

MESSAGE FROM THE PRESIDENT



I DON'T KNOW HOW or why I obtained the document, but I recently came across publication No.2 of the Law Reform Commission of Uganda of October 1977 entitled *The Venereal Diseases Decree, 1977*. The document is actually a statement by His Excellency Al - Hajji Field Marshal Dr. Idi Amin Dada, V.C., D.S.O., M.C., C.B.E., Life President of Uganda (as he then was or perceived himself to be) It reads, in part:

The Life President wishes also to remind all Provincial Governors and Chiefs and all Security Officers concerned that when the Life President makes laws, he expects them to be enforced with vigour and to be obeyed by all people without exception. It therefore causes him distress to see that despite this, there are many jobless people still roaming about in towns. These are the people who turn out to be kondos, particularly at night. These are the same people who harbour venereal diseases. Such people must be rounded up, treated and taken to places of training. Those who are taken to court and convicted must not be given useless light sentences. Courts too must rise up to the occasion, for they are serving in a Military Government.

The separation of powers in Uganda in 1977 became a little blurred; its judges had a somewhat fragile claim to independence. But some of the words have a familiar ring. How often in Australia in 1999 have you heard the populist clamour of politicians and others accusing judges of not doing their job, telling them they must try harder, they should bend to community attitudes and heed the strident demands of press and politicians? Sometimes the clamour goes so far as to demand that if judges make what the popular press perceives to be errors of judgment, they should resign.

Judicial independence from the Crown was a hard won victory for Parliament as well as the judiciary. *The Act of Settlement of 1701* was in parliament's interests. New South Wales parliaments are now unlikely to be in dispute with the Crown, but the need for the independence of judges from executive government is no less acute. Public perception of the judiciary is all important. Freedom of the press is all important. But the alacrity with which journalists are disposed to publicly denigrate judges, often in ignorance of all the circumstances in which a judge acted, can but serve to diminish judges in the eyes of people. The oafish attacks on Judge Kirkham, accusing him of responsibility for murder, are not atypical examples. Attacks on the judiciary in Australia are not a new phenomenon, but they seem to be increasing. His Honour Judge Docker of the District Court was often criticised (to put it mildly) by John Norton in the late 19th Century. By all accounts he was a less than perfect judge, being described by Cyril Pearl as 'irresponsible, savage, and

class-biased'. Norton was fairly direct in his criticism publishing, amongst other things:

Your consistent conduct on the subordinate bench has been alternately that of an idiot and a brutal bewigged bully. Some of your judicial obiter dicta - the obstreperous observations of an ignorant, irascible, jury-ranter - would seem to indicate that a padded room at Callan Park would be a fit and proper abiding place for you You are one of the opprobrious spawn of the old Convict system and would, had not Providence delayed your advent to this world in order to curse our Courts, have made an admirable member of the military rum-selling mob of martinets who mercilessly murdered, by the mockery of judicial process, men and women at the triangles and on the gallows. You are the hereditary lay descendant of that old parsonical pirate, the 'Reverend' Samuel Marsden ... Your vagaries on the bench recall the pothouse vapourings of a drunken man. A special session of Parliament ought to be called to put an end to your official existence. (*Wild Men of Sydney*, Cyril Pearl)

I do not know what happened to Judge Docker (usually referred to by Norton as Dingo Docker) but the District Court survived Norton. The problem these days is that too often the courts come under quite mindless political attack, which is then pursued by the press, enthusiastically supported by the same politicians. Typical of this sort of onslaught is when the sky fell after *Mabo* and *Wik*. For example, the member for Kalgoorlie disposed of the *Mabo* judgment by calling the High Court judges piss ants; others gleefully followed suit in less vulgar but equally destructive language. In recent years Chief Justices in Australia have become more willing to talk to the press, in face to face interviews, a process which I applaud. But judges cannot be expected, nor permitted, publicly to respond to unfair *ad hominem* attacks, thereby becoming embroiled in public controversy. For that reason, although the circumstances were extraordinary, I think Justice Bruce's appearance on *60 Minutes* was unfortunate. Attorneys General, neither Commonwealth nor State, seem inclined to come to the defence of judges; during the Kirkham controversy the Attorney's contribution was to support the Police Minister in his attack on the judge for discharging a jury. So if the judges can't defend themselves, and the Attorney General won't, it is left to the societies of lawyers to be astute to answer unfair criticism. It is, I think, an important function of the Bar Association. My own experience suggests that publicly defending a judge against attacks by a journalist carries with it certain hazards, but it does sometimes have the effect of waving a red rag at an angry bull, who then forgets about the original target. The judge thereby avoids further goring. At the very least, a reasoned public response by the Bar will enable the public to see that the story does have two sides. Ian Barker QC