

# **IVAN DENISOVICH'S DAY**

CLANT's last column ended with the observation that what criminal lawyers hate most happens to be the same as criminals: gaol. Fortunately for at least most criminal lawyers gaol merely means gaol visits but they still sit right down the bottom of our wish list. Why is this so? Quite simply, the gaol experience is an unpleasant one. It's not the distance or the time away from our files and other preparation which we conveniently kid ourselves as being why; it's the fact that going on a gaol visit is a dreaded experience: waiting outside the gate, talking to the wall, getting in through the gates and then sitting in the visiting yard with the current customer and his world. All that dread for just one hour! (or was it really only 45 minutes and we exaggerated our times in and out in the visitors' book?).

Every criminal lawyer should know what the gaol regime entails: it's part of the course: it's like knowing the law regarding "sufficiency of evidence", it's part of the learning of the criminal lawyer who advises and represents other people charged with criminal offences. Do we criminal lawyers really know what the gaol regime entails?

Some general facts regarding Ivan Denisovich's Day.

**RIC:** If your client is refused bail he is RIC in what is known as C Block. This section of the gaol holds approximately 50 prisoners. It can hold up to 70. Their accommodation is single cells and dormitory. Most individual prisoners are housed in a single cell which contains its own toilet and wash basin. None of the accommodation is air conditioned. All cells have wall fans and further ventilation is provided by air ducting which blows normal temperature air through electric blowers.

The day begins at 7.00am when the siren wakes the prisoners up. Following this all prisoners are provided with one razor blade, for ablation purposes only! Prisoners from C Block visiting court that day have a shower, are strip searched and removed to the reception area where they await transport to court. After the court party leaves, all razors, breakfast, dinner trays

and linen are collected and the cells inspected. They are then left open and prisoners are left to clean out their cells. Twice a week a prisoner receives clean linen and daily he receives clean prison clothes. Once the cells are cleaned they are then closed and locked. Prisoners gather in the main "Block Area" which includes the exercise yard, showers and muster room/TV area. The prisoners firstly clean this area. Following this the rest of the morning is spent in those areas where they can watch TV, play games, eg table tennis and pool and socialise. This main Block Area is both in and outdoor.

At about 11.30 the whole gaol has an Accountability Muster to check numbers. The kitchen is instructed to produce the lunches for the whole gaol. Lunch is served from about 11.50am. All C Block prisoners are again mustered and enter the C Block dining area to have lunch. This usually lasts about 20 minutes. Afternoons can be spent either in or out of their cell. There is a library facility in C Block. The prisoners are allowed to visit once a week and take out books. At about 2.30pm all games are called in and the prisoners clean up the Block Area. They then open up all cells and if appropriate clean linen is issued. At 3.00pm all prisoners are to stand by and they are individually counted and secured in their cell. They are locked in until about 5.30pm when they receive their evening meal in their cell which includes the following day's breakfast tray. Lights are out at 10.45pm. Prisoners are allowed to have their own TV and radio in their cells.

## **Other entitlements**

This applies across all Blocks. Each prisoner is entitled to one private telephone call per month and that can last no more than 10 minutes. The telephone call is not monitored. To have your private call you must put in a formal application. Each prisoner is entitled to two one hourly private visits per week. There are no limits on legal visits.

In C Block there is very little opportunity for work. There are a couple of minor positions; making the afternoon tea urn and working in the library. Other than that, no work. C Block prisoners do receive some pay and they can purchase



*John Lawrence, President of CLANT*

things from the prison shop on a monthly and fortnightly basis. The shop sells things like food, soft drinks, toiletries.

## **Other blocks**

B Block is the maximum security block where the conditions are stricter. It also contains prisoners in for their own protection.

L G & M Blocks contain prisoners who enjoy working in the laundry or gardening and watering parties or both. These blocks contain both individual cell and dormitory accommodation.

## **Low security area**

This would be the area to aim for. Prisoners in the low security area of the prison are the ones allowed outside the prison on work parties. To achieve residence there you have to put yourself up for "Classification". This is determined by various things including the charge and your behaviour in gaol.

## **Lifers**

There is no special block to house lifers. Depending on facts and circumstances for each individual a lifer can be placed in any of the available blocks.

When a citizen becomes a prisoner he loses heaps of normal entitlements: that's a fact. That's the law. That's not to mean the prisoner exits the world completely. The way our criminal justice system works, there is a danger that we lawyers say farewell to our clients when they are RIC or certainly when sentenced which is just not right. Knowing what their position is when doing five over two can be just as relevant to knowing what their rights were when they were initially

interviewed by the police about the crime. Knowing of these conditions is not only a professional necessity it should encourage criminal lawyers to properly represent our clients at the earlier stages of the process.

Apologies to Alice punters as I just don't know the regime down there. Presumably it's not much more exotic!

One of the more interesting and entertaining speakers at the CLANT Conference will be Richard Ackland: media "personality" and critical commentator on the same.

The more you see, hear and read the media the more cynical you become. I am hoping Mr Ackland will talk about that old adage: "Don't let the truth get in the way of a good story". Also how the media presentation of stories affects politicians, their policy and decision making in our criminal justice system.

The weekend before Easter provided a telling and typical example of not allowing the truth to get in the way of the story.

On Sunday 8 April the Tiwi Grand Final was played as usual at Nguui on Bathurst Island.

This "event" has become a media favourite. It provides them with "a story". The Tiwi have traditionally supplied a vehicle for the media to tell stories about Aboriginal life. The stories from there (unlike other Aboriginal communities, eg Port Keats) have traditionally been positive. Queens, Governors General, Prime Ministers have all visited "the Tiwi Islands" and enjoyed and waxed on about the traditional owners' marvellous hospitality plus their impressive efforts at Western entrepreneurship, eg screen printing, forestry work, barramundi farming, etc. This has invariably created a positive picture of Australia's indigenous peoples.

This year's grand final was in that tradition: Milikapiti Magpies v Ranku Eagles. Many politicians, all worth poking a stick at, turned up: our own Chief Minister; the Federal Treasurer; the Federal NT Senator; the Federal Health Minister along with hundreds of other dignitaries and personalities descended on the island for the final. The fourth estate from down south went too. There was a story in it. What was the story?

Well, "the story" made the front page of Melbourne paper *The Age* plus colour

photograph. *The Age's* National editor, Michael Gordon no less, wrote the story. And what was the story? The news? The truth? Well, as ever it was positive. It was a story of the Federal Treasurer, Mr Costello discovering a community kicking goals and turning the corner. The headline said it all: "Costello finds islands of hope for the future challenge". Let me just quote from the article:

"He (Costello) took his family and came away with two positive impressions.

The first was to do with health and the progress made in the Tiwi Islands in tackling chronic heart and kidney disease and diabetes, as well as the mental health problems that contribute to high rates of youth suicide".

and later:

The results have been remarkable, with deaths from all causes down by a third, no suicide in sixteen months and a doubling of the proportion of men who visit the doctor for regular consultation. But there is much still to be done, with high levels of tooth decay exacerbated by the lack of fluoride in the water supply and a very high incidence of otitis media, an ear infection causing profound hearing loss in children."

All in all everything going swimmingly apart from a bit of ear infection and toothache!!! What a lovely story. But was it the truth?

Contra the fuzzy glow radiating from that story certain factual events, over the same weekend and all very Tiwi, occurred. On the Friday before the grand final the coach of the Milikapiti Magpie team, a relatively young man, committed suicide. He hanged himself. It followed a drunken fight/assault upon his own wife who was subsequently airvaced to the Royal Darwin Hospital. His son, one of the stars of *Yolgnu Boy*, was a player for the Magpies.

Further, while watching the game itself a Tiwi lady, being the mother of another Magpie player, had a heart attack and died. Prior to that over the weekend a much revered Tiwi elder had also passed away. Those are facts. Facts which the National editor of the Melbourne *Age* would have surely been aware of when

he wrote that oh so sanguine article. To quote again: "No suicide in sixteen months...".

The story that the readers of *The Age* got flew in the face of these facts.

To deny any mention of those tragic circumstances beggars belief. One hates to be negative but, really, to portray earache and toothache as the problems yet to be addressed in the Tiwi communities is an absolute nonsense.

It makes you wonder where the media are coming from considering the Easter weekend was also the 10<sup>th</sup> Anniversary of the Report from the Royal Commission into Aboriginal Deaths in Custody. That being Australia's most important internal examination of indigenous Australia, their history and conditions and expert recommendations to address the same.

Originally established due to concerns that Aboriginal prisoners in Western Australia and Queensland were being "done away with" by prison officers, the Commissioner, the late James Muirhead, quickly discovered there was bigger fish to fry, or at least try and catch: that being the highly disproportionate rate of Aboriginal people in jails. His terms of reference were accordingly, widened to address what was seen as a "National disgrace". It was 1989, 11 years ago. The Australian ethos regarding Aboriginal affairs then was different to what it is now. The country spent millions on a comprehensive overview of Aboriginal life: historical, economic, social, political, education, health, law, were all areas that experts opined on. The Commission took years of investigation and eventually produced its Report which included 399 Recommendations. Its main theme was to reduce the number of Aboriginal people in jail by recommending social, economic, political and legal change to that effect. Where are we now? Recommendation No 92 stated: "**That Governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a function of last resort**"!!

In July 1996 the Northern Territory Government like others who fell over each other to claim support and intentions to implement these profound Recommendations brought in Mandatory Sentencing.

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## IVAN DENISOVICH'S DAY

Continued from page 9

In 2001 there is a markedly different ethos in Australian society as regards Aboriginal affairs. The RCIADIC is parked in oblivion because of this.

During and immediately after the Report the NT Government was forever positioning itself on the highest building in town declaring that none of the deaths investigated (99) were in the NT. However, since the Report there have been several instances of Aboriginal people suiciding in Northern Territory prisons and lockups.

One case in point was again Tiwi. In 1996 a Tiwi man locked up in the police cell in Nguuu for drunkenness, a cell described by the Inquiring Coroner as "a disgrace", hanged himself.

There are further instances, post Recommendations, where Aboriginal prisoners have suicided in custody. Everyone knows of the youth from Groote Eylandt who did so at the Don Dale Detention Centre.

So what, if anything, does Mr Michael Gordon say about the Tenth Anniversary of the Commission? His story of hope was probably written before he got on the plane. In fact he needn't have bothered getting on the plane.

Is it possible to have a proper debate and approach to the major issues which exist if so much of the "information" is based on the media portrayal. Just where are the goal posts? The expert's considered Royal Commission Report lies on politicians shelves gathering dust. It's literally history.

Decisions are be made by politicians who exist on their inter relationship with the media being that hand to mouth grab for popularity and power.

On the Tenth Anniversary of the Royal Commission *The Age* ran the Tiwi Grand Final minus the tragic factual backdrop as a positive story of hope. Mr Peter Costello, the Federal Treasurer, was its centrepiece. The story deliberately ignored the facts which were the same type of facts examined and reported on by RCIADIC ten years earlier. It would appear the Tiwi are forever branded by the Southern media as the positive vehicle re "stories" on Aboriginal issues. The truth of that weekend concerning contemporary Tiwi life did not get in the way.

## NEW NTU-ATSIC AWARD RECOGNISES STUDENT ACHIEVEMENT

The NTU Law School and ATSIC have joined forces to recognize promising new graduates in law. The new prize recognises the past and potential contribution by an indigenous law graduate to the community.

Awarded for the first time in 2001, the ATSIC Prize for the most promising Indigenous student who has graduated with a Bachelor of Laws was awarded to Eddie Cubillo at the School of Law Prize Night on 29 May.

Eddie Cubillo graduated with a Bachelor of Laws Degree in May 2001. Eddie's mother is Larrakia/Wadjigan and his father is Central Arrente.

Fiona Hussin, Academic Support Lecturer at the School of Law said that the support shown by ATSIC to Indigenous graduates was welcome.

"Every year indigenous men and women are graduating from NTU with law degrees. This new award recognises that achievement and the importance of graduates passing that knowledge on to the community," said Ms Hussin.

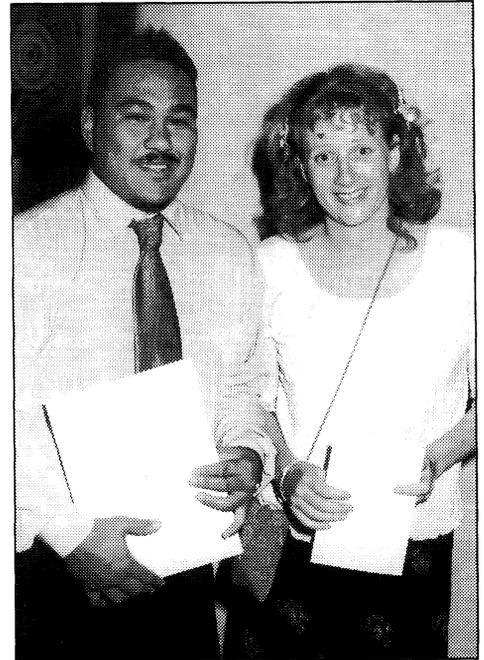
Eddie says that his enrolment in the Indigenous Pre-Law Program in 1997 and the support he received at the Law School were a big help in getting through his degree.

"Pre-Law gave me the confidence to know that I could make the grade in a law degree. I met people in the program and we supported each other in our first year," he said.

When Eddie started studying law, he found that law was not as hard as he had expected. By attending classes and studying he found that he could pass exams.

However Eddie found the philosophy behind the law hard to accept. This made his studies difficult.

"From the beginning I noticed that the legal system allows the parliament to



ATSIC prizewinner Eddie Cubillo with Academic Support lecturer Fiona Hussin

overturn a finding of the court. This democratic principle does not protect the rights of minority groups such as Aboriginal people. Throughout my degree I can see that this has occurred to the detriment of Aboriginal and Torres Strait Islander peoples. Legislation such as the Native Title Amendment Act and the Hindmarsh Island Bridge Act were bitter pills to swallow as an Aboriginal law student," he said.

In legal circles, the Cubillo name has a new meaning. Eddie's Auntie Lorna was one applicant in what has become the 'Stolen Generation Case'. On the brink of his legal career, Eddie is both proud of his name and saddened by the outcome of the case. "The Federal Court found that there was no evidence in this case of forcible removal. In one case a thumbprint was proof of the opposite. This finding only considers one possible interpretation of the evidence. The other argument is that a thumbprint does not prove consent."

Eddie completed his law degree in 2000. He is now employed as an articled clerk at the Northern Territory Legal Aid Commission.