

Pascoe case not an example of pure-form customary law

Colin McDonald QC's attacks on the press in the February edition of *Balance (Fictions, freedoms and unfinished business - Aboriginal customary law in Australia today)* must be challenged.

In discussing the case of Jackie Pascoe Jamilmira, Mr McDonald writes: "Mr Jamilmira received poor press. The air was poisoned by media misrepresentation of the carnal knowledge charge to which he had pleaded guilty in any event. His case was consistently portrayed from the wider community perspective as aberrant. Mr Jamilmira's choice to conform to his own community pressures and mores didn't fit the media theme and so did not get an airing."

Mr Jamilmira did get an airing. I visited him in his community and reported his views. However, I also learned that Mr Jamilmira's young promised bride had originally made a statement to police complaining that Mr Jamilmira had subjected her to a vicious bashing in the moments before their "marriage" was consummated. This is what the 15-year-old girl told police of her first encounter with the 50-year-old Jamilmira:

"I was listening to that tape on that stereo - the music was Backstreet Boys. He (Pascoe) told me to shut the door, I said leave it open. He forced me to shut that door, he made me frightened. I said: 'No, I don't like it.' He started slapping my face and then punching me. He used his right and left hand to slap me in my face, he was hitting me real hard. He had that closed fist and he hit me eight times. I was feeling dizzy and he said: 'Let me look, so I can hit you again.'

"I said to him I want to go out and have a drink of water and wash my face. He said: 'No, you're not going anywhere, no phone call, no truck [out of there] for you.' He told me to take off my clothes, so I did. He

grabbed me by my left arm and my right leg and threw me on to that mattress.

"He put his foot on to my neck and he was pushing me down on that mattress. He had my right arm and he was twisting it - it felt like he would break it. Jackie was wearing a long-sleeved jacket, that grey one, it had blood on the back of it, the blood came from my nose. He was on top of me and he forced me, and I was laying down and I was trying to cross my legs."

Pascoe was arrested and charged with rape. The girl later withdrew the allegations out of fear. They were ultimately never raised in court. They were published in *The Weekend Australian*. Sometimes, the media can take the public to places lawyers conveniently prefer not to visit.

I appreciate that Mr McDonald has a job to represent his client only on the basis of what he is charged with, but blaming the media for misrepresentation is in itself misleading. Mr McDonald dresses up Mr Jamilmira's case as an example of pure-form customary law facing off against western law and an aggressive media. That is a complete sham. For a sane debate on customary law, better examples of the clash between two systems ought to be provided.

Paul Toohey
The Bulletin

HEADNOTE REPORTERS WANTED

A subcommittee of the Northern Territory Council of Law Reporting (NTCLR), headed by Patron the Hon Austin Asche AC QC, is working to prepare a volume (or volumes) of Northern Territory cases from 1975 to 1990.

Cases will generally have relevance and importance today, or be of particular historical interest. Some will have been published in other services but the NTCLR believes it is important that the Northern Territory has its own cases presented in a single collection.

Headnotes will be prepared for all cases to be included in the volumes. This task is an interesting but large one and requires the assistance of volunteers in the legal profession. In particular, we require people to prepare headnotes of the cases to be included in the volumes.

There is no funding available for this work. All those who assist in the project will be acknowledged in the volume. You can register your interest by contacting the NTCLR's Secretary, Craig Smyth, by email craig.smyth@nt.gov.au.