

## **Speech given to the Judicial Conference of Australia Colloquium**

**9<sup>th</sup> June 2019**

**The Hon Sally Thomas AC<sup>1</sup>**

Good morning Madam President of the Judicial Conference, Chief Justice, Justices of the Supreme and Federal Courts, Judges of the Local Court, Ladies and Gentlemen.

I am here to speak a little about my life in the Northern Territory and, in particular, to relate a few stories about the Aboriginal women I have met and why I consider they are so deserving of our support.

I arrived in Darwin in 1978 with a husband and two young sons to take up a position as a Stipendiary Magistrate.

It was an exciting time to arrive. The Northern Territory had just gained independence. For the first time it had its own Supreme Court. There was a legislative assembly to pass Territory laws. There were celebrations and parties and formal functions and not so formal functions and money and an air of enthusiasm for a new beginning.

To set this in context I must say a little about my previous background.

I had, till that date, been a solicitor and partner in a legal firm that practised in an office near the corner of Pitt and Market Streets in Sydney. A world away from the Northern Territory.

During that time we had been involved in a number of headline cases. I will mention just one of them. It was toward the end of my five years of articles. We acted for a young man who had worked as a patrol officer in New Guinea. He was charged with sedition. The allegation was that he had been talking to groups of New Guinea native boys (as they were called) about various methods of attaining self-government, including the option of taking up arms.

At the time, of course, New Guinea did not have independence. In fact, it was a taboo subject especially among sections of the white population. Brian Cooper a 22 year old rather naïve Australian boy was convicted by the Supreme Court of New Guinea and sentenced to a period of imprisonment. We took the matter on appeal to the High Court in Canberra, the conviction was confirmed but he was released from gaol. Rather sadly, he committed suicide a few months later. Ironically, some years later New Guinea became independent.

My memory of going to Court in Sydney in those years was that everyone wore dark suits or sombre greys. We always kept a stock of coats and ties in

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the office to ensure our clients were appropriately dressed and would not incur the wrath of the Bench.

Suddenly, I find myself sitting as a Magistrate in the Main Bail and Arrest Court in Darwin. The litigants and many witnesses came to Court in thongs and a T-shirt. Sometimes one thong and half a T-shirt. I thought it was wonderful, no one seemed to mind how anyone else was dressed.

Then as now, Magistrates who are of course Judges of the Local Court, preside in the main centres in the Northern Territory such as Darwin, Alice Springs and Katherine. They also travel to many other communities to hold Court throughout the Top End and Central Australia.

This can involve driving long distances or flying in a small aircraft. It is a wonderful way to appreciate topography, the river systems, the varying vegetation and the geology of the Northern Territory. I learnt how very different Aboriginal communities are, the one from the other. Some communities are harmonious and actively occupied and others living with conflict, abuse and the effects of excessive alcohol or other drugs.

Quite often I was approached by Aboriginal women who wanted to discuss some issue quite outside the matters with which we were dealing in Court. For example, at Groote Eylandt a group of Aboriginal women came to discuss their concerns that their children were not attending school and most days were just running wild despite the best efforts of the women. They told me the Department of Education, at their request, had once taken a case of truancy to Court. The Department had lost the case and were not enthusiastic about going to Court again. The women regarded this as a form of racism and said white children would not be allowed to run wild and miss their education.

I was privileged to meet many Aboriginal women in communities such as Groote Eylandt, at Yirrkala near Nhulunbuy and on the Tiwi Islands. They took me fishing with them. They told me about the properties of the plants they collected for food or for medicinal purposes. On the Tiwi Islands, women and men were involved in commercial pottery making and in silk screen printing fabric and of course everywhere were wonderful examples of the art work by both men and women. As you are probably are aware, if you spend any time in an Aboriginal community you are very much included. You are given a skin name which means in effect you have a place in the system.

You are probably also aware of how Aboriginal people have worked out a quite involved and clever system outlining their system of marriage. Who are eligible marriage partners in the best interests of the Community. I understand this was a custom that was vigorously enforced.

One Aboriginal Elder once told me that it was his belief that the break down in law and order in the community was because too many couples were ignoring the hitherto strict rule about marriage and as he said "marrying the wrong way".

During my time as a Magistrate I was aware of how very difficult and confusing it was for Aboriginal people to be dealt with in an Anglo Saxon system. Whilst we were well served with very dedicated lawyers and Aboriginal liaison officers, there were at that time no trained interpreters.

On one occasion I was sitting at Nhulunbuy Court, I was hearing a committal proceeding involving a white man who worked at the mine who was charged with rape of a young Aboriginal girl. She did not speak English. A man from her clan who could speak some English was brought into assist in interpreting. After answering some questions the young girl fell completely silent for an inordinate length of time. After some investigation, I was informed that the problem was that, according to her law, it was wrong to mention certain parts of her body to the man who had been interpreting. We had to make other arrangements to complete her evidence.

The difficulties and confusion for Aboriginal people were manifold. One troubling aspect for them was the length of time between the commission of any offence and the matter being dealt with by the Court. For a variety of reasons this could sometimes be weeks or months. This could be distinguished from the more efficient and immediate methods in their own customs for dealing with offenders.

I was quite taken aback when I came to realise that for many Aboriginal people attending Court to answer bail, was way down on their list of priorities. Answering bail was certainly not a priority. If there was a funeral or a ceremony to attend, then that came first and why on earth should you be punished for attending a funeral or a ceremony which was a serious obligation.

In less serious offences, the strategy was to issue a warrant to lie to be executed on the day of the next Court sittings, when an Aboriginal liaison officer would round up the defendants for whom a warrant had issued.

There are many women I could mention relevant to my topic.

The first woman I will speak about was not, in fact, Aboriginal. She did however, spend a great deal of her life advocating for the rights of Aboriginal people. This was at a time when it was not at all fashionable to do so. Her name was Olive Pink. Olive Pink was a well educated white woman. She was knowledgeable anthropologist and botanist. When I first went to sit in Court in Alice Springs, stories about Olive Pink were prolific. She had died in 1975, three years before I came to the Northern Territory. Whilst she was admired and respected by politicians and community leaders in other parts of Australia, in Alice Springs she was the town eccentric. I was told she would come to Court and berate the Magistrate if she thought he had not dealt fairly with Aboriginal litigants. She was reputed to have frequently stormed into the offices of the Department of Housing and demand more be done to improve accommodation for Aboriginal people.

One of the oft repeated stories about her that I really enjoyed was an occasion when she visited the Alice Springs Gaol. She had brought some items of food more appropriate to Aboriginal tastes than the usual prison

fare. Upon entering the gaol, her pathway was blocked by the Chief Prison Officer. Olive Pink deftly pushed him out of the way and continued with her mission. She was charged with whatever you get charged with when you push over a Chief Prison Officer.

When the matter came to Court, she was fined in default a period of time in gaol. Olive Pink refused to pay the fine. She announced she would go to gaol. Suddenly an anonymous person paid her fine. The belief, whether well founded or not, was that it was the Chief Prison Officer who paid the fine rather than have Olive Pink in his gaol.

There are an increasing number of Aboriginal women moving into positions of power and influence in Australian society. They are politicians, lawyers, health workers, artists, musicians and much else. Our own university in the Territory, Charles Darwin University, provides a tertiary education in a whole range of subjects. In 2018 about 470 Aboriginal students graduated from this University.

Nevertheless, there are many Aboriginal women in communities throughout the Northern Territory who suffer abuse and struggle to have their voices heard. Such women I think need greater support and recognition for their wisdom and the way they care for their community.

Returning to the Court room and the issues surrounding the giving of evidence by Aboriginal people, Judges of the Supreme Court have recognised these difficulties and attempted to alleviate the inequalities. In 1978, the then Chief Justice Foster, pronounced what is referred to as the Anunga Rules. Amongst other matters, this addressed the inequalities in Police Records of Interview.

During the time I was on the Supreme Court, Justice Dean Mildren issued some directions to be given to the jury in appropriate cases. For example, in Aboriginal custom it can be very rude to look someone in the eye or to face them directly. Failure to do this in the Anglo Saxon system, can be interpreted as being shifty or devious, when for Aboriginal people the explanation is quite different. When hearing evidence from Aboriginal people, a question may be followed by a long silence. To our way of thinking this can indicate a lack of truthfulness or searching for the right answer, whereas such silences are part of ordinary communication for many Aborigines. Justice Mildren's Directions were for the benefit of juries, many of whom, even though living in the NT, may not necessarily have had much interaction with Aboriginal people or be aware of the differences in our respective cultures.

During my time on the Bench, I often felt a concern about how confusing our system of justice is for many Aboriginal people.

I will relate one story which I have told before, so my apologies if you have heard it.

It occurred when I was presiding as a Magistrate in the Court at Oenpelli, what is now called Gunbulunya. It is near Jabiru on the edge of

Arnhemland, a scenically beautiful spot. On average Court sat there one day a month. The Court room was in a building used from time to time by different groups. This meant that nobody really looked after the maintenance. The building was in an advanced state of disrepair. When you entered, you had to wipe away the cobwebs and other accumulated dust before you could sit down. Court day, in Aboriginal communities, is like market day. Everybody comes in to meet up with friends, have a chat and find out what is happening to their relatives. On this particular day when I arrived, there was a large group of Aboriginal people sitting on the front lawn where there was some shade.

Part way through the morning I took the usual adjournment. I went to the unbelievably ghastly toilet at the rear of the building. As I entered, the outside handle fell off. I was locked in. The only other people in the building, other than the litigants, were white men including the Police Prosecutor and his assistant. I was determined not to give them their laugh for the day by screaming out that I was locked in the toilet. Above the toilet was a window that looked out over the rear of the courthouse. I thought "I think I can get out of that window and leave the building without anyone noticing me". I climbed up to the window. I was a lot younger and more agile in those days. As I hurled myself out of the window, I saw to my horror a sea of black faces gazing up at me in astonishment. I realised they had all moved from the front of the courthouse to the back, to follow the shade. I landed with a bit of a thump and picked myself up as gracefully as possible and tried to look as though that was how I always left the court building.

As I flew home in a small aircraft over the beautiful Arnhemland escarpment and the East Alligator River, I reflected that all I had achieved that day was to add another level of confusion for Aboriginal people about the way the white man's system of administering justice worked.

As Administrator of the Northern Territory, you get to see only the best of life in the Territory, which was a very pleasant change from conducting rape and murder trials.

I had the opportunity, during my time as Administrator, to visit a number of Aboriginal communities and always to the schools. It was a very heart-warming experience to see some very innovative ways of teaching and engaging Aboriginal children. At some schools, parents were encouraged to attend with their children. It was usually the mothers who came, so they too could benefit from the learning and were also of great assistance in ensuring their children attended. There were schools where breakfast was served every morning before school started and other incentives to encourage school attendance.

On one occasion I had the chance to have a few days in Lajamanu, a community 872km west of Darwin. It was at a time when the Tracks Dance company from Darwin worked with the Aboriginal people to choreograph some Aboriginal dances. On the night of the performance, there was much dancing and feasting. Aboriginal people were dancing to tell the story of the

North wind, the South wind, the East wind and the West wind as the camp dogs wandered in and out around the dancers. It was a fascinating night.

Finally, I want to tell you a story of an Aboriginal woman involved in a case I heard in Alice Springs during my last few months as a Justice of the Supreme Court of the NT.

The case arose out of an incident that occurred in a Town Camp on the fringe of Alice Springs. On this particular night, a family in one of the houses were having a party. As the night wore on, a lot of alcohol was consumed and the music was getting ever louder. A young Aboriginal woman was dancing by herself on the verandah of the house where the party was held. Her husband was furious when he saw her dancing. He was very drunk. He ran towards her and kicked her hard in the face. Her jaw was broken and she subsequently spent some weeks in hospital.

Following the kick, the young woman went into the house and sat down quietly holding her jaw. Someone decided they should go and bring over an elderly Aboriginal woman who lived in a nearby house. She was referred to as Aunty. Aunty came over and entered the house filled with drunken revellers, quite a frightening environment. Aunty saw the young woman was having a very difficult time with her injury and immediately called an ambulance to take the girl to hospital. Then Aunty made the girl's husband come home with her and stay with her while she called the police. The young Aboriginal man was arrested and subsequently charged. He pleaded not guilty before a Judge and Jury of assault causing grievous bodily harm to his wife. At the conclusion of the trial, the jury found him guilty. He was duly convicted and sentenced.

Many witnesses attested to what they saw that night of the offence and also as to what Aunty had done. I do not remember Aunty's real name but I will never forget how calmly and bravely she entered the house filled with drunken people fighting and arguing. She calmed the situation down in the house, looked after the girl and took charge of the offender. She had very quietly dealt with a very volatile situation.

I later reflected on what a brave woman she was, yet I think she herself thought nothing of it. It was all just part of normal life.

She is one of many Aboriginal women I have known who are so vital in their own community but never recognised or acknowledged in the wider society.

I salute them all.