Confidence in the Justice System

and Courts in Particular

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THE MACQUARIE DICTIONARY DEFINES "ACCESS" AS "EASE OF APPROACH" AND "ACCESSIBLE" IS DEFINED AS "APPROACHABLE." IN THIS ARTICLE, MS HILARY HANNAM CM CONSIDERS THE ISSUE OF WHAT CAN BE DONE IN THE MAGISTRATES COURT OF THE NORTHERN TERRITORY TO MAKE JUSTICE MORE APPROACHABLE AND WHY THE COURT SHOULD BE CONCERNED TO DO SO.

There is consistent evidence from a number of sources that confidence in the Justice System generally and the Courts in particular, is low in Australian jurisdictions, especially when compared with similar systems elsewhere. Although there is ongoing debate about what is meant by "public opinion" and whether it is wise to rely upon it, it has been consistently documented that public opinion reflects that confidence in the Criminal Justice System is low.

This evidence is concerning because as noted by Chief Justice Brennan,

> 'the judicature has no power base but public confidence in its integrity and its competence in performing its functions.'[1]

Courts cannot carry out their function to secure the rule of law if their authority is not accepted by the community itself.

Research concerning public confidence in the Courts also shows that the level of confidence is generally based on misconceptions about levels of crime, the perception that Courts are too lenient and that Judicial Officers are out of touch with the community. Some of the research which confirms public confidence being based on misconceptions includes the *Tasmanian Jury Sentencing Study*[2] and *Misperceptions of Crime in Australia*.[3] The same research indicates that the well-informed public responds differently, with the level of confidence increasing as the level and quality of information improves. This suggests that providing the public with accurate information is fundamental to increasing confidence.

Informing the Public

Knowledge of the Courts is based upon either personal experience or media portrayal. The majority of Australians have little direct contact with the criminal Courts, so most members of the public rely on the media.[4] Much has been done and continues to be done to foster the relationship between Courts and the media by appropriate means. For example, most jurisdictions in Australia including the Northern Territory have media and/or education officers.

The Judicial Officer's Role

To the extent that knowledge of the Court system is based on personal experience, much can be done within the Court itself by Judicial Officers in particular, to make justice more approachable. As Judicial Officers we fail at the most basic level if litigants and other participants such as victims or witnesses do not understand what has happened in Court, what will happen next and that they have been listened to.

Some of the research concerning confidence in the Court system presents some alarming results regarding some aspects of the Court experience. For example, Indermaur and Roberts found that only 52% of Australians had confidence in the criminal Courts dealing with matters fairly. In a survey of sentencing and public confidence, only a bare majority were of the view that Courts treat people with dignity and respect and only 41% believed that Courts listen carefully to people.[5]

The perception of fairness in a litigant's Court experience has been found to be fundamental to the legitimacy of the Justice System itself. Two U.S. judges, Kevin Burke and Steve Leben, noted, as others have done, that litigants are often more concerned with the fairness accorded to them than they are with the actual outcome of the litigation.[6] Commentators have also observed that litigants will be more compliant with judicial decisions if they feel that the process was fair. One of the most basic initiatives that Judicial Officers can take to enhance access to justice is to use plain and accessible language, especially in, but not limited to, judgments.

Avoiding 'Legalese'

During the recent *Language and the Law Conference* held in May at the Supreme Court of the Northern Territory, although the focus was on litigants whose primary language was one other than English, Judicial Officers became increasingly aware throughout the conference that legal language can isolate and exclude all non-legal participants in the Court process, not only those with a non-English speaking background.

Surveys conducted overseas have demonstrated that the public feels that legal language is 'obscure and impersonal.'[7] This obscurity has long been a source of ridicule in literature and in the media. The attitude of the public towards legal language was well characterised by Malcolm Knox writing a tongue in cheek article in the *Sydney Morning Herald* about the *Bush v Gore*[8] U.S. Supreme Court case:

> 'It doesn't matter if it's Super League or a national election, judges are the most unsatisfactory people to decide life's big questions because it's so hard to work out what they are saying. All of the key decisions in this election, at whatever level, have been followed by universal blank looks. "Has he finished yet? Does that mean we won or lost?"'[9]

The use of legal language creates barriers between the Judicial Officer and the non-legal parties and may intimidate those who are most vulnerable in the Courtroom.[10] It is therefore imperative for Judicial Officers to use plain language that 'communicates directly with the audience for which it is intended' as often as possible. We should be vigilant in ensuring that our communications use modern, standard English rather than 'legalese' and seek to meet the needs of the affected parties and the public.[11]

Community Consultation

Other important initiatives that can be taken in the Magistrates Court to enhance access to justice include the publication of important decisions of Magistrates on the Court Website, appropriate engagement from the Court in the public debate and better communication with the community.

In South Australia, Chief Justice John Doyle initiated the 'Courts Consulting in the Community' program in order to investigate the attitudes of the community towards the Justice System. This program began in 2000, with a survey consisting of more than 1,000 telephone interviews and a two-day conference. Using this information, the Courts developed a number of strategies in order to improve public perceptions of the Justice System including:

- Court open days,
- Public education sessions,
- Resources for litigants including interactive information in Court public waiting areas. and
- A facility on the Courts Administration Authority Website that allows students and the public to ask questions of the Court.[12]

When the survey and conference were replicated in 2006, it was found that although the overall results were largely static there were some important improvements in the public perceptions of South Australian Courts including: a 12% decrease (to 61%) of respondents who agreed with the statement:

> *'it is about time that the Courts caught up to the real world'*

and a 16% increase (to 74%) of Court users who reported a good or satisfactory understanding of what was happening in their Court matter.

These results illustrate that although public perceptions of the criminal Court system remain firmly entrenched, proactive efforts from the Northern Territory Magistrates Court to educate the public and ensure that the Court experience is as inclusive as possible can shed light on the Judicial process, overcome negative misconceptions and improve access to justice.[13] .

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Endnotes

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2. Kate Warner et al, 'Public judgement on sentencing: Final results from the Tasmanian Jury Sentencing Study' (2011) *Trends and issues in crime and criminal justice* Report No. 407, Canberra: Australian Institute of Criminology.
3. Brent Davis and Kym Dossetor, 'Misperceptions of Crime in Australia' (2010) *Trends and issues in crime and criminal justice* Report No. 396, Canberra: Australian Institute of Criminology.
4. Lynne Indermaur and David Roberts, *What Australians think about crime and justice: results from the 2007 Survey of Social Attitudes* (2009) *Trends and issues in crime and criminal justice*, Research and public policy series no. 101, Canberra: Australian Institute of Criminology, 4.
5. Ibid 18.
6. Kevin Burke and Steve Leben, 'Procedural Fairness: A Key Ingredient in Public Satisfaction' (2007) 44 *Court Review* 4, 6.
7. See Robert W. Benson, 'The End of Legalese: The Game is Over' (1984-1985) 13 *Review of Law & Social Change* 519, 532; Plain Language Institute of British Columbia, *Critical Opinions: The Public's View of Legal Documents* (1992) 18 cited in Peter Butt, 'Legalese versus plain language' (2001) 35 *Amicus Curiae* 28, 32.
8. 531 US 98 (2000).
9. Malcolm Knox, 'Shonky votes? It could never happen in Australia', *The Sydney Morning Herald* (Sydney), 16 December 2000, 20.
10. Butt, above n 7.
11. Ibid 28.
12. Anna Butler and Katherine McFarlane 'Part 6: Strategies to Restore Public Confidence in the Criminal Justice System' (2009) *Public Confidence in the NSW Criminal Justice System*, Sydney: New South Wales Sentencing Council, 31-32.
13. *Courts Consulting the Community 2006 - Survey Summary* (2006) South Australian Courts Administration Authority <http://www.courts.sa.gov.au/community/conference_2006/Survey_summary.pdf> at 29 June 2012.

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Endnotes

1. Principal Legal Officer, North Australian Aboriginal Justice Agency (NAAJA). These are my personal views and not those of NAAJA, its staff or members. This article is an edited version of a paper presented to the Commonwealth Law Association's Commonwealth Regional Law Conference, 21 April 2012, Sydney. My thanks to Ruth Barson for her insightful comments.
2. See Charles E Potter Jr, 'Poverty Law Practice: the Aboriginal Legal Service in New South Wales' (1974) 7(2) *Sydney Law Review* 237; Cunneen and Schwartz, 'Funding Aboriginal and Torres Strait Islander Legal Services: Issues of Equity and Access' (2008) 32 *Criminal Law Journal* 38.
3. Some also include significant practices in family law, but at the time of writing NAAJA had ceased to provide services in family law because of a lack of adequate funding.
4. Cunneen and Schwartz, above n 2; *The family and civil law needs of Aboriginal people in New South Wales, Law Faculty, University of NSW (2008).*
5. Australian Bureau of Statistics, *4512.0 Corrective Services, Australia, December 2011, available at: www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4512.0Main%20Features2December%202011?opendocument&tabname=Summary&prodno=4512.0&issue=December%202011&num=&view=.*
6. See Northern Territory Department of Justice, *Northern Territory Quarterly Crime and Justice Statistics, Issue 35, March Quarter 2011, 94-5, available at: www.nt.gov.au/justice/policycoord/researchstats/index.shtml.*
7. See Department of Justice and Attorney General, *Aboriginal English in the Courts (2000), available at http://www.courts.qld.gov.au/__data/assets/pdf_file/0004/90715/m-aboriginal-english-handbook.pdf.*
8. See *R v Anunga (1976) 11 ALR 412.*
9. National Pro Bono Resource Centre, *Submission to the Senate Legal and Constitutional Affairs Committee: Inquiry into Access to Justice (2009), 15 available at www.nationalprobono.org.au.*
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    Committees?url=legcon_ctte/access_to_justice/submissions.htm.
11. See www.finance.gov.au/foi/disclosure-log/2011/docs/foi_10-27_strategic_review_indigenous_expenditure.pdf, 240.
12. See Schwartz and Cunneen, 'Working Cheaper, Working Harder: Inequity in Funding for Aboriginal and Torres Strait Islander Legal Services' (2009) 7(1) *Indigenous Law Bulletin 19.*
13. Law Council of Australia, above n 10, 24.
14. Senate Legal and Constitutional References Committee, *Legal aid and access to justice (June 2004); Access to Justice (December 2009).*
15. See the 2009 report of the Senate Legal and Constitutional References Committee, ibid,
16. This is not to apologise for the fact that ATSILS provide an effective legal aid service to people accused – and convicted - of crimes. Aboriginal and Torres Strait Islander people should enjoy the same right as others to a fair trial and effective representation and having a culturally competent service is the best way to ensure that these rights are protected. The report of the Royal Commission into Aboriginal Deaths in Custody also emphasised the wider role that ATSILS have in areas such as research – and the need to ensure that ATSILS are adequately funded for this work: see recommendation 105.
17. Steering Committee for the Review of Government Service Provision, *Report on Government Services 2012, (Productivity Commission, 31 January 2012) vol 1, p C.22, available at: http://www.pc.gov.au/gsp/rogs/2012.*
18. The importance of the role of Aboriginal organisations, including legal services, in empowering Aboriginal people and society was highlighted by the report of the Royal Commission into Aboriginal Deaths in Custody: see *National Report*, Volume 1, 1.8.