

# The trials of Bali

Happy New Year to all.

As a consequence of the 12 October 2002 bombings in Kuta, our Association had to cancel its 9<sup>th</sup> Biannual Criminal Law Conference in Bali this year. Following the bombing and after much agonising and heated debate, our Conference Organising Committee decided that the conference would now be held in Port Douglas, north Queensland. Although this decision was made with sadness and regret, we are nevertheless resolute that the conference will be a successful one.

The specific details as regards this conference are that it will be held this year at the Portsea Hotel from Monday 30 June to Friday 4 July. Port Douglas ain't Bali but our organising committee is still confident the conference will be attended by many high profile legal and relevant figures with the usual impressive list of keynote speakers. I will keep readers posted regarding relevant details on the conference.

As it happens the criminal legal consequences of the 12 October disaster poses an intriguing criminal legal scenario for Territory practitioners in particular. The subsequent international investigation into the crimes leading to the rapid arrest and detention and gathering of evidence by the authorities raises an interesting case exercise for criminal lawyers.

The crimes have been investigated by the Indonesian police (as opposed to their Indonesian military) and specifically the OIC, or "Investigation Chief", is the Senior Balinese Police Officer Made Mangku Pastiku. His investigative team has been joined by police officers from other countries whose nationals were killed in the bombing, specifically the Australian Federal Police, the English CIB and American FBI officers as well as officers from several other European nations.

The investigation has been throughout one of a very public and transparent nature. The international media have been consistently updated as to its progress and developments.

Arrests were swift and it would appear admissions from many of those arrested have been obtained. At present five men have been charged with relevant offences including murder and acts of terrorism in relation to the bombings.

One hiccup in the police investigation has been the arrest and detention of the religious leader Abu Bakar Bashir who was arrested as early as October last year. However, unlike the other "foot soldiers", he has denied any involvement in the Bali bombing. Of course, the 12 October bombings weren't exactly out of the blue for Indonesians. In the preceding two years, their country has been subject to similar terrorists attacks: the Istiqlal Mosque in April 1999; the Phillipine Ambassadors house in 1999 and the bombings on Lombok on Christmas 2000 to name a few.

Although the cleric has admitted involvement in those matters, he has consistently denied any involvement with the Bali bombings.

Speed has been the watchword with the first trial planned for February.

A major issue emerged early as to the venue for the trial. Without undermining the horror and tragedy which the bombing wreaked on Australia, ultimately the biggest loser in all of this was, and is, the Balinese people.

They also lost lives and many were grossly injured (29 deaths). Not to mention the trauma for the locals who literally cleaned up the resultant carnage.

Vast numbers of Balinese people are dependent directly and indirectly on the tourist industry. Based on that dependence, the Balinese people have managed to eke out a still impoverished existence. All of that is now badly damaged and quite possibly destroyed. The economic consequences on the Balinese have been and will continue to be devastating.



John Lawrence, President, CLANT

I've recently returned from our family holiday in Bali during Christmas and New Year. I was able to witness much of this loss first hand.

From what I saw and heard from the Balinese, they are resolute that the culprits who committed these crimes should be brought to task in Bali.

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*Advocacy, from previous page*

It is obviously inappropriate for you to be both counsel and a witness in relation to the matter and you will need to fully consider the implications of becoming the source of evidence in relation to a particular part of the proceedings, even at an early stage.

When you appear before the court to argue an interlocutory application you should present your argument in an ordered fashion. You will need to identify the evidence upon which you rely and be in a position to meet any objections to that evidence that may be made by your opponent.

You should have available to you all of the materials upon which you rely in a readily accessible form so that you can deal with any questions that may arise in discussion with the court. If you have prepared a chronology it is often convenient to identify the source of the information contained in the chronology by reference to the affidavit material or to the pleadings.

This will enable the court to quickly comprehend the factual basis upon which the argument is presented and will assist in the formulation of reasons for decision.

As with all appearances before a court or tribunal you should endeavour to present the application in a persuasive, interesting and ordered manner ensuring that you deal with all necessary matters in an effective yet concise way. Your case strategy will at all times guide the presentation of the argument.

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I even heard that when the issue of the defendant's trial venue was debated, some Balinese people organised to pay the Indonesian Government trillions of rupiah in order to "buy" the defendants back into the custody of the Balinese Police.

There will be no few interested observers at the forthcoming trial.

Presumably the governments of those nationals who were slain, including our government, as well as independent jurist associations, will keep an eye on the proceedings.

Our association has a special interest in the proceedings: professionally and personally.

In that regard, we shall endeavor to follow and report back as comprehensively as possible the trial proceedings and their outcomes. The maximum penalty for acts of terrorism is the death penalty.

From what I saw and was told, anything less will be inadequate for the Balinese people. The penalty may well create a major issue.

Much of Indonesia's relatively fragile economic and political situation could

# Shoyer new Info officer

**A former top Queensland bureaucrat has become the Territory's first Information Commissioner.**

Peter Shoyer will take up his role in March. He was the Assistant Information Commissioner in Queensland and has a background in law.

Attorney-General Dr Peter Toyne says Mr Shoyer also played a key role in the development of informal resolution strategies for FOI disputes.

The Information Act was introduced last year and commences in July.

well be affected by the outcome of these trials. The "democratic" President Megawati is under enormous domestic pressure.

The economic situation and the ubiquitous military hang over her like a cloud.

As it happens, her grandmother is Balinese and she is very popular on the island of Bali.

One can predict, even at this early stage, dissatisfaction and, perhaps, demonstrations by the Balinese if the offenders do not receive the maximum sentence available.①

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