

Mr William Tilmouth, Executive Director, Tangentyere Council,
Address to
FUTURE DIRECTIONS: COURTS AND INDIGENOUS CULTURAL AWARENESS CONFERENCE:
Alice Springs: 14 June 2002,

Good Morning. I would like to acknowledge the Australian Institute of Judicial Administration for their efforts to implement recommendation 96 of the Royal Commission into Aboriginal Deaths in Custody. So many of the recommendations in this report have been ignored - that I applaud the effort.

In the short time I have I want to give an Aboriginal perspective on some of the main law and justice issues we face in Central Australia. The right to self-determine with regard to law and justice along with all other rights that flow from sovereignty was never relinquished by Indigenous people. I want to make it clear, this is not just a political statement - it is the lived reality for the majority of Aboriginal people in the Northern Territory.

We live under two laws - a cause for both celebration and grief.

Celebration because our law - Aboriginal law has not only survived 200 odd years of oppression but is actually getting stronger.

Grief because the western legal system is still used to oppress our law and culture. While this system of "two laws" continues, without the full acknowledgment of Aboriginal customary law, our rights are denied. Customary law refers to a much broader system than the restrictive interpretation of law and order in western culture. From our point of view customary law provides the blueprint for all social, economic and political circumstances in life.

Unfortunately, much of the debate about the formal recognition of customary law is restricted to methods of incorporating it into the legal system. Aboriginal people advocate the broader interpretation - we do this by living it.

Steve Hatton - a former NT Attorney General acknowledged this when he told an Indigenous customary law conference, in,1995 that "Customary law for many people in the Territory is a fact. Whether we recognise it or not, customary law exists and affects the lives of many Aboriginal people. If we do not recognise it there is the potential for injustice to occur." Despite this lived reality, the reference to customary law within the Aboriginal Land Rights Act and the untested potential of the Mabo judgement - the recognition of customary law continues to be ad hoc.

In the courts, there have been examples of magistrates and judges finding in favour of Indigenous defendants where customary law has been used as a defence - and notably in R v Yunupingu (1998), the Magistrate dismissed the charges against the defendant finding he had the right to enforce Yolngu law on Yolngu land.

Whilst we may applaud these individual judgements, this piecemeal approach means that Indigenous people will continue to face double jeopardy with regard to punishment. Obviously 'customary law' is considered a hot potato by Australian Governments. The very fact that there has been so much fact finding, so many recommendations and so little shift in this area indicates that there continue to be significant barriers - one is of course the choice disciplinary method.

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. I travelled the route from mission home to juvenile detention and beyond and there is little to distinguish between them. This is because these 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.

From our perspective the Western justice system is covert, secret and the process prolonged. In contrast Aboriginal law is open and transparent - a public ritual, thought out by the Elders in accordance with the law. People are then able to move on with their lives - all parties are satisfied.

Not only do Aboriginal people face the double jeopardy but they are also discriminated against within the western legal system. On average 75% of the prisoners in Territory jails are Aboriginal and many arrests continue to be for public order offences. The daily average cost of keeping an adult prisoner in jail is about \$200 per day - a level of funding that Aboriginal organisations and communities can only dream about.

Over-policing in urban areas is the reason there are so many Aboriginal people in Territory jails. Our lives are scrutinised by a host of government agencies and our behaviour is publicly debated in the media.

The application of justice is also unfair. If you are non-Indigenous you can rip-off an entire community and walk away scot-free and the communities reward for alerting officials is to see their corporation collapse, leaving a pile of debt and human misery. I am not talking about isolated incidents here - but a pattern that has been occurring in remote Aboriginal communities, across northern Australia for years.

Consider also the injustice implicit in the lack of interpreting services. It is an indictment that it took the suicide of a young man detained under Mandatory Sentencing for the Government to fund such a service.

Little wonder that Aboriginal people question the value of western law or tablecloth law as Mr Dixon calls it; 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. I argue we need to deal with the reality and recognise Aboriginal customary law in its entirety.

Thank you