District Court (Criminal Jurisdiction) Listing

The Bar Council has been concerned for some time about the running list system introduced in the Sydney District Court on 2 June 1986 in respect to criminal trials. It has made representations concerning the prejudicial effect of the system on accused both because of the uncertainty attending the trial date and the ability to retain counsel, properly briefed, for the day the trial comes on. ***Tony Bellanto*** *spoke to the Chief Judge of the District Court, his Honour Judge Staunton C.B.E., Q.C., about the problems.*

"If I were at the bar I wouldn't like this system, but . . . " — His Honour the Chief Judge.

Practitioners in criminal trial litigation in the District Court will have experienced the frustrations of the "running list".

This system introduced in June 1986 was conceived as a method of dealing with:

(1) An unacceptable number of trials not reached, particularly high priority cases; and

(2) Ineffective utilization of available court time.

The Criminal Procedure Act, 1986 (proclaimed 13.7.87) and regulations, with some minor changes continues the present system.

The Act creates a Criminal Listing Directorate responsible for listing cases before the Supreme and District Courts. The changes provide for the Directorate to list Category C on a Wednesday and in respect of lower category B cases to make a "considered estimate" on the Thursday or Friday of the preceding week and in an appropriate case advise the parties the case will not start until the Wednesday or Thursday of the following week. Hopefully this will operate next year.

It seems therefore that the imprecise listing arrangements are to continue, inhibiting proper preparation of cases — disrupting counsel's preparation of work and inconveniencing clients and witnesses with its inherent uncertainties.

Additionally, the cost to the non-legally aided client and to the community where legal aid is granted is substantial when cases are not reached or where additional days (or weeks) must be put aside to meet the uncertainty of commencement and completion of the trial.

From the Crown point of view Counsel often does not get the brief until shortly before the trial resulting in inadequate time for preparation. This was one of the matters that prompted Crown Prosecutors (according to the Sydney Morning Herald of 29th July, 1987) to "work to rule" and rebel against "major defects in the system".

Is there a solution?

Recent discussions with the Chief Judge of the District Court indicated he stood firm in his view that there should not be a return to the old system of specific trial dates and that the current system of running list will continue with the changes referred to supra.

His Honour made the following points:

(a) The initial reason for changing to the running list was the lack of Criminal Court accommodation in Sydney and the need for custody cases to have priority. There was an ever increasing backlog of cases, limited resources and facilities.

In 1975 in Sydney there were four criminal trial courts with a backlog of 250 cases. Now there are seven courts with a backlog of 1,100 cases.

In the Western District there are 1,300 trials awaiting listing. Statewide there are 3,500 trials awaiting listing.

(b) Cases today are longer.

(c) Commonwealth prosecutions comprise about 7% of cases but consume 25% of Court time.

(d) Proposals for reform

(i) The provision of more Court accommodation in Sydney and Parramatta. The Downing Centre (to be completed by 1990) will house all criminal trial courts (14) plus two additional courts. The Hospital Road complex will hear civil cases only. Courts 15 and 16 Queen's Square are expected to be demolished. Eight District Courts are planned for Parramatta.
(It is significant that the present proposal was put to the Government in 1982 but was rejected due to insufficient funds.)

(ii) The creation of a pool of Judges from the District/Supreme Court to do criminal work in the city and country so that if a Supreme Court trial collapsed the Judge could draw on work in the District Court.

(iii) It is expected Transcover will reduce the overall Court time in civil cases. However this would not free Criminal Court accommodation.

(iv) Streamlining pre-trial procedures by providing for determination of issues in the absence of the jury, eg. admissibility of evidence, inspection of documents, admission of facts, etc.

The Criminal Procedure Act & Regulations, lays down guidelines for listing following committal for trial. Within two weeks for custody matters and six weeks for "bail" cases, the Directorate will make contact with the Prosecution and defence to obtain information to assist in listing pre-trial. The Prosecution will be required to file a "Notice of Readiness to Proceed", within a prescribed time. A copy of the indictment is to be provided at this time.

The Act requires the matter to be brought before the Court within three months in custody cases and nine months in non-custody cases. The Court may inquire as to the the reasons for any delay in filing the Notice of Readiness and may either —

(a) extend the time for filing,

(b) refer the matter to the listing Directorate for the allocation of a hearing date by direction, or

(c) make such other order as the Court sees fit.

These measures may help to stem or even reduce the appalling backlog of criminal cases in the pipeline, however the immediate future looks grim — and one must surely ask how is it that a system of **justice** could be allowed to fall into such a lamentable state of disrepair.

According to statistics published in the Sydney Morning Herald of 20th July, 1987 if present trends continue it is estimated there will be between 6,000 and 7,000 trials outstanding by 1990.□