SOME REMINISCENCES

by Gath Nettheim

The history of the *Indigenous Law Bulletin* ('ILB') can be taken back 30 years. But its background can be taken back at least another decade.

The 1960s was a very formative period in relation to Indigenous Australians and their claims for recognition of their territorial rights. In 1966 the Gurindji staged their famous walk-off from Wave Hill cattle station. Later, the Yolgnu people ran their campaign for recognition of their land rights in north-eastern Arnhem Land. After unsuccessfully petitioning the Commonwealth Government with a bark petition, the Yolgnu took the matter to the Supreme Court of the Northern Territory in the case *Milirrpum v Nabalco Pty Ltd.*[1] Both of these campaigns led to the movement for statutory recognition of land rights and, ultimately, to the recognition of native title.

1967 was also, of course, the year of the referendum to amend the Commonwealth Constitution in the interests of Indigenous Australians. The proposals to amend section 51 (xxvi) (the "race power") and to remove section 127 (which excluded "aboriginal natives" from the census) were overwhelmingly endorsed. The proposal won 90.77 percent of the votes cast nationally and also won majorities in all six States. The referendum had symbolic significance during this period whilst also enabling the Federal Government to legislate and implement policies with regard to Indigenous Australians.

It was from 1969 that the University of New South Wales ('UNSW') Law School began to take shape under the wise leadership of the Foundation Professor and Dean, J H (Hal) Wootten QC. The first students were enrolled in 1971.

THE ABORIGINAL LEGAL SERVICE

During 1970 Wootten was approached by some Aboriginal people and non-Indigenous supporters who were concerned by the discriminatory policing practices being experienced by the Indigenous people of the inner-city community of Redfern. They sought his advice as to what might be done to address the issues. He suggested the formation of a committee, comprising key Indigenous and non-Indigenous people. The committee would oversee developments, and would aim to arrange for legal advice and representation for Aboriginal people. This work was all to be done on a voluntary basis. Letters were sent to solicitors and barristers seeking their pro bono support and the response was encouraging. The relevant Minister in the Commonwealth Government, W C Wentworth, offered modest funding – enough to allow the committee to employ a lawyer, an Aboriginal field officer and an Aboriginal administrative person. They called the new body the Aboriginal Legal Service ('ALS'). After a change of federal government at the end of 1972, funding was provided for other such bodies around the nation. The Aboriginal and Torres Strait Islander Legal Services (now known as ATSILS) became solidly established as a publicly-funded Indigenous body. Importantly, this became a model for other services in such areas as health and child care.

In a 1973 conference held at UNSW, Wootten offered the following comments:

> I say the origin is important because . . . one of the conclusions I have come to, from my limited experience in dealing with movements relating to Aboriginal affairs and attempts to achieve things in relation to Aboriginal advancement, is that nothing succeeds in any meaningful way unless you do have real Aboriginal involvement, you do have something being done or some movement which is felt by some significant number of Aboriginals to be theirs, to be something that they want, to be something that they can identify with and not just something that is handed down or provided from outside. The Sydney service was a response to a very direct need and demand by Aboriginals in Sydney. The idea originated through their contacting lawyers, seeking assistance, and Aboriginals – and very able and articulate Aboriginals – have remained closely associated with it right through, and the staff has been Aboriginal as far as it can be.[2]

INDIGENOUS LAW CENTRE

A further development at UNSW occurred later in the 1970s. It became clear that the ATSILS were fully extended in advising and representing Indigenous

people in court cases, largely in the criminal justice area. Several members of the Law School staff worked on Indigenous legal issues at a broader level – offering advice to Indigenous organisations, researching particular areas, running conferences, writing books and articles, etc. (The proceedings of one such conference, with an impressive range of speakers, was published as a book in 1974 under the title *Aborigines, Human Rights and the Law*). Discussion arose as to whether there was a need for an Indigenous law centre to oversee such functions. In 1979 Neil Rees opened discussions by mail with the key 'front-line' organisations around Australia – the Aboriginal Legal Services and the Aboriginal Land Councils – as to whether they saw value in the establishment of a university-based 'back-up centre'. The answer, after a second mailing, was a cautious 'yes'. So in 1981 the Aboriginal Law Research Unit now the *Indigenous Law Centre* ('ILC') was established.

One of the Centre's early ventures was another weekend conference published in 1983 under the title *Human Rights for Aboriginal People in the 1980s*.[3] Topics for the four sessions were:

1. Australia's International Obligations.
2. Land Rights – Implementation
3. Customary Law
4. Makarrata or Treaty

Speakers included Gough Whitlam, Senator Peter Baume, Senator Susan Ryan, Senator Neville Bonner, Dr H C ('Nugget') Coombs, Pat O'Shane, Dr Ken Maddock, Gary Foley, David Weisbrot, Mick Dodson, Paul Coe, Pam Ditton. The following quote from then Vice President of the ALS (and subsequently President), Paul Coe was positive:

> ... I am very optimistic as regards the future, and not

Mother Maria Of Asissi, turns the other cheek
Teena McCarthy

Oil and charcoal on canvas board 400mm x 500mm

This self-portrait depicts the impact that the church has had on me and Aboriginal people and my feelings of sorry around my lack of cultural identity- this was denied from me.

> pessimistic. The reason why I say this is that there are young people like myself who are coming up more and more, and who are now starting to acquire the skills in order to make their own decisions at various levels of Aboriginal communities both in New South Wales and the other States. Also, we are now starting to realise the fact, being a sort of colonised indigenous people, that there were, and there still are indigenous groups all around the world. We are now starting to realise the struggle that we are faced with is not confined simply within the legal confines of Australia. As far as the young people are concerned, we are starting to realise that there are many similarities, and there many people overseas with us, various black groups and Indian groups, who realise that it is their interests and our interests to link up and try and build an international front.[4]

The ILC continues to hold public forums such as *Racism in Sport*,[5] held in September 2010 . The recently held, *Constitutional Open Forum* enabled the public to critically analyse and discuss the proposed constitutional amendments as announced by Prime Minister Julia Gillard on 8th November 2010. These changes require involved and complex debate to ensure that the referendum attracts a majority vote nationally, plus a majority of votes in a majority of the States.

INDIGENOUS LAW STUDENTS

Back in 1970 Hal Wootten also identified the need to ensure that there would be Indigenous people working within the legal profession. He persuaded UNSW to admit suitable Indigenous students to courses across the University. This not only ensured that Indigenous Australians would gain an education in law, but also in other important disciplines such as medicine and business. The initial intake in 1971 to the Law School included two of the young men who had been active participants in the establishment and running of the original ALS – Paul Coe and Gary Williams. At this time there were no Indigenous lawyers in Australia.

Since then the number of Indigenous Australians who have graduated in Law at UNSW and across the country has continued to rise. Some have gone on to become magistrates and judges, some have become academics, and others have pursued alternative careers in – and outside – Law.

Indigenous and non-Indigenous students at UNSW are encouraged to volunteer at the Indigenous Law Centre through the *ILC Student Volunteer* programs and internships. The volunteer programs enable law students to gain a better understanding of contemporary Indigenous legal issues. The Centre particularly encourages Aboriginal and Torres Strait Islander students to participate in the program. Indigenous students can use the ILC as a platform to direct greater attention to those issues particularly relevant to their communities.

The work of the ILC has been important to the Indigenous community. The Centre and individual students have been involved in research assistance for such court cases as *Koowarta v Bjelke-Petersen*[6] and *Mabo v Queensland (No 2)*.[7] They have also assisted in the preparation of 'shadow reports' to United Nations Human Rights treaty committees concerning Australia's compliance with treaties which it has ratified. Over the years they have also assisted in the evolution of what is now the *United Nations Declaration on the Rights of Indigenous Peoples.*

Beyond the work of the ILC and the ILB, UNSW has sustained a strong commitment to Indigenous peoples. It continues to run a number of support programs for Indigenous students including the Pre-Law program and Nura Gili's Winter School, to name a few. Through working collaboratively with the University of New South Wales and Indigenous communities the Indigenous Law Centre continues to contribute to the advancement of Indigenous peoples' rights and social justice in Australia and internationally.

Emeritus Professor Garth Nettheim was the foundational director of the ILC and remains a part of the ILC community, as a member of the Indigenous Law Bulletin editorial board and a Centre Associate.

1 *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141. Justice Blackburn rejected the doctrine of native title. The decision and the doctrine of *terra nullius* were later overruled by the High Court in *Mabo v Queensland (No 2)* (1992) 175 CLR 1.

2 JH Wootten QC in G Nettheim (ed), *Aborigines, Human Rights and the Law* (Australia and New Zealand Book Company, 1974) 59-60. For another participant comment on the formation of the ALS in Sydney see Roderic Campbell, *Gordon Samuels. Looking Back* (UNSW Archives, 2005) 77-82.

3 (Legal Books Pty Ltd, 1983).

4 (Legal Books Pty Ltd, 1983) 139.

5 See (2010) 7(20) *Indigenous Law Bulletin.*

6 *Koowarta v Bjelke-Petersen* (1982) 153 CLR 168.

7 *Mabo v Queensland (No 2)* (1992) 175 CLR 1.