

LINES IN THE SAND

ATSILS Conference — Alice Springs 2001

The third annual Aboriginal and Torres Strait Islanders Legal Service Conference was held in Alice Springs 24 — 26 March 2001. Aboriginal legal services from Central Australia, Katherine, Darwin and Nhulunbuy were represented. The theme of this year's conference was "Two Laws" and sought to explore the tensions between Aboriginal customary law and the "white man's law". Its aim was to reach some level of understanding of the complexities of Aboriginal system of law, the difficulties Aboriginal people have in reconciling their obligations under each law as well as looking at ways that we can promote customary law issues within the white man's legal system.

Delegates were officially welcomed by traditional owners, Barabara Satour and Brian Sterling. The Parrakelya Waltjapiti dancers performed a variety of traditional and modern dances before William Tilmouth, the President of the CAALAS Council opened the conference with a thought provoking statement on Aboriginal disadvantage and oppression.

Mr Tilmouth said that despite the 200 years of oppression, as an Arrernte man he was heartened by the fact that 'Aboriginal law has not only survived... but is actually getting stronger' as an ever increasing number of young Aboriginal people are choosing their law and culture - "a cause for celebration". He quoted Willie Dixon who described the two laws as 'tablecloth law':

Aboriginal law is the table, the solid structure underneath. Whitefella law is like the tablecloth that covers the table, so you can't see it, but the table is still there.

However, living under two laws was also "a cause for grief" as white man's law is still used to oppress Aboriginal people. Mr. Tilmouth referred to the lack of equality or justice in the Northern Territory and noted how little progress we have made since the Royal Commission into Aboriginal Deaths in Custody.

This year marks the 10th anniversary of the Royal Commission into Aboriginal Deaths in Custody and very little has changed. In fact, mandatory sentencing flies in the face of the recommendations and the Commission's findings. Aboriginal people are still being locked up for the most petty crimes!

Yet, as revealed in the Four Corners program on Monday night about Turkey Creek, you can rip-off an entire community and walk away scott free ... and the community's reward for alerting the officials for two long years is to see their corporation collapse, leaving a pile of debt and human misery.

There is no equity or justice in the Northern Territory.

If our law was respected — equal with non-Indigenous law — then non-Indigenous people should also be subject to Aboriginal law.

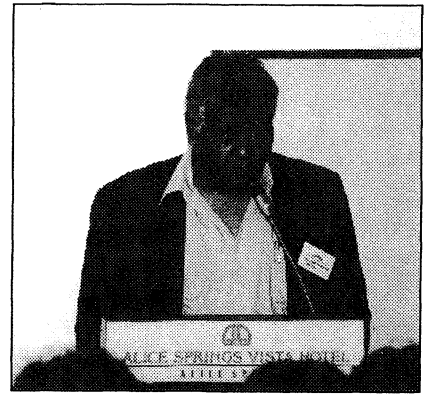
That concept probably seems quite radical to a lot of people — but consider the sheer barbarity of locking people into institutions where they are subjected to an array of abuses.

I am quite well versed on the abuses that occur in the "disciplinary institutions" of the western legal system. As many of you know I traveled the route from mission home to juvenile detention and beyond and there is very little to distinguish between them.

This is because institutions operate in privacy - the key ingredient for abuse. Western notions of law and justice are based on secrecy - particularly the surveillance and disciplinary arms ie prisons and police.

The Western justice system is covert and secret and is prolonged and drawn out over a period of time. You can spend time in remand and it can take months to go to trial ... not to mention the sentence you receive at the end of that waiting period. In contrast Aboriginal law is open and transparent and is a public ritual and a very quick process thought out by the Elders and determined by Aboriginal law. Everyone witnesses the punishment and are satisfied, which allows people to move on with their lives.

The stark contrast between these two models of power makes you question how



William Tilmouth, President of the CAALAS Council

civilised Western law is. Currently, it is economics that defines the discourse on justice in Australia. This ranges from whether you can afford a legal defence to making an industry of imprisonment.

And the sharp end of that tool is mandatory sentencing. Over policing guarantees your market. Aboriginal people are being farmed. Access to legal representation for Indigenous people must be maintained in this hostile environment. For these reasons it is imperative that the Aboriginal legal services retain their autonomy.

The first session for the day broke off into men's and women's forums led by senior Aboriginal people who spoke on customary law issues with authority. The discussion covered a broad range of issues. There were some areas that were too sensitive for discussion, imposing some limitations on complete candour. It is a limitation that is often encountered when taking instructions from Aboriginal people. Jack Munyarrir (Miwatj) summed up this difficulty later in the day when being bombarded with a barrage of questions said "I'm sorry but I wish I could help you more".

The risk of straying into areas that are not appropriate for general discussion was all too obvious. It is not uncommon for lawyers to ask impertinent and intrusive questions. Shirley Braun of CAALAS was philosophical about this issue. Commenting on the 'sorry business' seminar that was to follow later in the conference, she stated it was too personal for her, but on the whole, the tenor of the discussion, the desire of people to learn about customary law issues with the objectives of the conference to promote them overcame any feelings of apprehension.

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Ms Braun stated that it would be different if people were delving into these issues just to satisfy personal curiosity. This statement is consistent with the very strong message that emerged from the conference. All Aboriginal participants stated that they wanted to speak to judges, to magistrates and to lawmakers in an endeavour to enhance understanding of the complexities of their own legal system – a system that despite being under constant pressure remains strong, resilient and uncompromising. It will continue to exist along the white man's system, imposing very real obligations, however difficult that may be for Aboriginal people living under two laws.

Nanette Rogers (DPP, Alice Springs) gave a paper on customary law and sentencing, based upon the research she undertook for her doctoral thesis on this topic. Dr Rogers studied every Supreme Court Case in Alice Springs over a ten year period. From her study, she was able to give a factual analysis of how, and to what effect customary law issues have been raised as well as the quality of evidence adduced in support submissions on such matters.

Throughout the conference, 'workshops' were conducted for in-depth analysis of various topics. Criminal lawyers inquired into kinship obligations and how such obligations can lead to the commission of offences. Payback as a consideration affecting bail and the circumstances when it becomes an added punishment to that



Aboriginal and Torres Strait Islanders Legal Service Conference participants

meted out by white man's law was considered.

Insults and breach of customary norms that may lead to violence were discussed in the context of the defence of provocation. By contrast, Jane Lloyd, co-ordinator of Ngaanyatjara, Pitjantatjara, Yankunytjatjara (NPY) spoke of her experience working with Aboriginal women in violent relationships where the perpetrators of violence defended their actions on the basis of customary law. Further, the family law group found that customary law was less influential in family law matters than issues concerning the criminal justice system.

The 'sorry business' workshop tackled a particularly sensitive area. The purpose of sorry camp and the role of the deceased's immediate family as well as their obligations regarding contact with extended family and friends were amongst the matters discussed. Identifying persons who are permitted to speak in relation to the deceased is of significance to cases such as compensable death claims and matters involving the deceased's estate.

John Duguid (NAALAS) led a discussion group on the extent to which Aboriginal customary law has received recognition under 'whitefella' law. He noted that whilst some inroads have been made (token gestures?), much of the Australian Law Reform Commission's

recommendations (Report No 31, 1986) are yet to be implemented or even seriously considered.

The role of legal services and the strengths and weaknesses in meeting objectives were under scrutiny. Training of staff leading to formal accreditation was mooted.

Strategies for dealing with difficult clients were canvassed and administrative staff from

each of the ATSI's offices discussed ways of improving information systems and general administration.

Chris Howse (AJAC) addressed the conference on means by which all the services can assist each other in the promotion of Aboriginal issues. The inability to access government information was of particular concern.

On Sunday night delegates gathered at Madigan's Restaurant at the Alice Springs Desert Park. Stewart O'Connell (CAALAS) hosted the after dinner entertainment consisting of a theatrical interpretation of Charlie's Angels followed by awards to delegates for achievements and indiscretions. On the more serious side of the awards, Patricia Miller, Director of CAALAS, and Phillip Illin, Field Officer with KRALAS, were recognised for their long service to Aboriginal legal aid organisations. Some "outstanding" karaoke performances topped the evening.

In terms of content and substance, the conference was a great success. Although it scratched the bare surface of the issues, the participants gained some insight and respect for Aboriginal customary law and culture. From a non-indigenous perspective, the mood of the conference can be summarised by Heather Whitaker, the librarian with CAALAS, who has worked with Aboriginal people since the early 1960s. She says: "I have some appreciation of Aboriginal culture, but this is one of the only opportunities I have had in all of these years to really sit around and ask direct questions and be given open and meaningful answers to many areas I have known little about".



The Parrakelya Waltjapiti Aboriginal dancers performed at the conference