

SENTENCING FROM A KIMBERLEY PERSPECTIVE

MR ANTOINE BLOEMEN SM

A. PRELIMINARY WORK

1. Consult with community, elders and administrators before holding court; make sure that the elders sitting are: respected;
law men and women;
non-alcoholics; and
respected in the communities.
2. I'm fortunate – I have an Aboriginal Liaison Officer who knows the Kimberley and communities very well. Her background briefings are very helpful.
3. We let the elders and people know who we are and what our goals are.
4. An example from a recent community court:
 - arrived at 5:00pm in Kalumburu;
 - picked up by chairman;
 - met with group of elders (men), thereafter women;
 - discussed various matters;
 - I try to explain to that I do not have a magic stick to fix everything;
 - next day, met with elders who had been assigned to sit with me – 2 men and 2 women; one of which was 18 years old;
 - we had cases where the normal bail conditions would not be met and defendants would have to go to Broome or Perth. In one case, a man was sent to a station instead.
5. In another community, I was invited to meet with the women elders on their own (very special).

It was important to them that I understood that they are elders with equal – but different – power.

Previously, I had liaised mainly with the male elders.

While the power balance varies with each community, usually male officials tend to work mainly with the men, so getting only half the story.

6. Assistance and moral support of community based programmes is crucial.

For example, the women elders at Warmun asked me to help set up an alcoholic rehabilitation programme. They (4) sit with me in court.

This successful 3-day course is run every 2 months by mainly women, including several strong, well-respected elders.

I order people on bail on alcohol-related offences to attend the course.

Each one pays \$60.00 personally towards the cost of the course. If they refuse, most likely an imprisonment term.

I publicly congratulate the graduates of this and other courses whenever possible, and I often buy frames for their certificates.

B. PREVENTATIVE STRATEGIES

If possible, we look at preventative programmes in conjunction with the community leaders.

We target especially the:

- Wardens;

who have a very difficult 2-way job;
white man law and Aboriginal values.

I encourage and assist as much as I can. For example, in Warmun I bought 2 bikes so that the Wardens will have quick, flexible transport between the two main areas of the community.

Hopefully reducing the number of people who have to be sentenced.

- Children;

In Balgo, to help keep kids in school and out of trouble, we set up an after school fun bike project run by the Wardens.

With generous contributions from many members of the WA Judiciary, a doctor and an accountant, we bought 29 bikes and helmets.

A District Court Judge and the Bishop of the Kimberley came to a presentation – blessing with the Wardens, elders and lots of kids.

The rule was “no school – no bike”. The bikes are kept in a storage container when not in use.

It worked well – increase in school attendance by 46% – so we may have to get donations of more bikes!

C. SENTENCING PROCEDURE

Before sentencing a defendant, I make a point of asking:

1. Do you understand the charge and what it means?

Remember, many Aboriginal people speak 3, 4 or more languages – English (or Kimberley Creole) is perhaps the 4th or 5th, and often not the most used.

2. Does he/she wish to ask me a question or have something to say?

Sometimes someone does, and it can be useful in trying to give a more appropriate sentence.

3. In the case of a suspended sentence, I ask if they know what it means, and then ask “if you break it, who puts you in jail?”

Usually, they take the point and answer, “I do”.

I reinforce this – they put themselves in jail; I don’t.

This seems to work, as Aboriginal people have been the victims of the system for so long, they see themselves as powerless.

By trying to make people realise that in this case they do have control of their future:

If they re-offend, they go to jail;

If they don’t, they stay free.

4. When sitting with elders, I always consult with them before passing sentence. They give practical advice, and sometimes would give a longer sentence than allowed.

5. Some examples of different sentences:

- In one case, I learned from my liaison officer that the defendant was an artist. So I sentenced him to paint 12 paintings for the Kimberley Courthouses; myself personally providing the materials.

He painted his desert country, busk tucker and the Milky Way.

The Chief Magistrate opened the exhibition with the artist. The resulting media coverage gave the artist recognition for his work.

As the Chief Magistrate stated at the opening, "having these paintings on courthouse walls makes the place seem more user-friendly to Aboriginal people and gives others a different view of the country".

- In Balgo, the elders recommended that we take a creative sentencing approach to cleaning up the community.

The plan is to delay sentencing and put defendants on bail to paint buildings and/or pick up garbage, getting \$3.00 per big bag, paid for by the community.

One of the observations I've made is:

Regardless of the sentence, Aboriginal people do not seem to hold grudges.

They accept their punishment, and then it's over, (as it is traditionally).

I often chat with prisoners I've sentenced after release or in the courthouse gardens where they work whilst in jail.

The most common request is, "please, will you buy me some tobacco and papers?".

And when I meet them after they have been released, they tell me that they have not consumed alcohol and have not been in further trouble.

So, for me personally, it is vital to try to take a genuine interest in where the person before you is: coming from; and
their present circumstances,

so that sentencing can be made relevant, and if possible, positive for that person's future.