

The Koori History Website

THE PAIN OF FAINE GOES MAINLY TO MY BRAIN

(A rave provoked by an extract from Jon Faine's book, *Lawyers in the Alice: Aboriginals and whitefellas' Law, in the Age* in July 1994,)

by Gary Foley

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One of the ways in which racism manifests itself is when someone writes about a people in a manner that dehumanises them, and presents them as incidental, nameless victims apparently incapable of playing a role in their own affairs; non-persons able only to achieve liberation on the advent of the "good guys" (ie earnest young white lawyers from Melbourne) arrive like the cavalry to save the day. This is the impression one gains from the extract of Jon Faine's apparent romantic glorification of members of the Melbourne legal profession and their Daisy Bates-style saving of the Aborigines. (The "Age" Thurs July 1994)

The truth about the history of Aboriginal legal services and the Aboriginal community's relationship with the legal profession is dramatically different to the fantasies of Mr Faine's mind. To examine the truth is to not only expose the myth of Jon Faine's idealistic imaginings, but will also probably deflate a few Melbourne legal ego's along the way.

As a member of the group of Aboriginal people who, in Redfern and Fitzroy between 1969- 71 conceived and created the first community-controlled, shop-front, free legal-aid centres in Australia, I feel that I might be even better placed than Mr Faine to provide a brief history of Aboriginal legal services as perceived from a Koori community viewpoint.

The first major difference between my perception and that of Mr Faine's is that in my version all of the heroes are Koori's and very, very few lawyers are recalled with any fondness at all. However, if you read Mr. Faine's extract, Aboriginal people exist only as un-named victims or people in need of help, whilst many members of the legal profession (some with relatively brief stints in ALS's) are not only named, but

subsequent career achievements are provided in loving detail. The solitary Aboriginal exception to this rule is Ms Pat O'Shane, but she seems to named more because she is a "Magistrate" and "first woman layer in Alice Springs" rather than for her Aboriginality or her not insignificant contribution to the Koori struggle over 20 years.

The second difference with Mr Faine involves the history of how Aboriginal legal services began and what has happened since. If we are to believe Mr Faine's version which focuses on one relatively late developing service in Alice Springs and the Victorian Aboriginal Legal Service (for which the driving force was certainly not non-Koori lawyers), then it was the involvement of "eminent" Melbourne white-middle class lawyers, fresh and idealistic from university that were the major catalyst for everything leading up to Mabo. Furthermore, we are asked to swallow another Faine fantasy that the "land rights movement" culminated with Mabo. In the words of the song, "It ain't necessarily so!" and the truth as perceived by Aboriginal community is radically different.

Free legal aid was introduced to Australia in 1970, not by the legal profession, but rather by a small group of Koori community people in Redfern who at the time were labelled as "radicals" and "Black Power activists" by mainstream Australia. The preceding three years had seen the Redfern Aboriginal community expand from about 2000 people in 1967 to more than 36,000 by the end of 1969 as large numbers of NSW Kooris joined the mass exodus from the 45 old reserves (concentration camps) around the state, which were closed down after the 1967 referendum. As the new arrivals came to the city they inevitably ended up in Redfern and adjacent inner-city slum areas until there was a massive, impoverished black community which formed a sort of a ghetto in the sense that the Koori community stuck together and helped each other to survive.

There was no such thing as the "emerging middle-class Aboriginal activists" of Jon Faine's imagination! They were not to emerge until in the years after Whitlam when the young white Lawyers of the ALS gained great influence over government policy and deliberately set about to create an artificial elite pseudo-leadership of Aboriginal Australia with whom they could deal. The disastrous "throw money at it" policies of

the Hawke/Keating governments did most to facilitate the rapid grow of the tiny new black bourgeoisie who have been the only significant Koori recipients to benefit from the vast amounts of monies spent each year in the name of Aborigines. This new ALP-created black elite also increasingly are the new "hatchet men/women" doing the government's dirty work against the Koori community in return for their thirty pieces of silver. (how remarkably similar to the policy of the notorious USA Bureau of Indian Affairs!)

The Redfern Aboriginal Legal Service was created by people who lived in Redfern as part of the impoverished, 36,000 strong Koori community. It came about as a community response to the major NSW Police campaign of harassment and intimidation that occurred in Redfern during 1969 - 70. This harassment campaign seemed at the time to be the NSW government's overreacting to the sudden arrival of 30,000 landless, impoverished refugee's in the Redfern, Newtown, Waterloo and Alexandria areas of inner-city Sydney.

By mid 1969 a group of community activists had formed and was collecting information about police activities in Redfern, an activity that was quite dangerous in that virtually all members of the group had been arrested, beaten and/or harassed by members of the NSW Police "21 Division" (a notorious NSW squad that had been established in the 1930's to combat the Darlinghurst "razor gangs") who were turned loose to "quell the uppity blacks" of Redfern in 1969. After nine months or so data collecting, the group of activists, who included Paul Coe, Gary Williams, Lyn Thompson, Billy Craigie, Isobel Coe, Shirley (Mum Shirl) Smith, Tony Coorie and a few others, had accumulated enough information to approach someone outside our community for help in setting up a concept that we had developed and now wanted to put into practice.

The only things missing from the recipe were lawyers. You can't run a shop- front legal aid centre without lawyers, and the problem in Australia in 1970 was that there were NO Aboriginal lawyers. This was simply an indication of the extent to which Aboriginal people had been systematically excluded from education opportunities up till that time, but it nevertheless meant that we were reluctantly forced to seek support

from non-Koori lawyers. It must be said that the non-Koori legal profession in 1970 did not initially flock to the cause in the manner suggested in the Faine extract. In fact it was not until Paul Coe was able to convince the then Head of the Law Faculty of UNSW, Prof Hal Wootten, to join the cause that the NSW legal community bothered to respond meaningfully.

By the time Professor Wootten was recruited by Paul Coe and Gary Williams, the Redfern Koori community had already conceived the basic design of a shop-front legal aid centre operating with a team of volunteer lawyers working on a roster basis, under community direction and control. The concept had evolved from ideas picked up from Afro- American political literature, and the writings of Franz Fanon and others, stitched into the developing political ideology and philosophy of the first generation of the Koori Resistance to have been able to operate in relative freedom from government control. It was logical therefore that a major focus of the Koori community at the time was to extend and consolidate the hard won gains of the referendum and the opening to the concentration camps, and that Koori community control over all organisations that functioned in their communities would be a key issue in the 1970' and 1980's. (It must be said that as we look around today we seem more remote from genuine community self determination than we were twenty years ago, but that's a longer story).

The first large-scale Aboriginal legal, housing, medical and children's self-help programs, were developed by the Redfern Aboriginal community during the political/cultural Decade of Uprising that began when the Gurindji's walked off Wave Hill, and ended a decade later after the "Aboriginal Embassy" played a key role in the final destabilisation of the McMahon Government and the election of Whitlam and the beginning of a supposedly "new" approach. The new organisations that emerged in Redfern between 1969 to 1974 were called "Community-controlled, community-survival programs". It was said that these organisations were only meant to exist to alleviate specific, immediate problems confronting the community, and that they would become redundant when the "real answer" became reality.

The "real answer" was, and still is, considered to be contained in the concept of Land

Rights in which Koori communities would strive for economic self-sufficiency as a means of achieving genuine Self-Determination, and thus being in a position, as clans, groups and communities, to decide for themselves what kind of niche they wanted for themselves and their children's, children in the Australia of tomorrow. Land Rights in the manner envisaged by the Koori activists would also enable for the first time a Koori-run, multi-faceted and coordinated attack on all the inter-related problems confronting the community, thus building in greater chance of success. But until then, the legal, health and other self-help programs were supposed to ensure that the Koori community members at least survived to see the day Land Rights came in the form we sought. Alas, in terms of that we still wait.....

Nevertheless, in 1969 - 70, as the concept was developing among the Redfern political activists, despite occasional adopting and adapting of bits and pieces of good ideas from the mainly Afro-American and African political books we were stealing from Bob Gould's "Third World Bookshop" (it wasn't till later that he got in books about other Indigenous peoples struggles, and later also that he did a deal with the Koori activists to stop stealing books in return for him "giving" them the ones they wanted) the concepts that evolved were uniquely Koori in a range of ways, even in the way in which the concepts themselves evolved and were fine-tuned in the community itself.

So therefore it can be said that the original concept of free, shopfront Aboriginal legal-aid centres was very much a Koori community idea without any input whatsoever by any non-Koori lawyers. In fact, there is a considerable school of opinion in Aboriginal Australia that the later (1973 onwards) advent of the salaried lawyers and vast Govt sums allocated to ALS's resulted in most of them ultimately being controlled and run by non-Koori lawyers and this in turn led to the dramatic decline in quality of service provided by ALS's ever since.

Nevertheless in 1971 the Redfern Koori activists were able to open the doors of the Redfern Aboriginal Legal Service, and for a brief, eighteen month period, the Redfern ALS functioned as the community envisioned it, and was able to provide assistance to hundreds of Kooris in that period, but more importantly, when they won our first cases against the police (the first victory involved Aboriginal TV star, Bindi Williams,

who had been arrested on a trumped-up charge in Victoria park near Glebe) it led to a boost to the collective psychological mood of the large Redfern Koori community. This tremendous surge of confidence burst out of Redfern in the form of the Black Moratorium Demonstrations that erupted along the east coast cities and towns of Australia from Adelaide to Cairns during 1970 -72. This series of demonstrations forced Prime Minister William McMahon to, on Invasion Day (Australia Day) 1972, make his ill-fated "major policy announcement on Aboriginal Land Rights" which directly led to the famous Aboriginal Embassy demonstrations. Mr McMahon's brutal suppression of those demonstrations was televised around the world, to his embarrassment and consternation, and the fiasco directly contributed to his downfall at the end of 1972.

Thus it was true at the time that the establishment of the Redfern Aboriginal Legal Service by the so-called radical "Black Power" political activists was a major turning point in Aboriginal history as the first of the new community-controlled "Self-help" programs, and was a major catalyst in leading to the "Aboriginal Embassy", which in turn changed the course of Australian history.

By the time Jon Faine and his middle-class university mates were looking for a pre-career diversion, the principle of Aboriginal community control of their own affairs was firmly entrenched in the major Aboriginal communities in south-eastern Australia and the politically sophisticated Koori community of Melbourne was no place for opinionated young lawyers who felt that they knew what was best for others. The mass exodus of some of the "best" brains in potential ALS lawyer ranks from Melbourne to Alice Springs must have perplexed members of the Victorian Koori community who knew full well that there were more than enough major problems confronting the local community to keep all of the lawyers who left the state busy for ten years. Perhaps the eager young Melbourne lawyers, in their almost absolute ignorance of the history of the areas where they grew up in Victoria, believed the prevailing racist notion among their ilk that these people in the NT who needed their help are the "real" Aborigines!

How else can one explain the strange idea that a lawyer should leave a state where in

real terms Aboriginal/Police relations are at crisis point, and go to somewhere else to help ease other peoples problems that are essentially the same, except that the victims look that little bit more reassuringly black and thus more "authentic".

An additional irony of the "anywhere but Victoria" mentality of the Melbourne legal fraternity then was the fact that the young Redfern Koori activists had been considerably influenced and inspired by the Victorian Koori community's political actions conducted throughout the mid and late 1960's and early 1970's. The NSW Koori movement had always admired the Victorians for their superior organising skills, and their more disciplined and creative political actions, which had been widely publicised during that time. In Victoria, a controversy had raged from the mid to late 1960's about the future of Lake Tyers in Gippsland. At one stage representations had been made by Victorian Koori's to Amnesty International and the United Nations in relation to Lake Tyers.

Also, the so-called "Black Power" issue in Australia had been born in Melbourne when the Koori community simply sought to establish Koori community control over their own organisation, the Aborigines Advancement League (AAL). Names like Chairman of Lake Tyers Community, Charles Carter, AAL officials Pastor Doug Nichols and Bruce McGuinness were major media identities of the late 60's, early '70's, given the extent of newspaper and TV coverage they were able to gain for the Aboriginal community's struggle for justice then.

Furthermore, for about five years prior to the establishment of the Victorian ALS, the Aborigines Advancement League had conducted a quasi-legal aid service from their office in Northcote using volunteer lawyers where possible, or League officials appearing for Koori people when no lawyers could be found. In one six month period in 1969, then AAL Director, Bruce McGuinness made 23 appearances for Kooris fronting court (with lawyers organised by him appearing in 10 of those cases), 28 prison visits, bail/lock-up appearances). This practice of organising what legal assistance they could was began by League Director Doug Nichols, perfected by McGuinness, and maintained by subsequent AAL administrations, including that of the late Stewart Murray.

So it could hardly be said that the Melbourne Koori community people who included Jim Berg, Margaret Berg, Stewart Murray and others who met in 1973 to set up the Victorian Aboriginal Legal Service were all that desperately in need of gratuitous advice from a bunch of inexperienced, opinionated, middle class, pseudo-leftie lawyers fresh out of Melbourne and Monash Universities. In fact if there was a real hero of the white lawyers involved about that time, it was Elizabeth Eggleston of Monash University, who because of her unique (among lawyers) capacity to listen to what Aboriginal people had to say, and her respect for our world shown in her refusal to speak on our behalf and to always seek our permission and approval for any work she did with and in our community.

That the heroes of Mr Faine's story were faced with such strong and experienced Koori leadership in Melbourne is a more probable reason so many of Jon Faine's "star-studded virtual roll-call of legal luminaries" headed north. In Alice Springs a less politically experienced and assertive client community (not to mention more "authentic") made it much easier for young lawyers from the south to carve out a name for themselves in what they obviously considered to be a more glamorous and romantic way. Never mind that severe problems remained in the city they had so rapidly departed, they were too busy racing out buying their R.M. Williams, swags and 4WD's to notice.

Mr. Faine goes on to claim, "No-one went to Alice Springs for a quick buck, or because it was thought to be good for their career". Yet by that point in his article he has already gone to great length to describe the subsequent career glories and prestige achieved by most of these lawyers after they left the ALS. There is no doubt that a stint in an Aboriginal Legal Service has greatly enhanced the image, career opportunities and curriculum vitae's of many of today's eminent lawyers and judges.

But if they were all so dedicated and committed, why are they not still there? Has the problem been solved? Are there no Aboriginal people fronting court in Alice Springs these days? Did their pool of clients one-day suddenly dry up? Given the on-going imprisonment statistics of Aboriginal Australians, we doubt it. So how can people who

we are to believe are so committed, walk away after a mandatory minimum sentence/service, so to speak? Furthermore, all non-Koori professionals who work for Koori organisations usually leave with large payouts for long service leave, superannuation etc, and their careers are greatly enhanced (as Jon Faine pointed out) by their c.v.'s now being able to claim work experience in a bona-fide exotic Aboriginal organisation.

This is a particularly galling aspect for the hundreds of real heroes of the Koori movement, the voluntary workers who in some cases have given a lifetime of unpaid work with no chance of long service leave or superannuation, and who were working conceiving and designing the organisations long before the likes of Jon Faine and his mates later turned up and briefly were around before going on to other stepping-stones in their political, legal and book-selling careers. But don't get me wrong. I am not saying that all non-Koori professionals who work in Koori communities are cynical exploiters, I'm saying that the few who are not are known to, and appreciated by our community, but they remain unsung because that's the way they want it, and you won't find too many, if any, mentioned in Mr Faine's extract. And, rather than bothering to comment on Mr Faine's preposterous assertion that the land rights movement culminated with Mabo, instead it should be noted just how many non-Koori political careers seemed to have been launched from a little token stint in an Aboriginal community organisation.

Whilst it has been obvious for some years to all with eyes, ears and a sense of smell, that the Aboriginal affairs policies of the Hawke/Keating federal Labor governments have been a disastrous failure, rather than take urgent corrective measures the Govt instead subjects us all to a daily dose of patronising reassurances from Minister for Aboriginal Affairs, Mr Robert Tickner, a former ALS solicitor. At least three Cabinet Ministers in the present Keating Government are former ALS solicitors and barristers.

Today, on both sides of the House, in both Senate and the House of Representative, sit no less than 6 former lawyers of ALS's. Over the past 20 years, literally a dozen or more former ALS solicitors have been members and Ministers in successive

Australian governments. It is true to say that a veritable gaggle of former ALS lawyers have over the past 12 years have been involved in the development of the federal Aboriginal affairs policies that have failed so spectacularly. So, despite all that influence at the heart of power and their experience and first-hand knowledge of the plight of Koori peoples, they have been able to achieve virtually nothing in the way of improving the lot of those whose situation helped create the successful political careers these lawyers went on to enjoy.

Instead, today in most states we see Aboriginal Legal Service's which conceptually in no way resemble the original ideas born in Redfern 20 years ago, but rather are now lawyer run organisations which have become little more than conduits for vast amounts of Aboriginal affairs monies to be transferred straight from the Commonwealth to the legal profession in each state. Remembering that the Australian Institute of Criminology statistics continue to show regular annual increases in the numbers of Aboriginal peoples being imprisoned, (Australian Aboriginal people remain one of the most gaoled people on earth) and black deaths in custody continue unabated, and considering that ALS's consume hundreds of millions of federal Aboriginal Affairs dollars each year 98% of which goes straight into the pockets of the legal profession) it would seem that the Koori community has been poorly served indeed by the lawyers who have worked in their ALS's and then went on to successful political and judicial careers. In closing, I provide one last example of how the legal profession in Melbourne continues to treat their Koori clients with disdain.

The recent victory in the Supreme Court by the Koori representatives fighting the closure of Northland Secondary College was marred for the Kooris that night when they saw one of their solicitors being merrily interviewed on the 7:30 Report about THEIR reactions to the victory! This solicitor had not sought permission to speak to the media on behalf of the Koori clients or anyone else in the Koori community, and given that the Northland Koori's have always insisted on speaking for themselves or through their authorised spokespersons, this solicitor's action was arrogantly presumptuous and insensitive, at best. The fact that the "7:30 Report" chose to

interview a non-Koori person about a Koori community issue is consistent with all the media's track record for the past 200 years and comes as no surprise.

What was I saying about at the beginning of this article about relegating people to the sidelines of their own history?

