

AROUND THE TRAPS

The media and juries

When Ted Kavanau was asked to describe the editorial policy of CNN he was succinct, "If it bleeds, it leads".

I have commented before how impoverished the Northern Territory's daily newspaper would be if it were not for the doings in the law courts. Stories of blood and mayhem, preferably involving a hatchet or a meat cleaver, are a regular accompaniment to the morning Weetbix in Darwin. Some times the enthusiasm of the press to capitalize on a particularly mouthwatering set of "facts" in the course of a criminal trial results in an application being made to the court for a discharge of the jury on the grounds of prejudice. The assumption has been to date that such reporting is liable to influence the members of the jury in their role of impartial judges of the facts presented in evidence in the courtroom.

However a recently released three year study into the impact of prejudicial media publicity in 41 selected trials in New South Wales indicates that the assumption that jurors are influenced by the media may be wrong. According to the New South Wales Attorney-General Mr Debus the study sought the views of juries on the subject of prejudice arising from media reporting and compared them with those of judges and counsel involved in the same trials.

The response of the jurors was that they routinely ignored judicial warnings not to read news papers and said they avidly followed the press coverage of the trial. Indeed jurors regularly brought the newspaper into the jury room where the articles were often discussed.

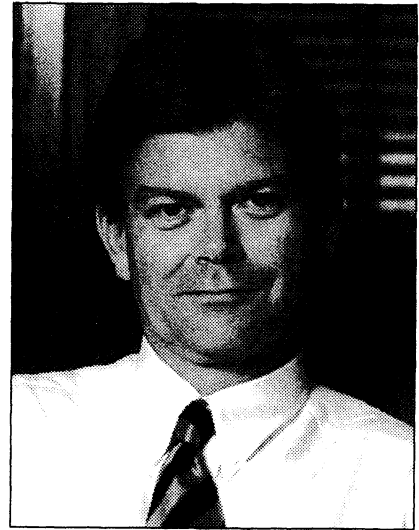
The study found that only three per cent of the jurors surveyed admitted to being faintly influenced by the newspaper reports. According to Professor Chesterman of the University of NSW and Law and Justice Foundations Justice Research Centre 83 per cent of jurors said publicity had no influence at all on their verdict.

Apparently a significant proportion of jurors considered the press coverage inaccurate and that it failed to convey a good impression of what really happened in the courtroom. One juror responded by saying that newspaper reports are "a lot of crap normally". Another said "If you didn't know any better, you would have thought that the reporter was watching another murder trial, not ours."

Of course if you were a juror who participated in such a survey you would not be about to admit that you were a complete knucklehead and preferred the account of a journalist to your own assessment of the evidence. I would be inclined to think that the three per cent figure should have a multiplication sign immediately next to it followed by a question mark. However to parrot that famous quote from Oscar Wild "A cynic is a man who knows the price of everything and the value of nothing". It would appear that the value of the report is, in the words of Professor Chesterman, "a tick in favour of the current jury system, and while they didn't get it right every time, jurors had shown they were not puppets of the media".

There are some very good court reporters about and for my money Bob Watt of the *NT News* and Murray McLaughlin of ABC Television are two of them. Pity they did not have more influence in how the issues relating to the law in the Northern Territory are purveyed by the media.

The media is critical to the way in which our society functions. Its importance was recently adverted to by Justice Angel in a speech published in the last edition of this magazine. An alternative view was once espoused by that great lateral thinker Sir Johannes Bjelke-Petersen when he said; "The greatest thing that could happen to the state and the nation is when we get rid of all the media. Then we could live in peace and tranquillity, and no one would know anything". Now there's a thought. Its surprising a Territory politician didn't think of it first.



Jon Tippett, Law Society President

The politically pro-active lawyer

The Australian Plaintiff Lawyers Association (APLA) has been getting a lot of press recently. A recent article in *The Bulletin* under the rubric of "The Blame Game" discussed the apparently rising tide of civil suits in Australia. The article makes the observation that APLA is a politically pro-active organization in much the same way, but on a smaller economy of scale, as the American Trial Lawyers Association which has become the sixth most powerful lobby group in the United States.

In the 1999 Victorian election APLA campaigned against the then sitting Liberal Government in marginal seats on the platform that the government had removed common law rights to sue a negligent employer. When Labor won power those rights were restored. The Northern Territory, in a flurry of activity in the late 1980s, removed many rights to sue at common law. Perhaps our legal community should rethink the supine way in which we allowed that to happen. In a small community it is often the closeness of government and the munificence of government patronage that can encourage a professional lethargy to develop in the face of the imposition of pernicious political doctrine.

Nick Styant-Brown, a partner of the firm Slater and Gordon makes the point in the article that the asbestos litigation resulted in the company CSR offering

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an umbrella settlement for all miners employed by it. The history of the common law is full of ground breaking cases that have resulted in better work practices, improved legislative frameworks for employees and employers to operate under, and the dignity of litigants who have been able to take action against the party that caused them injury. The legislation such as that enshrined in our Work Health Act and our Motor Accidents (Compensation) Act which denies common law rights to members of the Northern Territory community disengages the legal process from being able to offer those things to litigants whose action may fall to be determined by that legislation.

The article observes that the Australian Plaintiff Lawyers Association has begun to set itself up professionally and that it will soon have six full time employees. It has an expert data base and specialist litigation subgroups which link lawyers with similar interests. The President of the Northern Territory chapter of APLA is John Neill of Messrs. Ward Keller. It costs \$250 a year to be a member and according to everyone who attends the Associations annual conference is jam packed full of useful information. John Neill has all the details and perhaps many more you hadn't even thought of. Contact him if you are interested.

One thing that stuck in my craw as I read the article were some comments by one of those ubiquitous experts. Apparently this character Peter Cane who is head of the law school at the Australian National University's Research School of Social Sciences (an academic, who has studied the expansion of plaintiff law in Britain as well as in the US and Australia — wow!) reckons that "lawyerising" must be thought of as a business, not as a service profession. I suppose he thinks of his academising and theorising as a business but I wonder if he has a market for it. It was Thomas Jefferson who said that "Error of opinion may be tolerated where reason is left free to combat it". I wonder if Jefferson was so sanguine about people who got right up his nose?

Closer to home

By the time you read this you will have

all received the bad news about our professional indemnity insurer going into provisional liquidation. No doubt it has been the subject of some grumbling here and there particularly as it has meant a further impost upon the profession in the Northern Territory. That is understandable. It is particularly unfortunate as much work went into trying to secure the cheapest deal the Society could for professional indemnity insurance cover. The events that have overcome HIH were entirely unforeseen. In the circumstances I hope you agree that the Law Society was bound to act quickly with the object in mind of ensuring everybody had proper insurance cover.

On a brighter note the office of the Commonwealth Attorney-General Daryl Williams QC has contacted the Law Society and advised that the Attorney is coming on a short visit to the Territory and has some time to meet members of the profession at a "sundowner" type event on 9 April next. We hope that a suitable wet season welcome can be arranged in a place that is likely to be dry and that doesn't test the roll-on deodorant.

The Commonwealth Attorney has displayed a sincere interest incoming to the Territory and meeting members of the profession for some time. Last August I attended a Pro Bono conference in Canberra hosted by the Attorney. I gave a paper as a representative of the Northern Territory Law Society which was published in edited form (perhaps to the eternal gratitude of readers) in *Balance*. Some other Territory practitioners also gave papers. During the conference Daryl Williams made the time to meet with me for a discussion of about half an hour. I felt it an honour that our profession was acknowledged and welcomed by him. I hope you feel we ought to return the favour. The secretariat of the Society will keep you advised.

Premises

To speak of the profession contributing funds for the purpose of purchasing a permanent home for the Law Society might be seen as a brave move at this time of difficulty with our PI insurance. However I feel that I must resist my natural penchant for cowardice and raise the

matter now. Presently the Society is in fine premises that are the subject of very advantageous leasehold terms from the Government. That situation will not continue forever. There is the additional matter of a profession as small as ours losing significant income as a result of becoming part of the national travelling practising certificate scheme. We need to look to the future now, both in terms of establishing a viable income base, and developing methods whereby that can be implemented. A premises owned by the Society would inevitably further both objectives. In the short term I will be seeking a resolution from Council for a sum of money to be put aside from funds already held by the Society into a trust that has as its purpose the purchase of a building.

In addition to those monies there will need to be a fundraising drive to increase the sum available for the purchase. Some of you may have ideas as to what you would like done or not done as the case may be. I have in mind a premises that can be used by legal firms for business and functions. I would like to see all CLE's take place on Law Society premises. The premises would obviously be a base for an expanded range of services to be offered to practitioners both electronic and advisory.

Like all ideas it is much easier to talk about them than to put them into practice. I have been of the view that the Society has been in need of securing a permanent residence for some time. The changes that are rapidly taking place in our profession seem to me to require that step to be taken sooner than later. I am optimistic that the profession, having given the idea its usual due consideration and rejecting it, will conclude that the future is upon us and that it needs a stout heart with equally stout ideas to deal with it. I am also acutely aware that the place where optimism most flourishes is the lunatic asylum.

Your comments would be most welcome.

The Council of the Law Society Northern Territory welcomes feedback and comments from Law Society members. Write to the Society c/ GPO Box 2388 Darwin NT 0801 or email: lawsoc@lawsocnt.asn.au