the offender, the offending and the community attitudes so that the court is not considering issues of bail and imposition of sentences in a vacuum.
- Some of these outer islands are actually installing video link facilities for guilty pleas and mentions. The Elders would need to receive instruction about their court appearance via videolink, for example, timing, consultation with the defendant where appropriate, handing up of documents or references, if relevant.
- It would also be of benefit to the future CJGs in the outer islands if initial funding could provide for their transport to Thursday Island during a week when the Magistrates court is actually conducting sittings there so that they could familiarise themselves with the court environment and its procedures.
- The same issues of the payment of Elders and the training of Elders in the duties required for their effective functioning apply in the Torres Strait as indicated above in relation to the Cape communities.

Responsibility for Community Justice Groups has very recently been transferred from the Department of Aboriginal and Torres Strait Islander Policy to the Department of Justice and it is hoped that better training and resourcing will result.

CJGs are also expected to implement the individual Alcohol Management Plans in their respective communities. These plans are seen by certain community members as contentious and the process of consultation with the communities has been criticised by some within the communities.

Interpreters

The need for qualified and competent interpreters generally within the justice system is hardly controversial and is well recognised. Certainly the court system has a reasonably close relationship with interpreter services and if ordered generally this occurs in just about every well known language group and many not so well known.

Our experience, however, with defendants who speak indigenous languages/dialects is quite the opposite. We cannot recall at any time in our experiences in Far North Queensland where a qualified interpreter has been used. On occasions members of the Community Justice Groups may provide some limited assistance to the court in explaining an order where it was plain that what had been said was not understood. We strongly suspect that despite our efforts to speak as simply as we can, the requirements of orders to be met by defendants are simply not understood by them. We can not recall any instance where an interpreter or another suitable member of the community assisted during an actual hearing.

This is all despite the fact that the difficulties faced by indigenous persons, particularly where their first language may be a traditional one, have been studied and reported on for decades, with little positive results from our observations and experience. The complexities of cross-cultural communication impact not just upon exchanges between a non-Indigenous bench and Indigenous people but permeates throughout the whole criminal justice process from first questioning by police, to the ability to properly instruct lawyers, to the well known difficulties of the lack of understanding of the court process and the subtle nuances of giving evidence. There have been many academic and other studies which have recognised this and we do not intend to review that work here.¹¹

The circuits do not have interpreters available routinely. Rarely are there trained interpreters residing within the communities themselves, or otherwise available in any event. There have been occasions when interpreters have been ordered, but the expense involved in flying them to the communities is a restriction. Sometimes the matter has to be transferred to Cairns.

What concerns us is that interpreters or some other suitable community member should be present at every circuit and in every court to provide assistance as required.

¹¹ Eades, D., *Aboriginal English and the Law: Communicating with Aboriginal English Speaking Clients*, Queensland Law Society Inc, 1992; *Aboriginal English in the Courts*, Dept of Justice Qld based on the work of Diane Eades; J.Gibbons, ed., *A case of Communicative clash: Aboriginal English and the Legal System, Language and the Law*, Essez, Longman Group: Eades, D., 1993 ;M. Walsh and C. Yallop, eds., *Language and Culture in Aboriginal Australia*, Canberra, Aboriginal Studies Press; Eades, D, 'Language and the law': *White Australia v. Nancy* 'Cross examination of Aboriginal Children', *Aboriginal Law Bulletin*, 3:95: 10-11; Dr. Michael Cooke, "Indigenous Interpreting Issues for Courts", *The Australian Institute of Judicial Administration Inc* 2002; *Aboriginal Witnesses in Queensland's Criminal Courts*, Criminal Justice Commission, Queensland, report June 1996

This will not necessarily mean the proceedings will be the subject of continuous interpretation. It may be that the role is limited to instances where the differences in Aboriginal English and our own understanding need to be addressed. It may be that an order made is explained in a traditional language and in concepts which are understood, as distinct from legal concepts which may not be clear to the person.

Has there been Progress?

There has been incremental progress, more has been promised and there are some encouraging signs. There has been a greater presence on court circuits from Corrective services and Juvenile Justice workers. Until very recently a visit once a month in conjunction with the court circuit was the usual practice.

Corrective Services offices are now being established with a fulltime staff of 3 in Weipa and Thursday Island. Probation officers now reside at Doomadgee and Mornington Island. also is the subject of a permanent office. Certainly this will mean an increase in the number of programs offered and in the level of supervision. There has been a comprehensive review of programs being offered both in prison and in the community. It is at least a start.

There has been a greater presence of Juvenile Justice workers and of Child Protection Officers, but we are not aware of a permanent presence in any of the communities.

The introduction of Murri Courts is receiving serious consideration as mentioned above but it is in a limited way. There is a proposal to pay Elders for their attendance at court. Previously Murri Courts operated without any legislative or budget basis and commenced as a result of individual Magistrates' commitment to such a process. The recognition of that good work is very much welcomed. However there is no immediate prospect of those courts operating in The Cape or from Thursday Island and any innovation in sentencing practices will have to fit within the limited time and resources offered.

The principles of therapeutic justice as they operate in the Drug Court and in other diversion courts and programs are also welcome innovations which are beginning to make some inroads, but again these are being offered in larger centres and the areas of most disadvantage are being left out. In Far North Queensland, Alcohol Diversion bail programs are being offered in Cairns, Yarrabah and Townsville and will have some flow on effect in so far as many of those affected originate from the Cape (often as a result of moving to avoid the restrictions of Alcohol Management Plans).

There was an increase in the time spent by Magistrates in the communities when an additional day was added to the circuit each second month in 2004. This time needs to be further extended. This will be achieved by a change to come into effect at the beginning of 2007 when the Bamaga court will be included in the Thursday Island circuit, thus creating an extra day a month in the Cape York circuit. It will be welcomed by Magistrates and even more so by the communities and their members. It is to be hoped that over time further extensions of the circuit will occur to enable the delivery of a service similar to that available to indigenous persons in areas where there are Murri courts.

The difficulty faced by the court, however, in extending these circuits is the ever increasing cost of air travel associated with rising fuel costs. As a result there is a forecast of an increased cost of approximately \$9 000.00 per month for Cape circuits over the next twelve (12) months.

Local Indigenous Justices of the Peace have been trained, in the meantime, to constitute courts dealing with various community or alcohol related offences for a number of communities including Aurukun, Badu Island, Hopevale, Kowanyama, Old Mapoon/Napranum(Weipa area) Pormpuraaw and Thursday Island. This is welcomed.

The need for training of Magistrates to more effectively operate in these communities also needs to be addressed. Whilst we have read relevant resource material as can be seen from the attached list of references, and participated in information sessions at annual Magistrates conferences, we would propose even further training.

We would recommend that judicial officers presiding in remote indigenous communities receive cultural awareness training in order to gain a better understanding of:

- indigenous cultural identity and difference
- the historical impact of colonisation
- indigenous experiences of the legal system
- communication in court and in indigenous communities
- customary law
- the community standards/values/expectations in the communities involved.

Conclusion

Our experiences in attending these remote communities have proved to be a rewarding experience, both personally and professionally. Although we are critical of many aspects of justice delivery in these communities, there are signs of change which we hope will outpace the incremental changes we have experienced. Whilst we have been greatly enriched by the knowledge gained from those in the communities during the time spent there, we realise that in reviewing our experiences, there is so much more that we need to do.

After all, "... democracies and their laws represent the possibility of justice, and ... the people in the legal system have a duty to make that justice happen."¹²

Magistrate John Lock
Magistrate Tina Previtiera
1st September 2006

¹² Justice Rosalie Silberman Abella, Court of Appeal for Ontario, "Human Rights and the Judicial Role" AIJA Annual Oration in Judicial Administration.

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