

## **“THE THICK KHAKI WALL”**

### ***THE “INTERVENTION”, OPERATION THEMIS and MORE OF THE SAME FOR ABORIGINAL PEOPLE?***

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***Please note the opinions expressed in this paper are those of the writer and NOT the North Australian Aboriginal Justice Agency (NAAJA)***

***The Northern Territory Emergency Response (NTER) is two years old. It was a radical step taken to combat the high level of violence perpetrated on Aboriginal people, mainly women and children, by, in the main, Aboriginal men. Northern Territory Police numbers have increased dramatically with the NT Emergency Response. 18 new police stations were constructed (albeit container style) in eight months in 07-08. The NTER Review recommended these 18 new stations be built as permanent stations. This process has begun. Why has the first two years of the NTER been so largely concerned with building police presence in the bush? How is this extra police presence faring? Is this phase of the NTER protecting Aboriginal people? What might the future hold?***

***Might it be that the NTER has got off largely on the wrong foot by its emphasis on police and other law and order responses?***

#### **1. “RECORDED IN THE ANNALS OF HISTORY”**

The Northern Territory can be a pretty hard place. It bears a youthful, agitated population (approximately 250,000 people), a quarter Aboriginal, and a government seemingly without time to dwell on the subtleties of trying to prevent crime. Infamous for its mandatory sentencing policies, once for property crime and now for violent crime, it is hardly surprising the NT has for decades led the rest of Australia in locking up its citizens (1). It is certainly the place for believers in deterrence. The NT Government and its right arm the NT Police are the true believers. If NT Government pronouncements concerning law and justice are equally split between taking tough measures and how the system might be modernized and diversified to better perform

and thus reduce crime, 95% of their actions are about “cracking down” on crime in what appears to be a never ending search to bully and shock people into mending their ways as long as voters are similarly minded.

After years of the failure of mandatory minimum sentencing (and aligned increases in maximum penalties and constriction of the availability of bail) to significantly and sustainably lower crime rates (2), the focus on the perceived “barbarism” (3) of Aboriginal people and the resulting NT Emergency Response (NTER) AKA “The Intervention”, appears to have provided a new stimulus to an ardent push for deterrence to be the cutting edge of crime reduction. Jenny Macklin, in her press release of 23 June 2009 listed the first of the “key achievements” of the NTER as the establishment of 18 new police stations in remote parts of the NT that are staffed by 63 police officers - all added to the police numbers that were already the highest per capita in Australia.

The Commissioner of NT Police, Paul White, is clearly excited. In his “Commissioner’s Overview” to the NT Police, Fire and Emergency Services Annual Report of 2007–08 he opens as follows:

“The 2007-08 financial year was a remarkable one for the Northern Territory Police, Fire and Emergency Services, *one that will be recorded in the annals of history*” (My italics).

What follows leaves no doubt that the history making dimension of the year to Commissioner White’s mind was the influx of police (both Territory trained and interstate officers) into remote areas of the NT to set up shop in aid of the residents of those areas. He says:

“At the end of the last financial year (06 – 07), the Commonwealth announced (the NTER) into Remote Communities. Northern Territory Police immediately took the lead, training Australian Federal Police for deployment and assisting with the survey of 75 remote Indigenous communities. Taskforce Themis was established and by February 2008, NT Police had established 18 new police stations across the Territory with a total of 51 additional police on the ground in these stations. That is 18 new police stations in remote areas in eight months, *an unprecedented effort for Australian, and probably world, policing*” (My italics).

I will return a little later to more of the Commissioner’s overview. At this juncture, I note that these 18 stations were created in addition to the 33 that already existed and spread amongst the main territory towns and communities. Arguably only one large (1,500 plus persons) community was not the site of a permanent police station prior to the NTER and that was Galiwinku on Elcho Island. Galiwinku now has a flash station built at the cost of \$7.7 million.

The NT now has 51 police stations for a population of approximately 260,000 people. Roughly one for every 5,000 people.

What sparked this historical investment in police?

## 2. “LATE LAST NIGHT SHE TOLD ME....”

On 15<sup>th</sup> May 2006, Crown Prosecutor Dr Nan Rogers set fire to the pyre. In an interview with Tony Jones on the ABC television program “Lateline”, Dr Rogers “spoke out” about child sexual abuse in Central Australia. Dr Rogers described to viewers details of tragic crimes wherein Aboriginal children and babies had been sexually abused. This handful of crimes spanned several years of Dr Rogers’ work as a prosecutor in Central Australia and amounted to a nauseating indictment of the actions of several clearly seriously deranged wrong-doers. In her background to and explanation of these crimes, Dr Rogers made observations that would prove to be very fertile ground for those determined to see marked change by dint of strong law and order measures in how “remote”, perhaps all, Aboriginal people ran their lives. Dr Rogers, in her opening salvo, responding to a question as to why there had been “a long silence” about child sexual abuse in central Australia, said;

“I think there are a number of reasons for that. The first is that violence is entrenched in a lot of aspects of Aboriginal society here. Secondly, Aboriginal people choose not to take responsibility for their own actions. Thirdly, Aboriginal society is very punitive so that if a report is made or a statement is made implicating an offender then that potential witness is subject to harassment, intimidation and sometimes physical assault if the offender gets into trouble because of that report or police statement”.

Later Dr Rogers said, in answer to a further question asking if there was any way of explaining these terrible cases;

“No, I think that cases like this and the sexual assaults of the two-year-old and the seven-month-old baby are really beyond the range of *our* (my italics) comprehension. In *normal* (my italics) behaviour we expect people to be, say, murdered or sexually assaulted or, you know, maybe stabbed, but not on a *constant basis* (my italics) - not in relation to horrible offences committed on really small children. It’s beyond most people’s comprehension and *range of human experience* (my italics).

Tony Jones warmed to his task and stated;

“These incidents are taken as facts of life rather than things which would, in a way, cause the entire place to look at itself and change?”

Dr Rogers replied;

“Yes. And I think the reason for that malaise is mostly *because of the entrenchment of violence in the whole of the community* (my italics)”.

In a few short minutes, Dr Rogers lent her credibility to the portrayal of Aboriginal society and culture as infused with unremitting violence, retribution, sexual perversity, irresponsibility, child abandonment and child exploitation. These remarks have reverberated ever since. In the “Little Children are Sacred” report, the authors noted that this episode of “Lateline” was the catalyst for the inquiry that led to the report. Dr Brendon Nelson, the then Leader of the Federal Opposition, referred to Dr Rogers and

her report on these crimes during his speech in support of the motion put to the Commonwealth Parliament to say “sorry” to the Aboriginal persons forcibly removed from their families.

Dr Rogers spoke out at a crucial time. The NT Labor Party had come to power in 2001 amidst great hopes that there would be a fresh and successful effort to lift the standard of living of the many impoverished Aboriginal Territorians. Nothing of note had occurred in nearly 5 years. It is fully understandable that bold comments were needed to sharpen attention on the ongoing violence.

My concern was then, and now, that these comments tended to take Aboriginal people out as contributors to the desperately needed solutions. How could Aboriginal people contribute if they did not take responsibility for their own actions? If their society had degenerated into a perpetually violent saga in which the violent orchestrated events so as to inflict death, rape and bashings and control the outcome of court cases almost simultaneously?

Dr Rogers’ comments drew much needed attention to the crisis. Solutions were not part of the agenda for this particular exercise but late in the piece Dr Rogers did offer one pathway to improvement of the situation when she suggested that by “following through” and giving the “correct evidence”, Aboriginal witnesses / victims could do themselves and their communities a big favour.

Thus first solution posited was securing convictions. Immediately the focus became law and order. The political climate was right for this approach.

The shock waves were acted upon with belated gusto by the NT Government. By late June of 2006, some six weeks after Dr Roger’s had appeared on *Lateline*, the NT Police and the Department of Family and Children Services had ‘co-located’ to the Berrimah Police Complex to launch the Child Abuse Taskforce. This Taskforce was designed to ensure, amongst other things, better communication between police and child protection workers to heighten the chances of identifying child abuse.

Not long after the Child Abuse Taskforce got underway, the NT Government commissioned the preparation of the report that was eventually entitled “*The Little Children are Sacred*”. That report was delivered to the NT Government on 30 April 2007.

### **3. ENTER BROUGH**

As 2006 unfolded the Federal Minister for Families, Community Services and Indigenous Affairs, Mr Mal Brough was enthusiastically embarking on tours of duty in Aboriginal communities. One such tour landed him in the midst of a traditional “riot” in the northern NT town of Wadeye. Some of the male members of combatant families, grouped together under the fighting names “Judas Priest” and “Evil Warriors”, slung spears at each other somehow managing to achieve the outcome almost de rigeur for these episodes – no injury of note to any participant. Mr Brough was taken aback and filed that scene away, along with his no doubt sobering observations of material deprivation in many Aboriginal communities, for future use.

In short, the recommendations contained in “*The Little Children are Sacred*” report, together with the perceived inaction of the NT Government, went nowhere near the strident measures Mal Brough and others thought were needed to deal with Aboriginal people living in the more remote parts of the NT. The observations of Dr Rogers together with Mr Brough’s own experiences led to the call that the first priority was that police needed to be installed throughout the Territory to cut back on violent crime. With levels of consultation that are hard to gauge, the Howard Federal Government sprung the NTER, loaded with spikes including the order that 18 new “container” Police stations be established and manned as soon as possible in designated NT communities. This construction effort was part of Taskforce Themis and saw each designated community the recipient of three fitted containers. One was a cell block. The next was an office; the third was living quarters for the police dispatched.

#### 4. A note on TASKFORCE THEMIS

Permit me to vent on the use of the name “Themis”. The Greek goddess of “divine justice”. I suppose in keeping with the thrust of the NTER being about saving Aboriginal people from themselves, one had to come up for a name for the police dimension of this event that described the taking of justice out to where it was perceived none existed.

#### 5. Pre- THEMIS. NT POLICE NOT KEEN TO GO BUSH

My suspicion is that the NT police were not planning on such rapid expansion in their number and number of stations. I suggest the police were content with the location of stations and the established plan whereby patrols to and placement of Aboriginal Community Police Officers (ACPOs) in sizeable communities without a permanent police station were adequate measures. Certainly the NT Police have regularly asked for more resources, including more police, but they appear not to have identified a need for new stations to be created.

An organization’s annual report is a repository of its aims and achievements and, further, the opportunity to make a case for what the organization sees as necessary additional funds or resources that would enhance its performance. I have perused each of the NT Police annual reports dating back to the financial year 2001-02 and in none of them does the Commissioner attempt to make a case for the construction of more stations in remote locations. In the 2006-07 report there is a tone of satisfaction that the final year of the “Building our Police Force Program” had ended with the notable “establishment of traffic operations sections in Darwin and Alice Springs and a drug dog unit in Alice Springs”. The reports of 2005-06, 2004-05, 2003-04 all featured details of success in reducing the number of crimes in the NT. None called for new stations to be built.

Even more tellingly the NT Police, in its substantial submission of 2006 to the “Little Children are Sacred” report did not, in any of its 16 recommendations, call for the building of new police stations. These recommendations (inclusive of calls for education programs for kids, extra police personnel to deal with child abuse investigations, community educational programs, more interpreters, education of

health professionals at remote communities, establishment of a youth sex offenders program) were born of experience and a desire to tackle child sexual abuse and other forms of violence pragmatically. The essential elements were education, improved cross-Departmental co-ordination and the training of select police to become experts in this field. It is certainly a pity that those who formulated the NTER and Taskforce Themis did not pay more attention to these insightful recommendations. The minds behind the NTER were clearly gripped by the notion that more police in more places would lead to a reduction in lawlessness. I have often wondered how much thought was given to the fact that the most volatile community in terms of public rioting, Wadeye (AKA Port Keats), has had a significant and permanent police presence for decades.

I have grave reservations about how the police have acted in the wake of what Professor Marcia Langton has described as a “policy revolution” (4) that saw millions of Government dollars freed up to be spent on reducing violence against Aboriginal people. The police knew they had a sufficient coverage of the NT and what was required was significant expenditure on other measures to complement their work. Instead they have allowed themselves to join a mad rush of expansion that is costing a fortune and which they know will return very little. Professor Langton has described the intervention as “the greatest opportunity we have had to overcome the systemic levels of disadvantage among Aboriginal Australians” (5). My contention is that this opportunity will be squandered if such a large proportion of the available funds are used to build and staff police stations. The NT Police should have had the integrity to tell the politicians how to spend their money more effectively. They would have been listened to. Given only 3 or 4 of the projected 18 new stations are fully built (the majority still in their container phase), there is still an opportunity for the police to do what they know is right – tell the Government that they, the police, are far from the solution and that the Government will serve the Aboriginal people of the Territory much better by spreading the funds over the range of solutions.

Stephen Lunn’s article “Poverty, booze and jail” published in “The Australian” on 25 June this year is a handy gathering of the thoughts of many prominent commentators on how money can be best spent to lower the rate of criminal activity in Aboriginal communities that will have the effect of reducing incarceration rates. Prevention is the key. One pivotal passage reads:

“There is evidence out of Europe, a program that provided disadvantaged women with support on how to be a good parent in the first two years of their first child’s life. It showed that if you enable a parent to be a good parent in these early years it can reduce the social and economic cost to society tremendously.....there’s a simple answer spend money allocated to prisons on health programs.”

If the Federal and NT Governments were to allocate the money they have for the new NT police stations and the new Darwin gaol, and here we are talking well over \$500 million just in building costs, to the construction of strategically placed pre-schools, better health programs, expanded rehabilitation services, more and better schools and health centres you would really start saving lives. The Territory has a long history of punitive approaches to law and order and a long history of serious violence that shows no sign of abating. It is no answer to say we can have both the police and prisons and

all of the other measures. Wasting \$500 million that could have been applied to preventative and rehabilitative measures is a tragedy that can still be avoided.

## 5. OBSERVATIONS ON POLICE IN THE BUSH

I have many concerns about this development of greater police presence in remote parts of the NT. Here are some:

1. Prior to TT no sizeable community went without police assistance. The 33 pre-TT stations provided support to communities without a permanent police presence. 11 communities in particular (e.g Galiwinku) hosted an ACPO or received regular police patrols or both. Any community that encountered a problem they thought needed police help with could call in police. NT Police with their aircraft and mobile tactical response groups are designed for this type of call out. In my submission the NT had a more than adequate coverage of police pre-TT, particularly in respect of more serious crime. One advantage of this pre-TT set up was communities had at least a level of self-management in this regard, surely a good thing as the community can self-manage to some extent.
2. The expense of setting up these new stations and staffing them. Millions of dollars are involved here. The Galiwinku station with its attendant houses cost \$7.7 million. Then comes the expense of keeping these monuments to deterrence staffed. At least two officers on decent wages. Plus an ACPO. With the leave police get, then we have the cost of replacements. In my view, if these stations ever get built and once this madness has passed, you will have close to a dozen expensive white elephants dotted around the Territory. Surely the lessons from the fiasco of the Mutijulu station will not go unheeded.
3. Are bush police really the answer? Surely some are needed but this many? I note a further portion of Commissioner White's overview in the annual report of 2007-08. He says (in his comments on Taskforce Themis) :

“Innovative thinking and hard work continue, and community policing has resulted in the establishment of sporting teams, rallying support for bike donations, assisting in escorting children to school and a range of community-based crime prevention initiatives”.

I cannot help but think that what we are seeing here is certainly good intentioned activity but activity best guided by trained coaches, youth workers, school-based support workers and the like, not police officers. My view is a blend of suitably trained individuals need to work with community people not have an over-emphasis on police who then stretch their capabilities as they can. What happens to the community in terms of its sporting development if the two or three police who live and work there are all book worms? Or prefer to fish or hunt in their down time and not coach a footy or netball team? Or what happens when the police officer who is also the ace football coach inevitably moves on and is replaced by a squash enthusiast? I note that many

of the bush police are on 3 and 6 month secondments. A stay of 18 months to two years in a bush station is considered a lengthy commitment. Only the very few stay beyond 2 years.

4. TT places further emphasis on the policing of Aboriginal people. 85% of the prison population is Aboriginal. Court lists are dominated by Aboriginal people. Bush courts are run across the NT, courts infamous for their long lists and short time frames – the classic “sausage factories” that bring into question the quality of justice dispensed. Bush courts that exist to process Aboriginal people that have come into contact with bush police in respect to quite minor crimes more often than not. The bush court lists are crammed with charges against the *Traffic Act*, the *Liquor Act*, the *Summary Offences Act*, the *Police Administration Act*, the *Trespass Act*, minor offences under the *Misuse of Drugs Act*, minor offences under the *Domestic Violence Act* and minor thefts. Ultimately police in the bush start charging people and so often the offending is the sort of offending that would not be pursued in larger towns because of the prioritization properly dictated by finite police resources. So often the offending is charged as a result of the high levels of co-operation with police by the accused and families of the accused. Families bring perpetrators to the police. Perpetrators make full confessions. What so often appears to be very fertile ground for mediation and local solutions ends up before a visiting magistrate. Police are in essence trained to use the system, to charge and put the matter in the hands of the courts. An over-supply of police will lead to the increased criminalization of Aboriginal people. Just about every bush court sees fines imposed in the tens of thousands of dollars for traffic offences alone. People in areas without public transport, motor vehicle registries and driving schools slugged relentlessly, often to the point of gaol. It is worth noting that 20 % of the gaol terms imposed by the courts in 06-07 were imposed for offences under the *Traffic Act*. It is of further interest to break that figure down. This percentage represents 372 of the 1841 gaol sentences handed down by Territory Courts in 2006-07. Of those 372 sentences, 359 were imposed on Aboriginal people and the other 13 on non-Aboriginal people. Thus approximately 70,000 Aboriginal Territorians attracted 358 prison terms for drink driving, drive disqualified and the like whereas around 180,000 non-Aboriginal Territorians provided the other baker’s dozen. I submit that this break down does NOT reflect the respective levels of offending. What it does reflect is the way in which Territorians are policed. So many black Territorians are micro-policed. So many white Territorians would rarely interact with a police officer. One telling source of interactions is the “random breath test”. This NOT a test conducted at a random breath testing station at which all vehicles passing within a certain time frame are pulled over and the driver breath tested. Rather, these are the tests conducted when

patrolling police decide to pull over a particular car to run a breath test on a hand-held device. It is the choice of those vehicles to be pulled over, particularly in towns such as Alice Springs, Tennant Creek and Katherine that is of concern. The practice is labeled “driving whilst black”. Aboriginal drivers are pulled over much more often than non-Aboriginal drivers.

5. A classic example of over-policing occurred at Galiwinku on 17 February 2009. 4 police entered and searched the house of an older and respected couple looking for yeast. The fear was this substance would be used to make home brew. No yeast was found.

6. There is a zealotry driving this phase of the NTER. Increasingly bush police are refusing to issue on-the-spot fines for minor drug and alcohol offences. The reason is that the police do not feel the “tickets” have sufficient deterrent effect. A recent example involved an 18 year old single mother with no prior convictions. She flew into a “dry” community with a 375ml bottle of Bundaberg rum and 18 grams of cannabis secreted in her baggage. Upon being discovered the police declined to give her an on-the-spot fine for each of the two banned substances and elected to charge. 5 charges in total were laid, one of possessing cannabis, one of possessing cannabis in a public place and three separate Liquor Act offences (bring, possess and control liquor in a restricted area). These charges are all now the subject of submissions. Clearly the police have the resources to act in this fashion. They are angling for convictions that will seriously inhibit a minor offender’s chances of getting a job. Under the NT *Misuse of Drugs Act* repeat offenders can run into provisions such as section 37 that posit imprisonment as the first port of call other than in exceptional circumstances. Police make little attempt to hide their desire to set offenders up for use of harsh sentencing laws if they can. All in the name of protecting the children. Or someone.

It is of great concern when there is such an emphasis on deterrence when it has become abundantly clear that deterrence has little if any impact in the circumstances that beset so many Aboriginal people. In 2008 the Chief Justice of the NT Supreme Court together with Justice Kaye of the Victorian Supreme Court were moved to write an e-mail to fellow Supreme Court judges that sought to press the case for a research project to study how rehabilitation within prison could be improved for Aboriginal offenders. In that e-mail their Honours included the following:

“The threat of incarceration has little deterrent effect when crimes are committed by reason of desperate circumstances or when grossly affected by alcohol, cannabis or other drugs”.

We all know it – gaol terms do not deter. Yet we are now pouring in record amounts of money to provide the environment for more charges, more court appearances and more gaol.

## 5. PROTECTIVE CUSTODY.

In 2007 / 2008 8,472 Aboriginal females were “taken” into protective custody. In that same year 18,741 Aboriginal males were taken into protective custody. The number for non-Aboriginal females was 167. For non-Aboriginal males 1,755. (Some people contributed multiple detentions for the year). Total 29,139.

In 2002 / 2003 the figures were: Aboriginal females 4,566, Aboriginal males 10,975, non-Aboriginal females 96 and non-Aboriginal males 813. Total 16,450.

The NTER has as a feature the expansion of dry zones. Many extra police are now out and about to enforce compliance with these zones. Many people have decided to head to town more regularly for a drink. Towns such as Katherine and Tennant Creek have had near record levels of incarceration in police cells by way of “protective custody” this year. The highest numbers came in the days after Kevin Rudd’s stimulus payments hit bank accounts.

It is becoming apparent that increased police presence in the bush is having the effect of driving some Aboriginal people into the rivers of grog flowing in the towns.

## ENDING THE MADNESS

The aim of the increased police presence in the bush was to “stabilize” Aboriginal communities before they became the recipients of proper investment in the fundamentals. This was a flawed approach as these communities were as stable as they were ever going to be given the deprivations they faced. “Stabilization” was never going to flow from the presence of police. It hasn’t. The opening phase of the NTER has been largely a failure because so many resources have been given over to setting up what didn’t need to be set up. Thankfully this phase is nearing its end and the real business of improving the lives of Aboriginal people can begin. It would be of great assistance to the people of Galiwinku if they actually got a women’s shelter. The community has a multi-million dollar cop shop but no place of respite for a woman under the hammer of her partner. I was chatting with an Aboriginal woman last week in Nhulunbuy. Spotting me and knowing I was an ALS lawyer she took time out from her celebratory drink (she had just become a qualified nurse) to ask what she could do to follow up on an incident at Galiwinku from a week or so ago. She told me an angry husband was drunk in the community and threatening his wife. It was late. She rang the police and told them what was going on. They told her to ring the night patrol. I

asked, naively, why the woman was not at least taken to the shelter whilst the authorities sorted out who was going to handle the situation. My reporter told me that there was no women's shelter to go to. I was amazed. I suspect that if there is a decision taken not to build the rest of these Themis stations and the effort to move to the second far more promising phase of the NTER is thus enhanced and speeded up Galiwinku may then get its women's shelter.

#### Footnotes

1. Australian Bureau of Statistics March Quarter 2009 reveal:
  - i – National average daily imprisonment rate was 167 persons per 100,000.
  - ii - NT had the highest imprisonment rate 697 per 100,000 next WA 241
  - iii – NT had the largest proportional increase in imprisonment rates from March Quarter 2008 – a 20% jump. National increase in same period was 2%.
  - iv – March 08 average daily number of prisoners in NT 896. Dec 08 - 993. March 09 – 1105.
2. see NT Quarterly Crime and Justice Statistics Issue 26, December Quarter 2008  
for a rundown on the stagnant nature of the rate of violent crime in the NT.  
Also it  
can be argued that the drop in property crime has bottomed out and in certain categories (interference with cars, burglaries of businesses) property offending is  
on the rise again.
3. See Cunneen, Chris "Assimilation and the Re-invention of Barbarism" [2007] *Australian Indigenous Law Review* Vol 11, pp42-45.
- 4 & 5 see "Trapped in the Aboriginal Reality Show", Marcia Langton Griffith Review Edition 19, 2007.