

The Challenges of bringing  
two laws together:  
the introduction of a  
Yapa Community Court.

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- Disclaimer

- In June 2008, Yuendumu had its first community circle sentencing court.
- This paper describes how that court came to be, and what has happened since.

# July 2007

- How I came to be involved
  - Investigating the evaporation of the NT's ALJS
    - Esp Walpiri Law & Justice Committees and the Kurduju Committee
  - Recommendations of the Wild/Anderson Report
    - Re Community Courts; the context of Law & Justice Committees
  - Concern about failure by Government to properly engage and consult with Walpiri people

# July-November 2007

- Education and consultation about a potential community court with communities (especially the Elders) of
  - Yuendumu
  - Ali Curung
  - Lajamanu
- Preparation of an options Paper on Community Courts



Timor Sea

Cartier Islands

Darwin

Katherine

Groote Eylandt

Lajamanu

Tennant Creek

Alekerenge

Ali Curung NT, Australia

Yuendumu

Alice Springs

Queen

Australia

673 km

Image NASA  
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© 2008 Europa Technologies

Google

18°51'24.02" S 134°07'37.58" E

Eye alt 2027.35 km

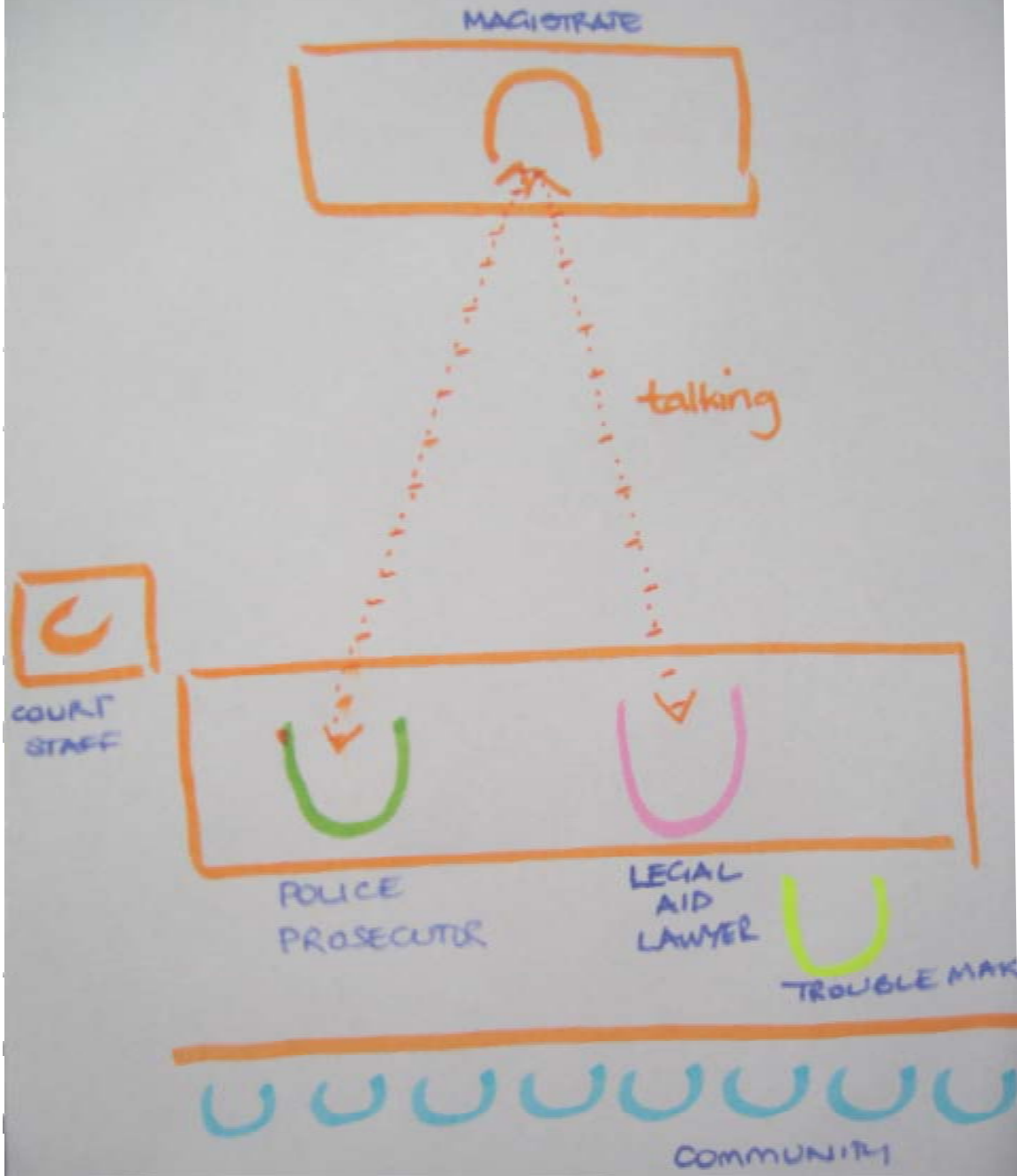
# July-November 2007

- Previous Warlpiri participation in bush courts
  - When the NT Government facilitated the Aboriginal Law and Justice Strategy
  - Now?
    - Yuendumu's Justice Mediation Group
    - Lajamanu's Law and Justice Committee
      - The men; role of Community Corrections
    - Ali Curung
- Other parts of the NT
- Interest in starting Community Courts from justice agencies and organisations?

# February-June 2008

- Continuing Education and consultation about a potential community court
- Rumours of funding
- Liaison with the Darwin Community Court Coordinator

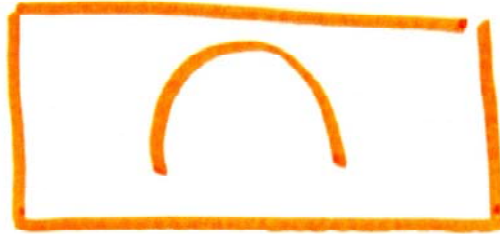






Pre-Court Conference  
of Law + Justice Committee  
few days before court

give opinion to Magistrate  
in writing about offender  
and the sentence





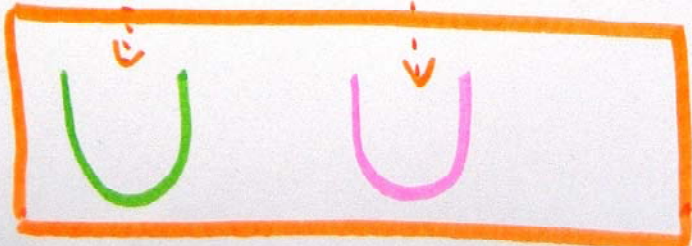
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Law + Justice  
Committee sit  
in court

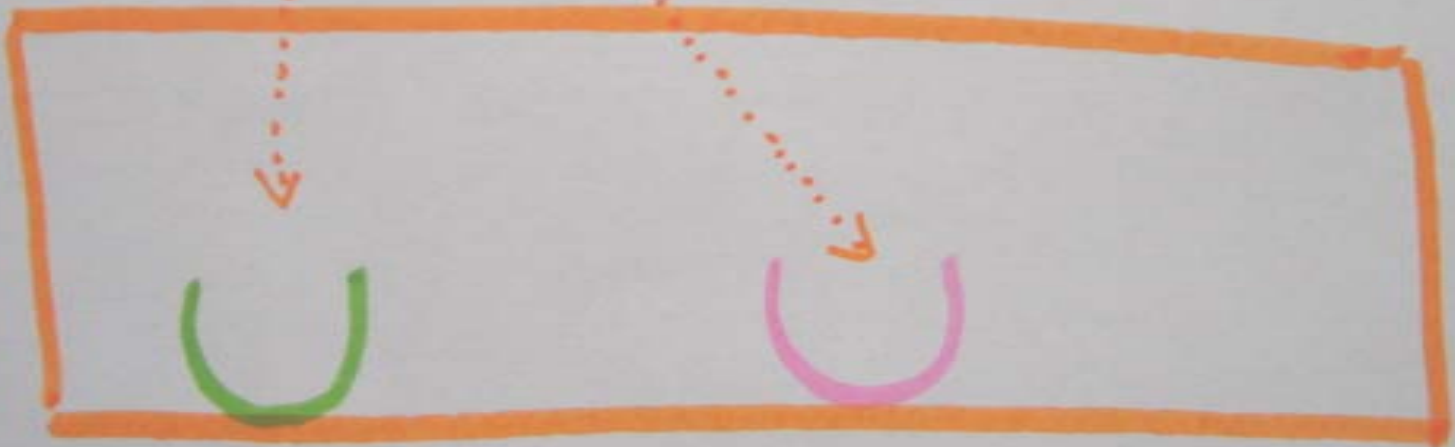
talking...





Elders sit next to magistrates on the bench

Elders can talk to lawyers



In Tiwi, after the court had finished, the lawyers all stayed inside the court and kept going with other matters ...



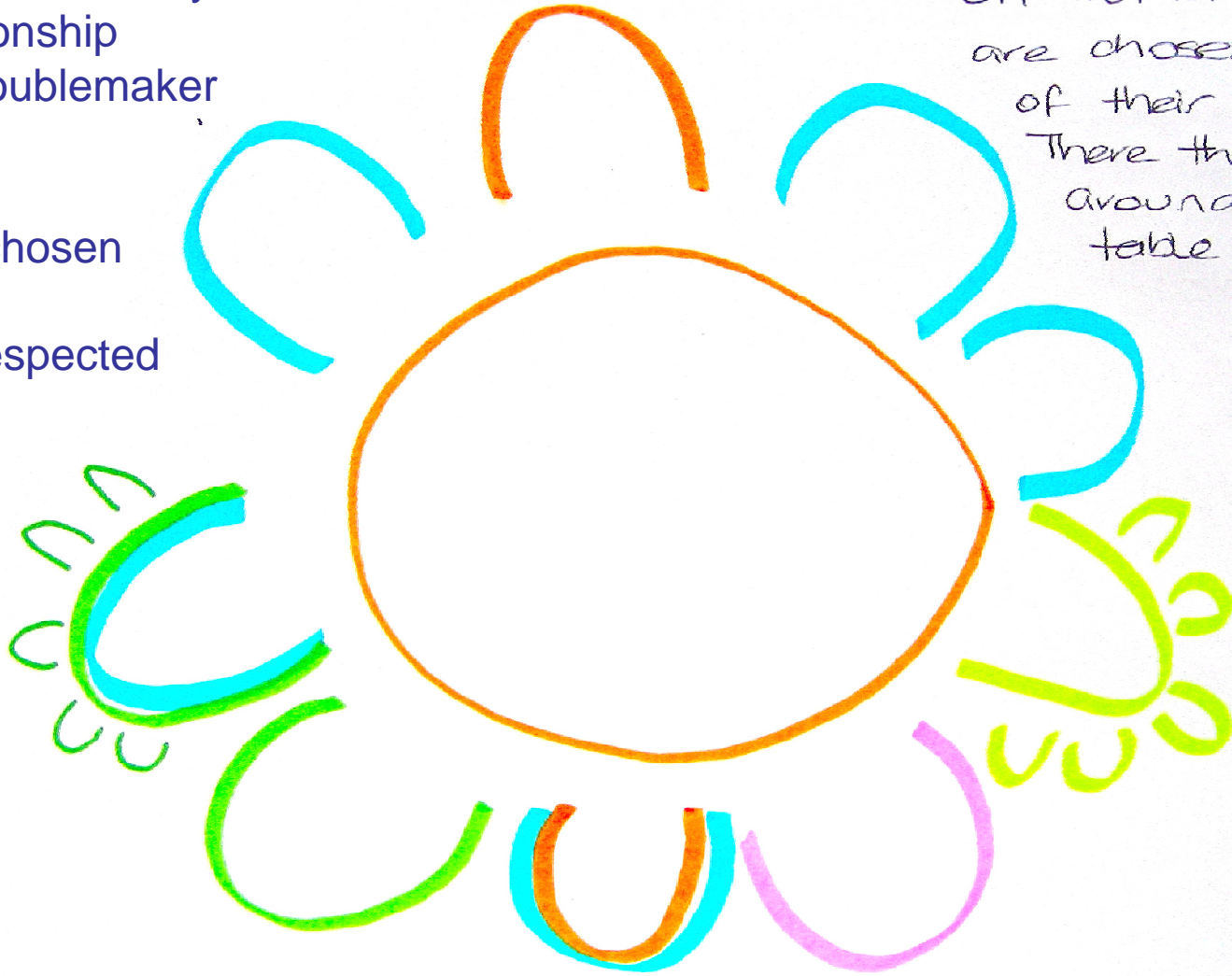
... outside the court



- ... the community members all talked with the troublemaker and her husband. They encouraged her and talked together about how to make her life happier

In other places where traditional culture is stronger, elders are chosen because they have the right relationship with the troublemaker and victim.

They are chosen because they are respected and have authority over those people.



On Tiwi Island, elders are chosen because of their skin group. There they sit around the council table.

On Tiwi, they also speak in local language, so there is an interpreter there to help the people who don't speak Tiwi/English

# February-June 2008

- **April:** The Magistrate (“SM#1”) meets with the Elders in Yuendumu
  - suggests a model
- **April:** Tangentyere completes report on Community Consultation
  - the Community identify a preferred model
- There is no response to this report.



# February-June 2008

- **May:** Legal aid and the Court hold a meeting. They determine that a mock court will be held next bush court at Yuendumu.
- The community is not invited, nor is Tangentyere.
- There are rumours that Community Court officer has been appointed who is based in Alice Springs.

# February-June 2008

- **June:** On the basis of rumours, in the days leading up to bush court, Tangentyere attend Yuendumu and delivers education about “what is a mock court”.
  - We have no information about what sort of matter or how it will be run
- On the morning of Bush Court, the court staff and magistrate arrive.
  - It is a different Magistrate (“SM#2”)
  - The new community court officer is there
  - The magistrate confirms that the next day they are planning to hold a mock court
  - Tangentyere tells the magistrate about the previous days’ education sessions & spends time with the new Community Court officer

## *A word on bush courts*

- **Caseload**
  - Preparation
  - Taking instructions
  - Interpreters
  - Getting through the list
  - Accommodation of court and legal staff
  - Every two or three months.
- 
- Heat/cold, dirt roads, distance, English as a 2nd (3rd, 4th or not at all) Language

# *February-June 2008*

- **June (cont'd):** the night before court, T prepares a mock court 'outline'. T had not been asked to be involved at all...
- On the morning of the mock court , the magistrate holds a meeting with the community to hear from them if they do want to do mock court.
- He asks T to chair that discussion in his absence.
- As that Discussion is about to end, in consultation with Legal Aid, the magistrate decides that it will not be a mock court but an actual case.
- T tells the Elders this.

# *February-June 2008*

- **June (cont'd):** the Court runs:
- The model used (compared to the one the Community requested).
  - plain language?
  - Interpreters?
- The magistrate tells the community it will continue.

# *July 2008*

- T bumps into the community court officer who says that the funding for his position was not continued beyond 2 months
- T asks for a meeting with two Magistrates (#1 & #2), the Registrar, Legal Aid, and Community Reps to inquire what is happening?
  - Undertaking to continue the court
  - An extra day is promised at the Oct bush court

# *August 2008*

- Yuendumu Bush Court: there is no community court
- Magistrate SM#2 meets with Elders & says there will be Community Court next time.
  - Observation by the Elders about the previous court
- CAALAS identify three cases for the next court

# *October 2008*

- Yuendumu Bush Court
- 1 out of 3 nominated offenders is in the community
- With an interpreter, T facilitates the community court:
  - meets with stakeholders, interviews nominated participants & the offender, explains process, ensures they are the right people to be on the court and that they freely agree to participate. Identifies issues. Education about kardiya law & process.
  - Reports to the Magistrate.
  - Hampered by heat.



# *October 2008*

## Cont'd

- Magistrate SM#1 attends
- The model that is used (compared to the one the community want and the previous model used)
  - Formality, 2 x interpreters, apology
- The offender from the 1st Community court is on the list for breaching the order made in that court; it's adjourned.

# Observations

- Initially I was unhappy that there was :
  - No consultation
  - No education
  - No policy development
  - No guidelines
  - No legislative basis
  - No funding
  - No facilitation role performed by Justice agency

- Now:
  - It is possible that in all the circumstances Yuendumu may have benefitted from this
    - Community does not need half baked policy prepared in Darwin
    - Relationships
    - Individuals learning
    - Slow process, not enforced externally
    - People learn better through experience

# Importance of a Yapa court?

- For the community:
  - Their family are alone in a normal court
    - Connection of family/community to a court case
  - They have a system of Yapa Law
  - They are relied upon to enforce law in their communities by kardiya, but not supported
  - Recognition of Yapa Law
    - Context of 'outlawing' customary law

# Importance of a Yapa court?

- For Lawyers:
  - As a vehicle for community education

# Importance of a Yapa court?

- For myself :
  - Court to reflect community values
  - Court to become accessible & comprehensible to Yapa
    - They are baffled by uncertain and inconsistent application, changing laws
  - Court users to learn how to communicate better & realise that these are different skills from a 'normal' court

# Now

I remain troubled that the Yapa Court is tokenistic, however from my experience Yapa show you how you can help them; they are patient and generous in sharing their knowledge and culture.

As lawyers and magistrates work with Yapa, they will be changed by this experience.

# Post script

On Monday, a Magistrate met with Ali Curung community, and a community circle sentencing court will start in March 2009.

Without extra court days, it is likely that Lajamanu will not have a community court.