president's column

THE TIES THAT BIND

Members of the jury, the accused at the Bar stands charged with murder. Upon his arraignment he has pleaded not guilty and has put himself upon his country which country you are. Your charge therefore is to enquire whether he is guilty or not guilty and to hearken to the evidence.

I listened yet again to those words just recently. Dumb, meaningless words that echo a certain sycophancy to the traditions of the "old country" from where we have taken the foundation of our legal system. The fact that my client did not put himself upon his country, he being an Irish national, could not have gone unnoticed by many in the court room. The same words are used without a hint of irony when Aboriginal accused are tried in the great majority of instances hundreds of kilometres from their own country. Do we move to change the words to reflect the fact that we are no longer a British colony? No. We prefer to bask in a moment of solemn tradition regardless of the senselessness of it all. Another twee term that we continue to hang on to is the reference to our colleagues in the court room as my "learned friend" which is often a misuse of two very valuable words. It seems to me that the use of Mr or Ms followed by a surname, or Counsel for the plaintiff/defendant would suffice.

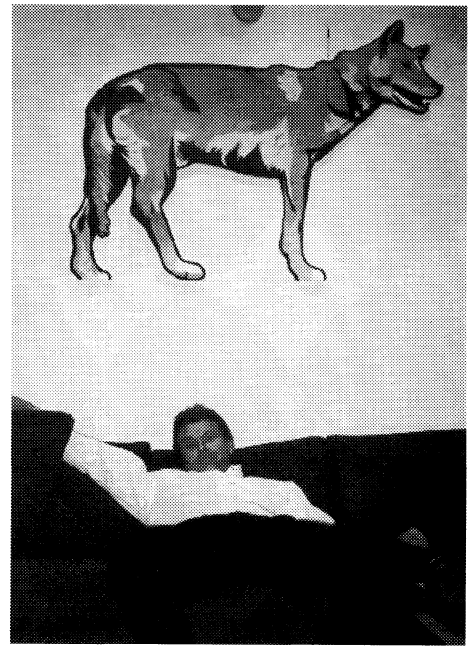
The cause of this rumination is the recent celebration of the centenary of Federation hosted by the Old Country in the Old Country and to which Australians of every political hue flocked like cockroaches to a left over dinner. In an article published in *The Sydney Morning Herald* Robert Manne, an associate professor of politics, remarked "I seriously doubt if there is any other country in the world which would have thought it fitting to celebrate its political birth in the capital of a foreign land"

Manne points out in the article that the Constitution drafted by the Australians was not allowed to pass through the British Parliament until the section which excluded appeals from the High Court in Australia to the Privy Council in London had been removed.

Manne observed;

> Over the question of Privy Council appeals a compromise was reached. The bill was sent to Westminster and passed. In so far as the British, then, made any practical contribution to the federation of the Australian colonies, it was to safeguard British economic interests from the decisions of Australian courts.

Well we got rid of the right to appeal to the Privy Council. That was not a failure to acknowledge that some of the Law Lords were very smart lawyers regardless of their personal habits. But we gradually saw an ever increasing need to determine our own legal direction and to draw upon the jurisprudence of an increasing variety of jurisdictions to help formulate that direction. Still however, like a weaned child, that remembers the comfort of the tit, we cling to vestiges of true British solemnity when it comes to going about our business in the courts. Jurors are sworn to faithfully try the several issues between our Sovereign Lady the Queen and the prisoner at the bar and we still use the term Queens Counsel to both appoint and describe Senior Counsel. Other jurisdictions have moved away from such anachronistic language more suited to the governance of an empire over which the sun never sets. Oddly enough it continues to survive in a place like the Northern Territory that has refocused the Australian battle to be free of the fettles of empire into one of a paranoid vision of the doings in Canberra. The freewheeling "Territorian" no longer fears the meddling ignorance of Westminster but the decisions of his or her own national Parliament. In the tough outback, part of which is nibbling at the toes of South East Asia the lingua franca of the legal system, still exudes the pomp and circumstance of Queen and country. Why that should be is hard to fathom unless you opt for one of two conclusions. The first is we like it. The second is we can't be bothered changing it. I am an optimist so I chose the second in deference to my profession.



Dog tired: Jon Tippett relaxes in the Supreme Court Counsel's Room under the newly hung CLANT logo which was presented to the Chief Justice at the Law Week 2000 lunch.

It is true, however that we have made some sensible changes. We have done away with the traditional horse hair wig in civil cases. Although we have embarked on the careful path of taking only one step at a time and retained the wig in criminal trials. A schizophrenic decision of sorts that now has people like me taking the wig to court just in case. Resplendent in bar jacket and woollen gown one is apt to feel underdressed in the absence of the bonnet.

Robert Manne points out that over the last fifty years Australia "began to try to find a new relationship with the Asian region to which it was geographically tied and with its own indigenous people who had been so brutally dispossessed by British settlement in the 19th century." We in the Northern Territory are in the engine room of that struggle to assert a new identity. In many ways the cultural process through which that is taking place is more vibrant here than anywhere else. Unfortunately it also faces disturbing symptoms of apprehension that have exposed our legal system, in some areas, to use as an instrument of repression. Hopefully that will turn out to be just a passing phase.

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The lingering expressions within the law that roll so easily off the practised tongues of lawyers and which hark back to the days when we were safely part of mother England's brood don't give the profession much street cred. We are supposed to be a profession of communicators. I was once told by my principal as an articled clerk "Don't write a letter unless you want to tell someone something they need to know". Similarly language used in the court room, even if it is only there to underscore the solemnity of the occasion, should be capable of conveying to the public something they should know. Slavish references to a monarch more associated with family division and conversations over a car phone lend little weight to the authority of the law in a society of such diverse heritage as ours. In the effort to discover ourselves we must be prepared to release the ties that bind. That necessarily involves freeing ourselves from the use of dinky archaic language which ought to make us feel quite stupid when we do use it.

When it comes to change, however, lawyers are like cows. First we chew on it a good while then it has to pass through four stomachs before we make anything of it.

And another thing... the baying of hounds

In the aftermath of the Childers tragedy, another travesty was taking place: media reporting of "Australia's largest manhunt" for someone wanted by police for assistance in the events that led to the death of 15 back packers in the hostel fire.

Within days virtually every media outlet in the country had named this person, and linked him in a very direct way as "Australia's most wanted man"; the "prime suspect" in an alleged crime and so on.

While it is true that such reporting is arguably legal, short of possible charges having been laid, it is difficult to imagine a fair trial being available for this wretched man if indeed he faces court — let alone the damage done to his reputation if proceedings against him do not eventuate.

It was left to the Mayor of Isis Shire Council which includes Childers, one Bill Trevor, to demonstrate knowledge of the principles of our justice system the media seemed so eager to ignore.

He was quoted in *The Australian* (itself one of the outlets I have quoted above) as saying:

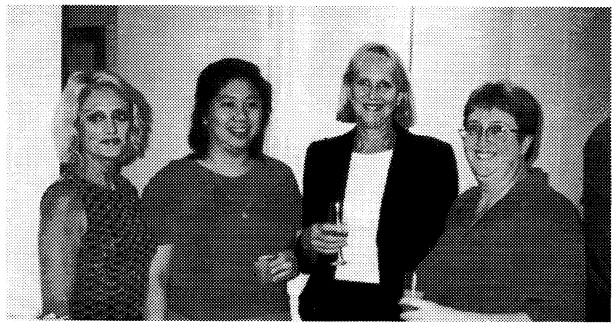
> I think it's good the man police were seeking was apprehended and can assist police further. The next process will start now and hopefully (he) will be able to shed some light on what happened... We don't know what happened and, under the Australian and British (justice) system, everyone is entitled to the presumption of innocence until proven guilty.

All power to Mayor Bill Trevor. In a time of enormous communal passion and grief he has managed to maintain the kind of rationality and support for justice that is at the heart of a system which is designed to protect our liberties. Mr Trevor gets my prize this month for defending those proper processes. He has managed to shame those hysterical elements of the media that have appeared so eager to condemn and pre-judge before the proper processes of the law are carried through.

TWO YEARS AT ST HILARYS

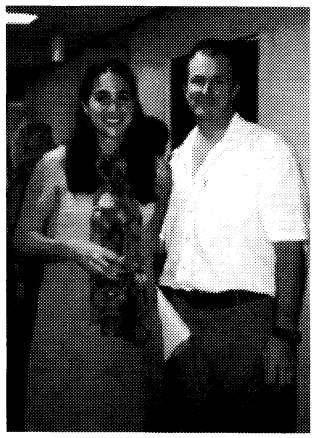
Darwin practitioners and friends gathered to celebrate the second anniversary of St Hilary Chambers in Darwin at a function on 23 June 2000.

Melanie Little is the principal at St Hilary Chambers. She is joined in her practice by local solicitor Julie Franz and articled clerk Debbie Matheson.



Debbie Matheson, Peggy Cheong, Gloria Richardson and Melanie Little

Catherine Caruana and Tatiania Lozano



Julie Franz and Robbie Hantleman

Margaret Orwin and Tim Prichard