CROSSING THE LAST FRONTIER: PROBLEMS FACING ABORIGINAL WOMEN VICTIMS OF RAPE IN CENTRAL AUSTRALIA

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THE SUBJECT OF INTRA-RACIAL RAPE IS STILL PRONE TO ACCUSATIONS OF interference in Aboriginal 'business' and white feminists playing out their politics on Aboriginal territory (*see* Bell & Ditton 1991, pp. 385–412; Huggins et al. 1991, pp. 506–7). Unfortunately, the debate over the publication of an article on intra-racial rape by anthropologist Diane Bell and her friend Topsy Nelson, an Aboriginal woman from Tennant Creek (Northern Territory), was reduced to criticisms of their right to speak out about sexual assault within the Aboriginal community. The initial challenge came from Aboriginal women living in the eastern and southern states who were joined by white feminists who chose to organise panels at conferences to debate the issue of whether Diane Bell as a white academic and anthropologist could speak about such matters and either denied Topsy Nelson's voice or her right to seek representation in that particular style and forum.

What none of the critics realised is that, prior to the publication of that article, Topsy had assisted in bringing a criminal injuries compensation claim to court for a young Warlpiri woman who had been sexually assaulted. Topsy had given evidence before a Magistrate's Court. It was her 'business' to talk about rape.

Neither authors were ever invited to respond to the challenge nor enter the dialogue that their article generated; and out of all the debate that has raged, no-one responded to or took up the substantive issues which Bell and Nelson's article was concerned with; that is, the extent of intra-racial rape, the silence that surrounds it and the fact that it is not an issue of customary law but an issue of violent assault against Aboriginal women without any traditional basis. The work of Aboriginal researcher Judy Atkinson (1990) on violence in Northern Queensland and Audrey Bolger's (1991) study of violence in the Northern Territory lend support to the article by Bell and Nelson (1989).

The authors of this paper have the full support of the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council, the Aboriginal woman Director of the Central Australian Aboriginal Legal Aid Service (CAALAS), and the views expressed in this paper are endorsed by all Aboriginal staff of that service. The President of Tangentyere's Four Corners Council, Wenten Rubuntja, has also given support to this paper.

The NPY Women's Council, whose members come from communities across the north-west of South Australia, the very southern communities of the Northern Territory and the Central Reserve communities of Western Australia published a report into child protection in 1991. This report touched on child sexual assault and violence against women and the research data contained many references to sexual assaults. Valerie Foster, a Ngaanyatjarra woman and member of the NPY Women's Council, responded to our paper by saying that it was really important and 'about time' that proper interpretations of Aboriginal social customs and law were made.

We Still Have That Law in our Hearts

When traditional women are asked about rape and about the incidence of incestuous sexual assaults, their responses are emphatic that it is not Aboriginal way, that it is not in accordance with Aboriginal traditions or customary law. Aboriginal women's way of explaining this is to describe the forms of punishment for such assaults and how the punishment would be administered. Pitjantjatjara women interviewed on this matter gave an example of how the uninvited attentions or harassment of a man would be dealt with.

> A woman was out gathering food and from behind a man stalked her and then grabbed hold of her. The woman was able to shake free of the man and ran back to her family to whom she reported the attack. The woman's brother or mother's brother then went after the man and speared him in the thigh (Nganinytja, translator L. Rive, Field Notes, Lloyd, J., 12 October 1992).

They said that a man could be put to death for rape or speared in the thigh, and if a man continued to sexually harass a woman he would certainly be put to death. Although women made distinctions on the nature of the assaults and the accompanying forms of punishment, the underlying issue remained that the assaults were serious and totally unacceptable.

Aboriginal women and men who have been interviewed on this issue are very clear on what constitutes correct social and sexual relationships and what relationships fall outside the strictures of the kinship system and customary law. When Aboriginal women and men talk about these issues they refer to ideal models of social behaviour; for example, when Pitjantjatjara women talk about fights between spouses, they say that the families of both spouses would ensure that the fight was controlled and, in doing so, would protect both the husband and wife. Families—in particular the woman's brother, mother's brother and father's sister—would speak out on behalf of a woman and protect her interests. People then understood and respected the boundaries of customary law. The women acknowledge that there are problems in adhering to these laws and maintaining social harmony but they say 'we still have that law (traditional) in our hearts'.

There has been wider acknowledgment that, outside the European judicial system, Aboriginal customary law not only exists but is a meaningful reference for many Aboriginal people. In the Northern Territory in particular, the Magistrates and Supreme Courts have encouraged and taken into account Aboriginal customary law and anthropological evidence in sentencing. In the Northern Territory, many of the community and statutory organisations which represent Aboriginal interests have been able to draw on applied anthropology to fulfil their particularly unique socio-cultural research designs.

Sexual Assault, Alcohol and Traditional Law

A large proportion of offences of violence in the Northern Territory are against women. Bolger reports that they were grossly over-represented in the number of offences of murder, attempted murder and sexual assaults committed against them in 1987 and 1988 (Bolger 1991, p. 11), and there is nothing to suggest that these figures would differ significantly for 1992. Given that a number of studies (for example, Scutt 1983) have noted that women are often reluctant to report incidents to police, and that it may be only 10 per cent of those cases reported which result in the arrest of a male (Scutt 1983, p. 228), Bolger estimates that the equivalent to about one-third of the Aboriginal female population in the Northern Territory is being gravely assaulted (including sexually assaulted) in a year (Bolger 1991, p. 12).

A paper about violence and Aboriginal women in Central Australia would not be complete without some reference to the abuse of alcohol, which is often perceived to be the cause of serious social problems for Aboriginal people—whether they reside in town, town camps, bush communities or outstations. It is a fact of life that alcohol is implicated in the commission of criminal offences by CAALAS clients in all but a negligible number of offences. It is also true that more Aboriginal women and girls are drinking, and this clearly makes them extremely vulnerable to any violence which may be committed on them.

Although it is recognised that sexual violence and alcohol often go hand in hand, it is becoming less acceptable to justify such violence on the grounds that the offender was drunk. In Central Australia, Aboriginal people have established programs to deal specifically with alcohol addiction. These programs have drawn inspiration and expertise from Canadian

Indian experiences. Central Australian Aboriginal organisations have also spent thousands of dollars in appealing takeaway liquor licenses and restricting liquor sales to Aboriginal people from roadhouses. This shift in attitude has also been reflected in the attitude of the courts; for example, in 1990 in an aggravated assault case reported in the *Aboriginal Law Bulletin*, Justice Kearney of the Supreme Court of the Northern Territory commented on the issue of Aboriginal men committing acts of violence against Aboriginal women in his sentencing. Kearney J. stated that:

> No effective steps have been taken by the respective governments of the day to remedy the social disaster of excessive drinking. To my mind, Aboriginal women have a right as all other women do, to be protected by the law; and in practical terms and in the case of this court, that means in practice I think ... sentences for Aboriginal men who wreak unprovoked violence on Aboriginal women while under the influence of drink (*R. v Hagan et al., Aboriginal Law Bulletin*, vol. 2, no. 46, October 1990, p. 18).

Until recently, Aboriginal women have generally made indirect references to sexual abuse in the context of alcohol-induced violence; for example, when the Australian Law Reform Commission held consultative meetings in Central Australia in 1982, Aboriginal women living in town camps in Alice Springs talked about alcohol and the family and social disruptions alcohol created. At Hermannsburg and Yuendumu, women also made indirect references to problems of sexual assault. At Yuendumu's west camp, women identified three sources of trouble which are of continuing concern in 1992:

- films which give the young people ideas contrary to customary laws and traditional ways;
- alcohol; and
- the YMCA, which allowed male and female youth to mix outside the bounds of the prescribed kinship categories (Australian Law Reform Commission 1983, p. 15).

Pornographic films and videos are frequently procured and shown on Aboriginal communities. Such films endorse violent and sexually exploitative acts against women as normal.

At Hermannsburg, women complained that Aboriginal Legal Aid often twisted Aboriginal law to the advantage of the defendant and that the evidence put forth by the defence is not always accurate. White lawyers, particularly male lawyers, have accepted Aboriginal men's explanation that traditional law sanctions their violent assaults against women in a whole variety of circumstances. Both Atkinson (1990, pp. 6–7) and Bolger (1991, p. 50) have criticised the justification put forth by both Aboriginal and non-Aboriginal men that the violence against Aboriginal women was embedded in customary law. While it is easy to criticise Aboriginal Legal Aid Services, they are not entirely to blame and responsibility needs to also lie with the courts, the Crown and Police prosecution, and the magistrates and judges who preside over the courts.

There are a number of serious problems which presently face Aboriginal women in Central Australia who have been raped. Some of these problems are related to the

administration and procedure of the criminal justice system itself; other problems are to do with crimes compensation.

Problems Encountered in the Courts

Closed courts

Women who have been raped face many difficulties in giving evidence in the courtroom. This is often compounded for Aboriginal women who may be shy of white people, easily intimidated by authority figures, and whose cultural background is such that sexual matters are not referred to in mixed company let alone in the presence of court personnel.

Section 5 of the *Sexual Offences (Evidence & Procedure) Act 1983* (NT) provides that a magistrate may order that certain persons (for example, members of the public, lawyers not involved in the case) be excluded from the court in committal proceedings. The legislation at present does not apply to proceedings in the Supreme Court; recently at a rape trial in Alice Springs, an Aboriginal woman had to give her evidence and undergo cross-examination in the presence of at least twenty 15-year-old teenage male and female students, as well as the jury, judge, lawyers and the court personnel. Additionally, at the end of one adjournment, the woman concerned was told to resume her seat in the witness box in preparation for the judge's return to the courtroom. The judge did not return for some time, and the woman was left sitting in the witness box while lawyers and the group of school students were seated in readiness for the trial to re-commence.

In a Discussion Paper on the law relating to sexual assault recently produced by the Department of Law, on behalf of the Attorney-General for the Northern Territory, it has been proposed that the law be amended to provide that whenever a complainant in a sexual offence is required to give evidence, in either the magistrates court or the Supreme Court, the court will have the power to order that the court be closed (Northern Territory. Department of Law 1992, p. 129). This proposal is endorsed. Such a procedure is a recognition by the system of the trauma involved for all women who must give evidence in sexual assault cases, and it also provides them with some dignity and privacy in the courtroom.

Support persons

Section 5 of the *Sexual Offences (Evidence & Procedure) Act* provides that a magistrate can close a court in a sexual assault case when a complainant gives evidence. There are a number of exceptions (as referred to previously); one of these concerns the parents or guardians of a complainant who is under seventeen years of age. There is no such provision if the complainant is an adult to enable her to be accompanied into court by a support person of her choice.

In early 1992 in Alice Springs, the committal proceedings in a rape case were about to begin. Both the victim and the man were Aboriginal, they were related, and English was their second language. The victim indicated to the (male) prosecutor an unwillingness to give evidence. A woman CAALAS lawyer was requested by the prosecutor to speak to the woman with a view to ascertaining the reasons for her decision. It emerged that she simply wanted her sister to sit with her in court while she was giving evidence. Both the prosecutor and the female police officer in charge of the case were immediately cooperative. The sister was located and an application was made by the prosecutor for leave from the magistrate for the sister to be with the victim in court while her evidence was given. These instances are exceptions to the rule (*see* Case 1 in the second half of this paper).

It is proposed by the Discussion Paper on sexual offences that the law be amended so as to provide that in either the Magistrates Court or the Supreme Court, a support person of the victim's choice should be exempt from the order to exclude witnesses from the courtroom when a victim gives evidence, and should be allowed to sit in close proximity to the victim (Northern Territory. Department of Law 1992, p. 129).

This proposal is also endorsed. Not only is a courtroom environment hostile and strange for a rape victim in criminal proceedings, there is an overwhelming preponderance of white people (including males) who are formally dressed or gowned and who often have difficulty understanding Northern Territory Aboriginal peoples' English. A support person's presence is reassuring and engenders confidence in the victim when giving evidence.

If the law in the Northern Territory is reformed as proposed with regards to closed courts and support persons, then it becomes formalised. Insensitive and/or disinterested prosecutors may then be prompted to use the legislation for the benefit of rape victims.

So far as other Australian jurisdictions are concerned New South Wales, Victoria and South Australia appear to have no legislative provisions regarding closed courts and support persons. It is to be noted, however, that lawyers with Aboriginal Legal Services in South Australia have known courts sitting in the Pitjantjatjara lands in the north-west of that state to allow a support person to sit with a rape victim while her evidence is being given.

In the Australian Capital Territory, the court has a discretion both to close a court and to enable a support person to be present (section 76A, *Evidence (Laws and Instruments) Act 1989*) but in practice the discretion is rarely exercised.

The Queensland approach provides for both arrangements where 'special witnesses' are required to give evidence (section 21, *Evidence Act 1977* (Qld). A special witness is defined as:

- a child under twelve years of age;
- a person who would be disadvantaged as a witness as a result of cultural differences or intellectual disability;
- a person who would suffer severe emotional trauma if required to give evidence; and
- a person who would be so intimidated so as to be disadvantaged as a witness.

The court may order, among other things, that the court be closed while the special witness gives evidence and that a support person remain in court with the special witness. These procedures obviously apply to adult women.

In Western Australia the Acts Amendment (Evidence of Children and Others) Bill 1991 enables a 'special witness' to have a support person in court. The definition of special witness is similar to South Australia's.

References to Aboriginal witnesses

In Central Australia most judges, magistrates and prosecutors refer to an adult Aboriginal female witness by her first name in court proceedings. Apart from the fact that such a reference is racist and paternalistic, it is demeaning for the woman who recognises, after hearing other witnesses referred to as Mr Smith or Mrs Jones, that she is regarded as less worthy. This affects her demeanour, her confidence and her ability to give evidence.

Unfamiliarity with Aboriginal ways

In 1992 in a rape trial in Alice Springs, a young adult female eyewitness was asked by the prosecutor about the nature of her relationship to a previous male witness who was of the same age as her. She replied 'grandson', and there were smiling grimaces and expressions of disbelief by the prosecutors, judge and court personnel, none of whom had even a basic understanding of the kinship system and 'skin' or subsections groupings. She was asked the question again and she gave the same answer. Apart from the inescapable conclusion that the prosecutor had not spent sufficient time with the witness prior to the trial, the experience was at best confusing and at worst humiliating for her. There are cross-cultural courses offered in Alice Springs by the Institute for Aboriginal Development. Every effort should be made by those involved in the court process which affects Aboriginal women victims to familiarise themselves with Aboriginal customs, culture and the problems they face.

Criminal Injuries Compensation for Aboriginal Rape Victims

In cases involving assault on Aboriginal women by Aboriginal men, the prosecution does not call competent evidence regarding the rights and responsibilities of Aboriginal men and their relationships with Aboriginal women or evidence which gives a proper interpretation of customary law. The prosecution's inaction makes them complicit in distorting the notions of Aboriginal culture and reinforces the commonly-held belief that sexual assault within the Aboriginal community is not a serious offence (Bell 1991, p. 403). The magistrates and judges also contribute to these inaccurate misconceptions in not demanding the prosecution

presents alternative evidence. There are, of course, exceptions. Diane Bell has detailed and cited a couple of Northern Territory Supreme court cases concerning Aboriginal women who had been raped and assaulted (1991, pp. 402–6).

In one case, the Judge was very sceptical of the arguments and pronouncements of tradition and requested that evidence be given from an anthropologist whose credentials included:

> knowledge of the local community, its politics, the dynamics, culture and customs; and a real understanding of kinship and the obligations that go with kin relations (Bell 1991, p. 405).

This reasonable request was not answered and as a consequence the victim's case was severely neglected.

In the aggravated assault case *R. v Hagan* cited earlier Justice Kearney (1990, p. 18) in his sentencing remarks, did not accept the submissions by the defence counsel that the sentence of both men accused should be totally suspended. Justice Kearney also dismissed the evidence of the father of one of the accused who asserted that it was his son's 'right' according to Aboriginal law to have sex with the 14-year-old victim. Kearney J. went on to say that:

> Aboriginal women have a right as all other women do, to be protected by the law . . . Rape, or attempted rape, in circumstances such as this case where there are no elements of tradition involved, are crimes of violence in their essence (*R. v Hagan et al.*, *Aboriginal Law Bulletin*, vol. 2, no. 46, October 1990, p. 18).

There have been many adverse comments over the years about the ability and availability of Aboriginal Legal Services to respond to the needs of Aboriginal women (Bell & Ditton 1980, p. 17; Bolger 1991, pp. 88–90) when the focus of such services is primarily to represent men charged with (among other offences) crimes against women. Until 1990, this was generally true of CAALAS, but this has now changed to the extent that Aboriginal women who have been sexually assaulted are actively sought out by a woman lawyer at CAALAS to advise them of their rights to criminal injuries compensation.

Broadly speaking, criminal injuries compensation is a formal acknowledgment by the community that a crime occasioning injury and suffering has been committed on a person. It is also an expression of support and concern by the community and government authorities (Bartley 1987, p. 44).

When advised about the existence of criminal injuries compensation legislation, most adult Aboriginal women rape victims in CAALAS's operational area want to make an application for compensation.

There are two main problems associated with pursuing such applications. The first is that, if the rape occurred outside the Northern Territory, then the compensation legislation for that jurisdiction must be used, and unfortunately it differs radically from one Australian jurisdiction to another. The second problem is there is often no place for the conventional medical and psychological reports which are used to support a woman's claim for compensation and alternatives, such as anthropological reports, must be utilised. The first problem may be illustrated by very brief summary of the relevant legislation available in Queensland, New South Wales, South Australia and the Northern Territory.

Queensland

Compensation for personal injuries suffered by rape victims is found in section 663 of the Queensland Criminal Code. Such an application is heard in the District Court before a Judge, and a compensation order can only be made against a 'convicted' person. If the offender is unknown or acquitted of the crime, then no application can be made at all. The maximum amount for a victim's mental injuries is $20,000, and for physical injuries the same as the maximum amount payable to an injured worker under worker's compensation. When a compensation order is successfully obtained, the victim may not receive anything if the offender has no assets. There is provision in the Criminal Code for compensation claims in some circumstances to be recovered from the state, but historically, the state is less than generous.

New South Wales

Compensation orders are primarily made in New South Wales under the *Victim's Compensation Act 1987* by the Victim's Compensation Tribunal, which consists of a magistrate sitting alone. A victim may be awarded compensation if the offender is unknown, provided the sexual assault has been reported to police within a reasonable time. Where a man accused of committing a sexual assault is subsequently acquitted by a criminal court, the tribunal must determine on the balance of probabilities whether the rape was committed by either that man or another person. The maximum amount which may be awarded is $50,000. Neither a convicted offender nor an alleged offender has any right to appear at the compensation hearing, and the proceedings are conducted with as little formality as possible. Once a compensation action order has been made, payment is forthcoming from the Attorney-General's Department.

South Australia

The compensation scheme in South Australia is governed by the *Criminal Injuries Compensation Act 1987*. A claim is brought in the District Criminal Court and there is a limit of $50,000 which may be awarded. Generally, the amount of compensation is paid to the victim by the state. If the offender is unknown, or acquitted of the offence using the criminal defences of age or insanity, a compensation order can still be made. However, if the offender is acquitted of rape due to a lack of criminal intent, then a claim for compensation cannot be made to the court; instead, an application can be made to the Attorney-General for a discretionary payment of compensation.

Northern Territory

The Northern Territory scheme is found in the *Crimes (Victim's Assistance) Act 1982* (NT). The claim is brought in the Magistrates Court. The maximum amount which can be awarded is $25,000 and, if the offender is unknown, then the court may only make a compensation order if the victim reported the offence to the police within a reasonable period.

The above is a barely adequate overview of criminal injuries compensation legislation in a number of different jurisdictions. However, it does serve to emphasise the point that uniform legislation is highly desirable throughout Australia. Northern Territory Aboriginal women are often highly mobile and frequently move, for example, between the Northern Territory, South Australia and Western Australia, or Queensland and the Northern Territory. It is an absurd situation that a woman raped in Queensland receives no compensation because the convicted offender has no assets, whereas if she was raped in South Australia she could be awarded up to $50,000 or, in the Northern Territory, up to $25,000.

Anthropology & criminal injuries compensation claims

In making criminal injuries compensation claims for Aboriginal women who have been victims of sexual assault in Central Australia and who have not sustained any serious physical injuries, CAALAS has sought an anthropological understanding and analysis of the assault and not psychological or medical evidence to support the claims.

The inclusion and reference to anthropological evidence in bringing criminal injuries compensation claims for Aboriginal women victims of sexual assault to court does not appear to have occurred in other areas of Australia where the Aboriginal Legal Services have either not pursued the claims for women or have briefed them to private legal firms that have relied upon medical and psychological evidence. Anthropological evidence explains cultural perceptions and gives an understanding of the socio-cultural implications and impact of such assaults on Aboriginal women victims. Psychology does not have the cross-cultural framework with which to assess the effects of sexual assault on Aboriginal women. Medical evidence will show physical trauma but will not describe the social or community perceptions of such assaults and the socio-cultural impact they have on the victim and others. Psychology and medicine will also not discuss much about the circumstances of the assaults nor that the notions of who is the victim are different and, therefore, the fallout or impact from the assaults becomes much wider. (Furthermore for many traditional Aboriginal women it is culturally inappropriate to be assessed by psychologists and doctors.) Anthropological research tells us who is committing the assaults and their relationship to the victims. Importantly, it also tell us who is in a position of authority to speak about such matters and give evidence for the victim (Bell 1991, p. 405).

Lifting the taboo

Criminal injuries compensation claims for Aboriginal women victims of rape are an avenue for redressing the way in which Aboriginal culture has been distorted and misrepresented in the legal system.

They also give voice to Aboriginal women's definition of culture and what is acceptable social behaviour. Intra-racial rape has been a taboo subject. It is only in recent years that there has been some public acknowledgment within the Aboriginal community of the alarming rate of sexual assaults. Through the work of Aboriginal women researchers, women's refuges, non-Aboriginal researchers and Aboriginal community groups, sexual assault within Aboriginal communities is slowly being seriously addressed.

In most cases where Aboriginal women have been sexually assaulted by Aboriginal men, the accused is a close relative of the victim and the offence is incestuous. They are often men in powerful and trusting relationships. Knowledge of Aboriginal kinship systems and social relationships alert us to what the possible social effects or impact of the assault on women is. The nature of the relationships and the reactions of Aboriginal women, and some men, are the indicators which support a claim for compensation.

While the courts in the Northern Territory are willing to respect and take evidence from Aboriginal men on matters of customary law, they have not afforded the same degree of interest and weight to Aboriginal women's voices.

The outcome in all three cases outlined below, and in other sexual assault cases, reinforce the wanton attitude of the courts, the police and the defence to assaults on Aboriginal women by Aboriginal men. Since 1988 there has been a growing awareness within the Northern Territory police force and among the judiciary of the horrific abuse inflicted on Aboriginal women. However, this awareness has yet to be translated into action which redresses the bias towards Aboriginal men's evidence and definitions of tradition and customary law and which will empower Aboriginal women.

Three criminal injuries compensation cases: redefining sexual assault

The first two cases below involved women in the Northern Territory who have both been awarded compensation. The third compensation case involved a woman from northern South Australia whose case has yet to be heard. The three cases are linked by disturbing aspects in common: all three sexual assaults were incestuous; the accused were all close relatives who either lived in the same community or were frequent visitors to the woman's residence; misleading and improper interpretations of the assaults were given by counsel for the defence and their witnesses. The prosecution (Crown) did not question the defence case nor put forth the views of Aboriginal women. In one of the Northern Territory cases, the prosecution accepted without question the defence's request that the sentence be totally suspended.

Case 1: Prosecution's reluctance to accept socio-cultural evidence. The first case involved a young Warlpiri woman of sixteen years who was sexually assaulted by two men, one was her mother's brother and the other a classificatory mother's brother; that is, within the skin or subsection classification of the kinship system, he is an uncle of the victim. In this case, the victim was interviewed with the woman who had 'grown her up', that is her social mother not her biological mother. This woman had taken care of the victim since she had been sexually assaulted four years prior to the compensation claim.

The background to the sexual assault led to evidence of previous sexual abuse and incest. The young woman had been the victim of sexual abuse by her stepfather, who was also in an incorrect skin relationship with her mother. The girl fell pregnant and the family

made arrangements for the child to be adopted by distant family. Following the birth of the child and ensuing family disputes as to who should have custody, the young girl, who was aged only sixteen at the time, began drinking. Three months later she was raped by her two uncles. The victim of this sexual assault said in an interview with a woman lawyer that:

> Since the rape I am scared that other wrong skin men will rape me. Under Aboriginal Law my uncles should respect me.

In the transcript of the statement given to the police the victim said:

> I have told this true story to the police and want A & B to go to court, because what they doing to me. They not the right skin, I'm not their girlfriend . . . I want to go to court and tell that judge what they did to me, so they will get into trouble. They did a bad thing to me. (Statement of Sabina X 1984, p. 6).

In the criminal injuries compensation case which was heard in the local Magistrates Court, evidence was given by the victim and the Aboriginal woman who had taken care of her since the assaults. Despite this and the fact that she was raped by two men, she was only awarded two-thirds of the full amount. Without medical and psychological evidence, the counsel (male) appearing for the Crown was unable to give the magistrate any guidance on the amount of compensation he could grant. While the counsel for the crown did not dismiss the evidence of the victim, her social mother and the anthropologist, he did not fully accept it. The male magistrate commented that the compensation rate appeared lower for Aboriginal women (Transcript 1988, No. 8721100, pp. 15–17).

Case 2. Defence tells court that it was not against any customary taboo. The second case also involved a young Warlpiri girl who was only ten years of age at the time she was assaulted. The accused was aged approximately forty-five and was her father's mother's brother (father's maternal uncle) and her mother's sister's husband's father. The prosecution had not been able to assess the first relationship between the accused and the victim, which would have told the court that it was incestuous. They did report on the second relationship which was less significant and their comments on that indicate their disinterest and inability to comprehend Aboriginal social relationships. The prosecution, after pronouncing the relationship between the victim and accused through the marriage of the accused's son and the victims' mother's sister, said that 'If you say it quick enough it doesn't sound too bad' (*R. v Jampijimpa*, Transcript 1985, No. 23 of 1985, 19/11/85, p. 4). And obviously it is not afforded any serious consideration in relation to the offence.

The defence called evidence from an Aboriginal man from the community of the accused. The prosecution neither cross-examined this witness nor sought to call any evidence on behalf of the victim. While the defence witness' evidence was not controversial it reinforced the emphasis placed on Aboriginal men's definition of Aboriginal culture as being the only definition. Furthermore, the counsel for the offender submitted that:

> Although it's not of great note, that it was compatible skin in the sense that my client is a Jampijimpa and the prosecutrix or complainant was a Nabanardi so it wasn't against any customary taboo in that sense . . . (*R. v Jampijimpa*, 18/4/86, p. 19).

Some minimal genealogical research showed that the compatible skin relationship was cancelled out by the evidence that the offender was the victim's father's maternal uncle and the victim was only ten years of age. Therefore, the assault was incestuous and against customary law. The compatible or correct 'skin' or subsection relationship was only a potential relationship. This young woman victim was awarded the full amount by the woman magistrate.

Case 3: Police say sexual assault on Aboriginal women not a crime. The third crime compensation case involved a Pitjantjatjara woman from northern South Australia who was arrested for being drunk and disorderly and was then sexually assaulted by two Aboriginal police aides and a community warden when being returned to her community. The victim was in police custody at the time. All three men eventually pleaded guilty. In sentencing, His Honour Justice Millhouse relied on the evidence of the Police Sergeant and stated that:

> there is no crime of rape known in your community. Forcing a woman to have sexual intercourse is not socially acceptable, but it is not regarded with the seriousness that it is by white people (unreported, *R. v Wangkadi Mingkilli*, Supreme Court of South Australia, Port Augusta, before Millhouse J., 20 March 1991, p. 2).

Although the Sergeant also gave evidence about the probability of swift payback or community punishment, this did not occur and full responsibility was given to the courts to deal with this case.

While this particular community is virtually immobilised by petrol sniffing and alcohol and is therefore unable to respond to such violence with any appropriate or meaningful reference to 'Customary Law', it does not mean that the offence is not serious. Once again in this case, attention and significance were given to Aboriginal male values which were reinforced by the values and attitudes of the white male community with no evidence or attention given to Aboriginal women's views of this matter. No evidence was presented by the prosecution on the relationships between the three men and the victim.

Once again preliminary research into the victim's genealogy has revealed that the sexual assault by all three men was incestuous. One of the men was her father's brother's son, 'cousin brother' or 'brother'. Aboriginal people do not distinguish between children of siblings of the same sex. He was described as being of 'one country with the victim's father' —a very strong expression of a close relationship. The other two offenders were the sons of the victim's cousin's brothers.

As in the other two cases, the family of the victim spoke about the tensions created between the families of the victim and offenders. In this case, the victim's father complained that 'the families can't come close together because those men have made problems for all the families'. Two of the men were sentenced to two years and nine months, while the third was sentenced to two years and six months. All three were given a non-parole period of six months and were eligible for release after four months. They are now living in the same community as the victim, who has been socially ostracised and is camping in a wiltja (traditional shelter) on the outskirts of the community. Such ostracism is generally only demanded of couples of incorrect relationship ('wrong-way' marriages) living together. In this case, it appears that the victim is being blamed by the community for the assault.

Aboriginal Community Strategies

A number of successful and innovative strategies have been developed by Aboriginal women and men within Aboriginal communities and community organisations; for example, the Julalikari (Aboriginal town camp organisation in Tennant Creek) Council's night patrol inspired the Yuendumu women's night patrol and the Alice Springs town camper's organisation, Tangentyere's Night Patrol. These initiatives have been welcomed and actively supported by the Northern Territory Police. Other Aboriginal women from communities as far away as Yalata in South Australia have been inspired by these community initiatives. The night patrols have been instrumental in reducing the level of assaults in the town camps and, at Yuendumu, there has been a noticeable drop in a range of assaults and offences. The Yuendumu women's night patrol has received some media coverage which has described the women as the 'Granny Vice Patrol' thus belittling their authority and law, which is the basis of their success in maintaining law and order at Yuendumu (*Weekend Australian*, 7–8 March 1992). This is another example of the way in which Aboriginal women are excluded from any pronouncements of law and culture.

In Central Australia, Aboriginal women are forming their own networks and seeking help from different groups of Aboriginal women. The Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council has been inspirational and responsive to other Aboriginal women's needs.

In June 1992, a ceremonial gathering of 500 traditional Aboriginal women occurred north west of Balgo in Western Australia. There was no formal meeting structure and the entire agenda was known only to the senior ceremonial women. The only formal discussions that were allowed concerned an exchange of ideas and experiences concerning night patrols and requests for the NPY Women's Council to assist a couple of groups of women develop their own women's council. It is when women have become empowered that they are able to develop their own strategies to deal with social problems that impact on them.

Although some constructive strategies and initiatives have been developed to tackle difficult social issues, they often ignore Aboriginal women's priorities or at best exclude them from the design stage, involving them at a later stage. Unfortunately, this is presently the case with Tangentyere Council's Social Behavioural Project. This initiative, which has defined alcohol-related violence, inappropriate sexual behaviour between 'skin' groups and sexual assault as problems, is supported by the Four Corners Council which at present is made up entirely of male elders from the Alice Springs town camps. A parallel women's council is planned but has not yet eventuated. It has been anticipated that the involvement of 'Women Elders' will address the evidence of spouse violence, rape and child abuse (Tangentyere & Memmott 1992, p. 3). The recent appointment of a Women's Cultural Officer may speed up this process.

In summary, the situation is grim but is gradually being addressed as a matter of concern. However, little change can be effected until Aboriginal women themselves become empowered. Some attempts at law reform and a range of community strategies are being included on the sexual violence agenda and these will hopefully create a safer environment for Aboriginal women throughout Central Australia.

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