

FERAE NATURAE

It is Oscar time in Hollywood. The time of year when producers in Tinsel Town out do one another in their attempts to gain a nomination for their film. From now until the golden statuettes are given out at the end of March you can rest assured that the tabloid papers and the gossip magazines we read at the supermarket check outs will be full of the doings of Russell and Cate and all the rest of the stars who are in the running for a nomination.

The hype is artificial. The hysteria manufactured. Movies are big business. An Oscar nomination can add millions to box office takings. If a nomination or a statuette can be purchased, so much the better. The producers and the spin doctors make their investments in publicity judiciously, hoping for the maximum return. It is the same for their product. Money invested in a film is capital and the dream of the investors is profit. No doubt every producer dreams of making another *Blair Witch Project* a piece of schlock made for a few hundred thousand dollars which reaped millions in profit at the box office through astute marketing and public curiosity and prurience.

It is the same for newspapers. Murdoch, Packer and their ilk became plutocrats because they have learnt to create a product cheaply which they can sell at a profit. The cheapest news of all is crime reporting. The public interest in crime is unflagging and unquenchable. One reporter can sit in one court and have delivered up to him free of charge or effort an endless flow of human weakness, human cruelty and human woe which human curiosity being what it is we are only too happy to read.

The staple of our own local Darwin paper, the *NT News*, is crime reporting. Day in day out the paper is full of crime. The indefatigable Bob Watt covers the Supreme Court and the Magistrates' Court and daily files his stories. I mean no criticism of Mr Watt but is this not the journalistic equivalent of the *Blair Witch Project*? Maximum profit for minimum capital outlay. The Courts are a cash cow for the proprietors of the *NT News*.

It was reported in *The Media Magazine* in *The Australian* of 8 February that Zel Rabin editor in the 1960's of the now defunct *Sydney Daily Mirror* said at the time that word for word he was the highest paid writer in the World. On average he wrote 20 words a day — for four or five street posters of four or five words each. But those posters sold the millions of newspapers that propelled Rupert Murdoch on to the world stage. Mr Murdoch appreciated his genius and paid him accordingly.

You can bet your life that Mr Rabin's street posters were not of this ilk: *Reasoned Sentence in Rape Case*. What sells papers is the same thing that sells films — titillation and sensation leavened with a bit of outrage and horror. Who went to see the *Blair Witch Project* to be reassured that the forests of New England were safe for hiking?

Is there a connection between the current acrimonious debate about law and order and the media and public preoccupation with crime. I think there is.

The daily contents of the media create a perception in the public imagination that the world is rapidly becoming a more dangerous place. This is not necessarily so but to advocate a contrary view will not sell papers or indeed lead to re-election.

It is only human to look for someone or something to blame for the apparent parlous state of society.

Judges and magistrates provide an easy scapegoat. Especially when they cannot argue back.

The appeal of crime to the human imagination is universal. Every crime writer from Conan Doyle to Lynda La Plante knows this. Crime is linked to punishment and, just as everyone believes that their common humanity provides them with an insight into crime and its origins, so there is a belief that common humanity provides an understanding of the appropriate punishment for every crime. Everyone is thus an expert on crime and punishment and so entitled to comment, even if that comment is spawned from an inadequate and sensationalised report of a crime and its



facts in the media. It is of course never that simple. The variance of human circumstance and human conduct are infinite.

The rise of public disquiet with sentencing has coincided with a growing sense of disenchantment and dissatisfaction with the institutions of government and public administration generally. Jon Tippett, perhaps because of his high public profile, regularly receives correspondence from a gentleman who gives as his address *Middle Australia*. In his latest letter Mr Middle Australia advises that *...the rural heartland is ablaze with anger and discontent fuelled by high petrol prices, loss of services, rampant crime and a host of other ills visited on these peaceful hardworking folk by big city administrators! And their rage is not just directed at Governments but at the hideous elites who dictate the terms on which they live! The judges, the magistrates, the media, the policy-makers, the academics, the clerics, the entire "We Know Best Brigade"!*

Mr Middle Australia neatly ties together the phenomenon of disquiet about sentencing and levels of crime with a generalised cynicism and mistrust of government and its institutions, including the judiciary.

We allow misinformed and strident attacks on the judiciary to go unanswered at our peril. Such attacks serve only to diminish the standing of the judiciary in the community and lessen public confidence in the essential role the judiciary plays in society. It is easy to diminish the standing of judges — hard to create something to take their place.

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Education and information for the community about the role of the judiciary and the process of sentencing are essential bulwarks in the defence of the judiciary. Sentencing is an art and a science. It is not intuitive or effortless. It has principles which can be learnt and taught and which are founded in experience and common sense. Above all it is a rational process capable of explanation and analysis. To this end it is to be welcomed that the Chief Justice has seen fit to publish all sentencing remarks as they are delivered on the Supreme Court's new website. This will go a great way to allow explanation of the sentencing process to the interested lay person.

The Law Society supports other initiatives to demystify and explain the sentencing process. To this end it is currently seeking funding with the Northern Territory Legal Aid Commission to hold a series of workshops based on the highly successful *Trial of the Century* hosted by NT Neighbourhood Watch at the Supreme Court in Darwin in 1998. *Trial of the Century II* workshops will be open to members of the community. In the

workshops participants will be presented with a number of case scenarios which are acted out by lawyers who play the roles of prosecutor, defence counsel, accused and other witnesses. Crown facts and a plea in mitigation are presented. A judge or magistrate presents a summing up and explains the general sentencing principles which are applicable to the scenario which has been presented but he or she does not deliver an actual sentence. Participants then withdraw to discussion groups where they consider what they have heard and where they are free to ask questions. Each group delivers the sentence it thinks appropriate to the crime. The judge or magistrate then delivers the sentence he or she would have delivered in the circumstances. Comparisons and discussions ensue. It is instructive to record that past experience is that the lay sentencers are usually more lenient than the professional ones.

The aim of the process of course is to demonstrate the complexity and difficulty of the sentencing process and to reveal that it is not necessarily the simple knee-jerk process it is supposed to be but rather the careful weighing and

balancing of competing influences. Like most things in life it is not as easy as it looks.

I commend the scheme to you and hope that it will be up and running towards mid year.

In the twenty first century it is becoming apparent that the only groups willing or able to defend the judiciary from destructive and ill-informed comment are lawyers. In this regard it may be that lawyers and Law Societies in particular will be accused of doing so only for ulterior motives. If this is the case so be it. In this context it is perhaps appropriate to publish some comments of Bob Ellicott QC, attorney-general in the Fraser Liberal Government which were published in the most recent edition of the New South Wales Bar News: *I still believe that the attorney-general's role is the most significant in government. I see it being frittered away. And as it is being frittered away, so the independence of the law and the rule of law are frittered away. That is something we can't afford.*

As always, dear readers, food for thought.

LETTER TO THE EDITOR

Balance - Lines in the Sand

I note that the regular Alice Springs contribution to *Balance* is entitled *Lines in the Sand*.

There is no need to remind practitioners in Alice Springs of the oft quoted "Berrimah Line". It seems to me that the Alice Springs article by virtue of its titular heading overtly pays homage to and reinforces the Berrimah Line Syndrome.

I would suggest that this is both inappropriate and unfortunate in these times.

Additionally the expression "to draw a line in the sand" (and hence its derivative) invokes unnecessarily aggressive confrontational imagery (witness President George's declaration to the Iranians).

Therefore I would urge the Law Society to take into account these possible

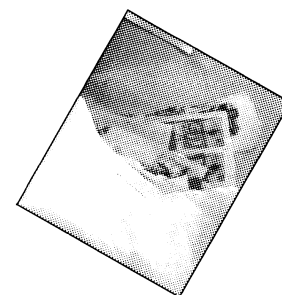
connotations and perhaps consider a more inclusive header for contributions from Alice Springs.

Peer Schroter
Povey Stirk

Thank you for your recent letter concerning the *Balance* article *Lines in the Sand* which has appeared in the last three editions.

Firstly the Society welcomes all comments regarding *Balance* and its contents. It is hoped to make *Balance* a journal in respect of which all members of the Society feel a sense of ownership and as a result will feel free to contribute articles and indeed letters to it.

With this in mind the Council of the Society was anxious to create in *Balance* a segment of the journal which would be referable solely to



Central Australian practitioners - to their needs and interests and which would also be a means of informing other practitioners of the goings on in Alice Springs and surrounds. The aim was to break down the *Berrimah Line* not reinforce it.

The title *Lines in the Sand* was devised by the Society's Alice Springs representatives Katrina Budrikis and Domenic Conidi.

Their aim was to create a title which would be evocative of the desert environment in which all you Centralian practitioners are fortunate to live. Any illusion to Mr Bush Senior was unintended.

Editor