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Listening, learning and leading: the work of the Ngara Yura Committee*

His Honour Judge Stephen Norrish QC
Chair, Ngara Yura Committee



Judicial officers have an important responsibility to “listen, learn and lead” when dealing with Indigenous Australians who come before them. The Ngara Yura Committee of the Judicial Commission of NSW seeks to achieve this by educating judicial officers and others dealing with the justice system about Indigenous social and cultural issues. The education of judicial officers on these matters is a national task occurring in all States and Territories.

“Ngara Yura” derives from the language of the Eora people of the Gadigal nation, the traditional owners of the land where the Committee meets in Sydney. It means “to hear and listen to the people”.

The Ngara Yura Committee was established in the early 1990s as a consequence of final recommendations of the Royal Commission into Aboriginal Deaths in Custody, that judicial officers should receive instruction and education on matters relating to Aboriginal customs, culture, traditions and society.¹ The Committee also provides opportunities for Indigenous Australians and organisations to bring to the attention of judicial officers issues relevant to the exercise of their judicial responsibilities.

The Ngara Yura Committee’s principal functions are to:

- provide advice and assist the Judicial Commission to develop and implement programs designed to describe and explain Aboriginal culture including society, customs and traditions

- organise and supervise appropriate cultural awareness education, seminars and training initiatives for judicial officers
- provide regular information on Aboriginal issues relevant to judicial performance.

Cultural educational services are delivered through the following strategies:

- community visits into Aboriginal communities in NSW
- publications
- conferences, workshops and seminars.

The Committee also advises the Judicial Commission on matters of policy concerning judicial relations with, and judicial treatment of, Aboriginal peoples.

The Committee seeks to educate judicial officers about issues arising in the justice system in wider contexts, including:

- history of Indigenous development and relationship with European occupation from an Indigenous perspective
- contemporary social and economic conditions of Indigenous communities
- Indigenous language use and communication skills



- family and tribal relationships
- relationship with government authorities
- structure and functions of private and public Aboriginal organisations, amongst other matters.

Educating judicial officers about these issues has the fundamental aim that the justice system provide “equality before the law”, without discrimination. It has been recognised by judicial officers at the highest level that:

“... discrimination can arise just as readily from an act which treats as equals those who are different as it can from an act which treats differently persons whose circumstances are not materially different.”²

It is widely acknowledged within the legal community that there is a close relationship between the history of Indigenous disadvantage and social dislocation in its various forms and the overrepresentation of Indigenous Australians appearing in the courts and in custody charged with criminal offences and as litigants. Further, it is acknowledged that Indigenous Australians have interests in achieving justice, not just in criminal cases where they are defendants, but as litigants in other types of litigation, as victims of crime, witnesses, supporters, or persons seeking remedy for perceived legal and/or administrative wrongs outside the court system.

The Committee is concerned with educating NSW judicial officers. Each State and Territory has its own committee concerned with education about Indigenous social and cultural issues. The two national judicial education and administrative organisations, the National Judicial College of Australia (NJCA) and the Australasian Institute of Judicial Administration (AIJA), each have their own Indigenous Justice or Aboriginal and Torres Strait Islander Cultural Awareness Committees, the membership of which includes judicial officers from across all State, Territory and federal jurisdictions, as well as Aboriginal lawyers, educators and service providers.

Membership of the Ngara Yura Committee

The current members of the Committee are:

- The Honourable Justice Stephen Rothman AM
- His Honour Judge Stephen Norrish QC (Chair)
- His Honour Judge John Nicholson SC
- Her Honour Deputy Chief Magistrate Jane Mottley
- His Honour Magistrate Doug Dick
- Terry Chenery, Group Manager, Social Justice, Department of Aboriginal Affairs (NSW)
- Megan Davis, Director, Indigenous Law Centre, UNSW (see profile on page 6)
- Ernest Schmatt PSM, Chief Executive, Judicial Commission of NSW
- Ruth Windeler, Education Director, Judicial Commission (Convenor)

Tammy Wright, a Gamilaroi woman, is employed by the Judicial Commission as a project officer to support the Committee.

Community visits

In recent years, the Committee has organised visits, usually over a two-day period, by groups of judicial officers, members of the Committee, Judicial Commission staff and their partners, to the following areas to visit Aboriginal communities and organisations:

- Kempsey (November 2007)
- Dubbo (May 2008)
- The Hunter Valley (Cessnock, Kurri Kurri, Lake Macquarie) (November 2008)
- Wallaga Lake and Narooma (November 2009)
- Taree and Forster (June 2010).

Publications

The Committee has caused or contributed to the publication or production in recent years of:

1. reports concerning community visits published in the *Judicial Officers' Bulletin*
2. papers presented at seminars
3. protocols for “Welcome to Country” ceremonies conducted in court and during judicial visits to communities
4. a DVD explaining the function and procedures for “Circle Sentencing” in NSW
5. reports about conferences conducted by the Judicial Commission and the Committee
6. articles in the *The Judicial Review*
7. the Committee’s forthcoming website. This will be part of the Judicial Commission’s website and will publish all material, papers, reports, photographs, profiles, etc, related to the Committee’s work, functions and objectives³
8. Section 2 of the Judicial Commission’s *Equality before the Law Benchbook*. The Bench Book is designed to assist judicial officers to treat people fairly, irrespective of ethnicity, religion, sexuality, age, sex, mental or physical disability, communication skills, or whether they are represented or not. As earlier noted, judicial officers must be sensitive to ensure “equal treatment” to those that come before the courts.

Seminars and conferences

The Committee organises seminars at courts or at the Judicial Commission’s premises on a regular basis, usually involving Indigenous presenters, on a range of topics, including:

- communication in court with and for Aboriginal people
- strategies to address domestic violence
- sentencing patterns for Indigenous people in the State
- cultural facilities and programs in custodial settings and out of custody programs
- trial and sentencing procedures
- Corrective Services policies and programs.

In May 2009, with the financial support of the National Judicial College of Australia, the Committee conducted a weekend residential conference opened by the Governor of NSW, Professor Marie Bashir AC, called “Exchanging Ideas”.⁴

Why education matters

The success of the Ngara Yura Committee and its interstate and national counterparts depends on the cooperation of judicial officers, community Elders and members, and professional people and organisations serving or working with Indigenous Australians. Their work has to be considered in the context of the legislative framework in which each individual court functions. This includes the conduct of the various participants in the court or justice system, such as police, lawyers, community corrections staff, other corrections staff, medical services, counselling and rehabilitation agencies, as well as court staff.

Indigenous Australians come into the legal system not as “equals”, but as disadvantaged “non equals” on any socio-economic measure or indicator. Recognition and understanding of this is fundamental to “equal treatment” for Indigenous Australians by courts. Treating all alike, without recognising differences, is not “equal justice”.⁵

The Royal Commission contemplated the education of judicial officers and others as one way to improve outcomes for Indigenous Australians by providing information about social and cultural matters. Beyond education, there is a need for action by others to provide greater resources and services, greater support, guidance, nurturing and encouragement, in consultation with local Aboriginal people. This should occur at all levels of the system that compels people to appear in courts to be dealt with by the judiciary, whether they be defendants, witnesses, victims, support people, advisors or mentors.

Courts are constrained by the need for impartiality when dealing with parties. Impartiality cannot be achieved in an atmosphere of ignorance of the circumstances of Indigenous Australians by judicial officers, or by ignorance or discriminatory, arbitrary and unfair conduct by other participants in the justice system.

Some lessons and challenges

A number of lessons, challenges and difficulties for the Committee and the wider judicial community have emerged from the Committee’s work.

In no particular order of importance, these include the need for:

1. appropriate protocols for contacting communities, approaching Elders, choosing venues and respecting local customs and traditions for committee and court purposes
2. devising interesting programs that encourage all participants to have their say, be relaxed and feel like equals
3. explaining the limitations of visits and judicial participation
4. reporting to a wider audience than the participants the lessons learnt and information gained from the Committee’s activities
5. coordinating Committee programs with the wider world of judicial education
6. encouraging changed attitudes within the court system, including greater respect for Indigenous culture in court behaviours
7. securing adequate funding for the Committee’s work
8. attracting judicial participation in the Committee’s activities as presenters and participants
9. coordinating activities with other States and Territories
10. crossing the State/federal jurisdictional divide
11. not unreasonably raising expectations of communities as to what the Committee can do in practical terms.

A wider issue of concern for the community arising from judicial action is the overrepresentation of Indigenous Australians in the criminal justice system. The 2009 National Indigenous Drug and Alcohol Committee (NIDAC) report *Bridges and Barriers*⁶ pointed out that the way to address current trends of Indigenous incarceration and health, particularly in the context of the criminal justice system, requires a multi-dimensional approach, not one confined to what happens inside a courthouse, a police station, a gaol or the justice system generally.

The way forward

The Committee’s work has identified some issues that need to be addressed by everyone involved in representing, treating, counselling, or in any way dealing with Indigenous Australians at risk of involvement, or who are already involved, in the criminal justice system as victim, witness or defendant.

- There must be resources, services and strategies to divert people from offending behaviours or situations and appropriate education, employment and medical resources for all Indigenous Australians.
- Individuals within their communities have to take responsibility for their actions and also take responsibility for those dependent upon them.
- Pride in culture, language and family should be encouraged and nurtured before, during and after court proceedings.
- Within communities, systems of protection of children and victims of domestic violence must be respected, encouraged and supported. Secure accommodation for all is vital in this context and generally.
- When dealing with people at risk of offending or already within the criminal justice system, both the community and government agencies must act in combination, with an emphasis on diversion, rehabilitation, employment and personal development.
- Once a person becomes involved in the system, putting aside the issue of determining guilt, the initial concerns from charging onwards should usually be diversion, treatment, rehabilitation and/or training. More than statutory lip service should be given to incarceration, sometimes called “incapacitation”, as a last resort.
- Therapeutic court models such as “Koori” or “Circle” courts should be maintained and encouraged in the Local Court and the District Court.
- Healing should be as much a part of the process as punishment and retribution.

- Elders should be involved in all court processes to assist judicial officers to have some understanding of the cultural context of a particular person appearing before the court. Mentoring by Elders should be encouraged at every opportunity outside the court process.
- Where incarceration is the only option, the programs within prisons must be revolutionised to ensure that the person incarcerated is a better person on release and better able to cope in the wider community. Facilities must encourage culture and opportunities for the offender to understand what brings them into custody and provide concrete strategies to ensure that on release, the offender does not go back to where he or she was beforehand.
- Greater Aboriginal and Torres Strait Islander representation in judicial office.
- Inclusion of “Welcome to Country” and “Acknowledgment of Country”, and traditional owners regularly in court business.

Conclusion

Many of the matters outlined above are beyond the role of judicial officers and the power of courts. However, educating judicial officers is a step towards a better future for Indigenous Australians in their relationship with the court system. Judicial officers cannot necessarily “lead”, but they can “listen” to Indigenous Australians and “learn” from their experiences. By their example in their judgments

and conduct in court, judicial officers can provide a model for “fair” treatment that governments and their agencies may follow. If the courts can set an example for the wider community for fair, decent, respectful and “equal” treatment of Indigenous Australians, that will impact upon the causes of the current overrepresentation of Indigenous Australians in the criminal justice system. The gains of the Committee’s work have and will be modest and incremental, but hopefully the long term dividend will be profound.

Endnotes

- * Paper presented to the National Indigenous Drug And Alcohol Conference, Adelaide, 16–18 June 2010, the theme of which was “Listening, learning, leading”. The views expressed are not necessarily those of the Committee.
- 1 Royal Commission into Aboriginal Deaths in Custody, *National Report*, 1991, Vol 5, AGPS, Canberra, Recommendation 96.
- 2 *Waters v Public Transport Corporation* (1992) 173 CLR 349 per McHugh J at 402.
- 3 This will be launched later this year.
- 4 A report of the conference was published in (2009) 21 *Judicial Officers’ Bulletin* 37 and is available through JIRS at <<http://jirs.jc.nsw.gov.au/publish/job/vol21/jun/index.html>>, accessed 25 January 2011.
- 5 *R v Postiglione* (1997) 189 CLR 295 at 301–302 per Dawson and Gaudron JJ.
- 6 At <www.nidac.org.au/images/PDFs/nidac_bridges_and_barriers.pdf>, accessed 25 January 2011.



Ngara Yura Committee



Pictured at a recent meeting are some members of the Ngara Yura Committee: (l-r) the Honourable Justice Stephen Rothman AM, Terry Chenery, his Honour Judge Stephen Norrish QC, his Honour Magistrate Doug Dick and Ernest Schmitt PSM. Not pictured: his Honour Judge John Nicholson SC, her Honour Deputy Chief Magistrate Jane Mottley, Ms Ruth Windeler, and Ms Megan Davis.

Mentoring Indigenous young people: the Tribal Warrior program



A post release program for young inner city Aboriginal offenders has successfully prevented re-offending and greatly improved relationships between police and the Aboriginal community. The “Clean Slate Without Prejudice” program for young people recently released from correctional centres is run by the Redfern Local Area Command working in partnership with the Indigenous-owned Tribal Warrior Association (TWA). Participants complete a “Behaviour Undertaking”, and agree to various conditions, including seeking assistance from mentors from the TWA.

The program began in July 2009 when 10 young Aboriginal males, all with a history of violent crime, undertook boxing and fitness training and voluntary work with the TWA. They also attended forums on health and exercise, family violence, victims of crime, and substance abuse. Only one of the 10 participants reoffended.

The program currently has eight participants. Qualified TWA mentors assist those on the program to obtain accommodation and employment and to attend seminars, forums and Redfern Police Station to meet with police.

The Redfern Local Area Commander, Superintendent Luke Freudenstein, liaises with the Department of Corrective Services to ensure that residents of the Command Area recently released from custody are referred to the program. Participation in the program can also be supervised by the Probation and Parole Service.

The program is available for suitable people granted bail, or subject to bonds to be of good behaviour.

The TWA is operated by Aboriginal Elders from Redfern and inner Sydney under the leadership of Chief Executive Shane Phillips. It provides certified commercial maritime training leading to employment

opportunities in the maritime industry and mentoring to underprivileged Australians, with an emphasis on Aboriginal youth. The TWA has also developed a certified course in “mentoring diverse cultures” to assist people to overcome life barriers and provide education and employment opportunities and assist those mentored to gain independence. In June 2010, Victor Morgan was appointed as manager of the Tribal Warrior mentoring program.

The mentoring program is funded through the State Department of Community Service (DOCS) and the Federal Department of Families, Housing, Community Services and Indigenous Affairs. The training for the mentoring certificate course is funded through Centrelink and the Federal Department of Education, Employment and Workplace Relations.



The Tribal Warrior Association provides certified commercial maritime training, employment opportunities and mentoring opportunities to encourage education, self-respect and independence amongst young people and also offers a post-release program for young Aboriginal offenders. The TWA also organises and provides authentic Indigenous ceremonies and cultural performances for public and corporate events. Photo courtesy of TWA.

The program currently has up to 50 people aged from 7–25 working with seven trained mentors. By 2012, it is planned that 30 paid mentors will work with young people, although this is dependent on ongoing funding.

Police regularly train with Aboriginal young people and meet with them as part of the mentoring program. This interaction has developed a good level of trust between the Aboriginal community and police. An Aboriginal community day held once a month, the “Family and Culture Day”, has local police involvement and requires alcohol and drug dependent persons to leave the Block in Redfern for the day.

Statistics from the Redfern Local Area Command show that in 2009, the percentage of young

Aboriginal men charged with robbery had decreased by 80 per cent.

The Honourable Justice Blanch commended the TWA programs in the December 2010 decision *MW v R* as an effective way of dealing with bail, bond and parole conditions.¹

Further information about the TWA programs may be obtained from Victor Morgan, Manager, Tribal Warrior Mentoring — Victor@tribalwarrior.org, telephone 9699 3491 or from the TWA website at www.tribalwarrior.org.

Endnotes

- 1 *MW v R* [2010] NSWCCA 324 at [67].



Photo courtesy of TWA

Megan Davis, member of the Ngara Yura Committee



Megan Davis is the first Indigenous Australian elected to the United Nations Permanent Forum on Indigenous Issues. She will join the Forum this year for a three-year term after being nominated for the position by the federal Government. Megan is a Cobble Cobble woman, originally from south east Queensland. Megan joined the Ngara Yura committee in 2008 and brings to the committee her valuable experience as an international human rights lawyer, Director of the Indigenous Law Centre and Associate Professor of Law at the University of New South Wales. Congratulations Megan!