
The quality of mercy ... it blesseth him that gives and him that takes

For prosecutors and defenders alike Alasdair McGregor is one of the Northern Territory's most respected magistrates. After a four year stint in Katherine, he gave an interview to Darwin's 8DDD's Julia Christenson. *Balance* provides an edited transcript.

One Northern Territory court magistrate says mercy has been taken away from the courts and not given back to the government. Alasdair McGregor says the government took mercy from the courts when they introduced new sentencing laws like mandatory sentencing, and if people want mercy they must now write to the Attorney General Mr Denis Burke and apparently a number of people have done just that. Is the Attorney General likely to give mercy if people write to him?

I think one of the real problems is that the first offenders, the people that are most concerned about going to jail, are the ones for whom it is still a terrifying thing.

They have only got 14 days before they are out again, so any applications for mercy are being made before they are going to court. We have now got a scenario where there is a lot of negotiations behind the scenes before they enter a plea in court and quite clearly the police are having to do what traditionally home secretaries, chief ministers and the like would be doing after they've been to court.

(Previously) there was always time to appeal, there was always time to seek forgiveness from God, there was always time to go to the home secretary, the chief minister, chief secretary whatever ...

So there is no time left now even if it was deemed to be suitable?

No. Mercy is mentioned still now in the two acts that we use. The criminal code still says that that code does not

take away the prerogative of mercy. The sentencing act tells us in section 9 that in certain circumstances the courts have to take into account circumstances that justify the courts showing mercy to an offender, but in these cases of mandatory sentencing there is no room for the courts to show mercy, therefore it falls back on the royal prerogative. Remember at the royal coronation the Queen got the sword of mercy handed to her, the blunt sword. and that royal prerogative is handed to by the administrator on the advice of his ministers.

On the advice of his minister, the Attorney General?

Well, probably, yes. What we have at the moment is a situation where parliament is clearly, for its own reasons, and they may be very good reasons, felt that the courts were not exercising the combination of justice and mercy correctly, but hasn't really made very much provision for anyone else exercising mercy.

(But) I see the mob at Dagaragu who are desperately trying to keep a generation of their children out of jail. I see a mob at Beswick doing the same thing. The mob of the older men, the elders, strong women. I see them doing this where the victims are themselves because the victim is the community store, in some cases owned by them, and where they think they have got a fighting chance of knocking their kids into line. This may be against some international convention, I don't know. You can't knock your kids into line in Scandinavia. But they think they would like the chance of being able to do that without losing their kids to jail.

So they are desperately concerned about their children going to jail?

They are ... a lot of people don't like the prison system out on the communities.

Not many magistrates will speak as freely as you have. What's the feeling behind the scenes.

I am not able to speak out on that one. I've just come in from four years in the bush and I've probably got a totally different perspective from the northern suburbs. I don't see any more the people who used to ransack houses. I know the feeling is strong against ransacking ... I've seen all that in court. Perhaps I wasn't tough enough on them. But I haven't been seeing that lately. If it has still been happening in Katherine then all I can say is that I don't think the clean up rate in Katherine is stupendously high, certainly by comparison say with Groote Eylandt. I'm not getting those cases.

You said that perhaps you hadn't been tough enough. Do you think that's the problem. That magistrates haven't been tough enough and that's what has led to these laws?

The rule has always been, the traditional rule that I learnt before the criminal code came in, was that you were as merciful as you could be consonant with justice. You had to give a just sentence, but subject to that you didn't give one that was much higher than mercy required. I'm sure its possible to have a down hill slide on that as different sentencing theories come in.

Is mandatory sentencing the answer or is there another answer?

It's an answer. Mandatory sentencing is an answer. I always take comfort, and I've been in this job nearly 24 years now, that there are many ways of reforming a person, or rehabilitating them, or sorting them out, and maybe the one I've picked is the right one, I'll probably never know.

You've talked about mandatory compensation, what do you mean by that?

I think the people who are losing to crime are generally more concerned with getting restoration than with punishment. Of course they want punishment, but they would also like their money back. I was hearing only yesterday a friend of my wife twice recently had her car interfered with which cost her about \$100 each time. That's the sort of thing you are not going to get back from the insurers. If you give a bloke 14 days jail then maybe you'll be minded to impose a restoration or compensation order as well. If its his third time up, he's going in for twelve months, compensation is a long time coming, even if it is possible to give it to him ... I have a situation, and it is probably totally different in Darwin and possibly totally different in Alice Springs, where most of the people I deal with are either on low wages on what they call CDEP, which is basically an Aboriginal work-for-the-dole, or they are on social security benefits. There is no way presently whereby you can get (compensation) out (of these mechanisms).

We have heard that Magistrates in central Australia have been trying to get around mandatory sentencing. Have you looked at that and been successful?

The Attorney General in Shane Stone's government, Mr Burke, once announced on your station that he was in favour of regional programs and that was great by the people in my area, Katherine, because that allowed, as far as we could see, the people in Kalkarinji, Dagaragu to organise a punishment camp. It allowed the people at Beswick to organise a punishment camp and they, I think, worked quite well. Kids, juveniles, young adults who are foolish enough to offend again while they were supposed to be working it out in the community or camps they certainly got brought back into court and others who presumably performed had their charges withdrawn. That was as far as we were concerned a good regional program.

What about under the current system, looking for exceptional circumstances. Do you find yourself doing that?

If its open to us, of course we find ourselves doing it. We find ourselves doing it for hours at a time.


So your bending over backwards to find those exceptional circumstances?

No, we're not bending over backwards, their lawyers are bending over backwards. Their lawyers are flinging everything at us to make sure that we make the finding that the lawyer seeks and instead of having trials (there's not many trials in the Katherine area, most people will plead guilty to whatever it is the police have said they've done or something similar) and that becomes quite a large forensic task to decide whether the case is trivial. There's a lot to go into. There's only four paragraphs and each of those

paragraphs have got three or four subparagraphs depending on how you count them. There's a lot to consider.

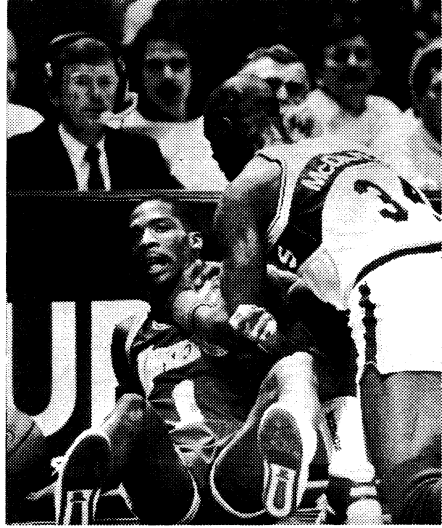
Our Attorney General Denis Burke is feeling very confident now that he is supported in mandatory sentencing by the community, do you think the legal and judicial opposition is going to continue? We saw a great drama in the Supreme Court of course a couple of weeks ago when Justice Martin just about declared himself ineligible to sit.

Well I don't want to talk about that, except that I will say (when I) heard the Attorney General over my breakfast ... I was a little bit angry when I went to work that day.

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