> no doubt ascribe the disastrous consequences of their successful litigation to what might well be described as the 'unacceptable face of British justice'. The most significant reform [needed] would be that when the legally aided person failed in his action or defence, the legal aid fund should pay the costs of the unassisted party, like any other litigant. The legal aid system had done great good for many people. But the profession must remember that, when seeking legal aid, they were under a special responsibility to see that it was wisely and carefully administered. (*Times Law Report*, 6 May 1981).

Finally, in a piece published in the Australian Broadcasting Commission's excellent pamphlet *Civilisation and the Law*, (1981), Professor Kingston Braybrooke, Emeritus Professor of Legal Studies at La Trobe University, sums up the arguments for the adversary and the alternative inquisitorial systems:

> The adversary system, it is said, guarantees that element which is fundamental to any fair trial, an unbiased tribunal. ... A major criticism [is that] one or other of the disputants may not be able to put forward the best possible case for himself and under this system the triers of fact have very limited powers of intervention on behalf of the person whose case is not going well, or is ill prepared. ... We have to admit that no system of settling disputes is perfect; both major types suffer from defects.

media law

> Our job is to report what happened, not to decide what happened. The milkman delivers the milk in the morning and he doesn't try to interview the cows. We deliver the news. ...
> James Reston, *New Zealand Herald*, 30 April 1981, 18.

dilemmas of a journalist. The law governing the media is changing. Reciprocating the interest of the law in the media, the media (in Australia and Britain) is showing a greater interest in the law. Where will all this lead?

Among pressures upon the media today are those arising from:

- introduction of new technology, sometimes saving tottering journals but at a price of jobs and networking of the same news;
- changes in media ownership, leading to extensive inquiries for the Administrative Appeals Tribunal (concerning television station ownership) and by Mr. Justice Norris (investigating newspaper ownership and control in Victoria);
- pressure from Third World countries in UNESCO urging a 'new world information and communication order' to present a 'more balanced' reportage of Third World news;
- pressure from many moral dilemmas facing the modern journalist.

Addressing Australian Consolidated Press staff, the ALRC Chairman, after outlining proposals before the Law Reform Commission affecting the media, identified some of the 'dilemmas' facing the modern journalist. He instanced:

- the 'cheque-book journalism' which had surrounded the trial of the so-called Yorkshire Ripper, a phenomenon which had induced the Queen to express her 'sense of distaste' at the proposal to purchase a story from the 'Ripper's' wife for half a million dollars;
- invention of the news, not only with frank inventions (such as led to the withdrawal of the Pulitzer Prize from a correspondent of the Washington Post who admitted that her prizewinning story was a fabrication) but also news stories that foreign journalists were paying gangs in Northern Ireland to throw rocks at army vehicles to provide 'colourful words and dramatic film';
- the suggestion by some journalists in New Zealand that the forthcoming Springbok tour should not be reported out of respect for South Africa's black population;
- the dilemma posed by the illegally obtained and apparently fraudulent

tapes of telephone conversations said to have occurred between Prince Charles, in Australia, and Lady Diana Spencer in England;

- slanting of the news by concentrating on atypical but dramatic events to the total rejection of more 'socially important' and representative events:

> In the actual business of upholding journalistic standards, the law's role is (and properly is) a small one. Conscience, tradition, good standards and a realisation of the responsibility that must accompany the great power of the media, all contribute to the avoidance or solution of excesses without legal intervention. Occasionally, however, the law must have its say in the defence of minimum social standards.

Amongst items identified as involving significant reforms of the law affecting the media today, the ALRC Chairman listed:

- changes in the law and attitudes governing obscenity, indecency and blasphemy;
- changes in official secrets law and clarification of current laws as occurred in Mr. Justice Mason's decision in *Commonwealth* v. *John Fairfax & Sons Limited* (1980) 54 ALJR 45;
- improved opportunities for access to government information promised by the forthcoming Freedom of Information legislation;

a sad blight. In a previous address to the annual seminar of the Australian Suburban Newspapers' Association in Melbourne in March 1981, the same speaker referred to the ALRC report, *Unfair Publication: Defamation and Privacy* (ALRC 11) 1979. He described present libel laws in Australia as 'a sad blight upon a society professing to be open and free'. He listed among defects of current laws:

- the proliferation of eight different and often conflicting systems in a media now basically nationally distributed;
- confusion and uncertainty in the law, impeding journalist standards and training;
- procedural defects involving lengthy delays and encouraging 'stop writs';
- lack of adequate and varied remedies more apt for the wrong of defamation, e.g. rights of reply and correction;
- lack of a limited, strictly defined remedy for privacy invasions of the media, where these are of no legitimate concern to the public.

Mr. Justice Kirby said that the ALRC report had been referred to the Standing Committee of Attorneys-General. He suggested that law reform reports should be followed by decisions without undue delay:

> In a controversial matter such as defamation law reform is bound to be, it is inevitable that differences of view will exist about specific proposals. The right to disagree is central to a free and democratic society. In the end, it is up to the elected represenatives to decide. But if I can be permitted to say so, it is important that they should face the obligation of decision. Otherwise a great deal of public and professional energy will have been squandered and hopes for reform will have been raised needlessly.

Referring to the consideration of the report by the Standing Committee, he said:

> Hard-pressed public servants of the Commonwealth and State, with busy local obligations of their own, finding such time as they can to fit into already over-burdened programmes, give consideration to a complex, intricate, sensitive package of reform. The history of uniform law reform in Australia gives little cause for optimism.

too hard basket. A number of editorialists leapt into print. The Melbourne *Herald* (16 March 1981) complained:

> Two years have passed since the Australian Law Reform Commission presented its recommendations. ... Meanwhile publishers and public alike continue to suffer under a set of bewildering complex laws which are a gross inhibition on freedom of expression. ... What is required now is for the Commonwealth, States and Territories to sink their individual claims in the wider national interest. State rights must take a second place to the need for a law which will help make freedom of expression in this country more effective — and at the same time produce a law to protect the privacy of individuals.

The Melbourne *Age* (16 March 1981) listed as reasons for inaction: constitutional divisions, conservatism of the legal profession and the 'community's limited interest in the complexities of law':

> But reform of the libel laws, particularly so as to give less protection to the unscrupulous and the introduction of laws to safeguard the privacy of those who would be injured or embarrassed by irresponsible exposure by those sections of the media that are inclined to stretch the definition of 'the public interest' are needed urgently. The Law Reform Commission has proposed new laws that represent a reasonable compromise between the various competing interests. For governments, the time for talk should be over.

The *Australian* editorial (16 March 1981) called attention to its particular interest in rationalisation of the 'convoluted mess of differing, sometimes opposing rules' because of its position as the only national newspaper. It recognised that no carte blanche could be given to the media to indulge in character destruction or needless muck-raking. It suggested that the Attorneys-General 'keep in mind the urgency of the matter'.

The *West Australian* (17 March 1981) lamented that that State was burdened 'with some of the most restrictive libel laws in Australia':

> Politically, the business of reforming defamation law is not a particularly pressing item; it is not the stuff that makes or breaks governments and consequently it is a prime candidate for an extended stay in the too hard basket. But the governments would do well to remember that this issue has been painstakingly researched and presented to the public. The need for action is widely recognised.

The Brisbane *Courier Mail* (17 March 1981) pointed out that one of the part-time commissioners who had worked on the bid to bring 'sanity to the current maze of clumsy, unjust, inept defamation laws' was Sir Zelman Cowen until his appointment as Governor-General. Whilst expressing reservations about laws for the protection of privacy, the leader writer urged:

> The pressing need is for reform of defamation laws and [the Australian Law Reform Commission] has the blueprint to do this admirably.

Commenting on these calls, the Queensland Attorney-General said that Queensland had agreed to work towards a uniform defamation law. He said that the role of government was to consider the law reform body's report in the light of all factors, nor merely those of a legal nature. This could result in a slow progress but it would ultimately produce more effective laws. The WA Attorney-General, Ian Medcalf QC, pointed out that there were many different opinions about defamation law reform:

> You can't ride roughshod over them. When you're actually in the legislative field, you've got to be sure before you make your move. The report is still under active consideration and I think Mr. Justice Kirby should be a little more patient. The law isn't just a matter for law reform commissioners and law reformers. The public is entitled to its say and so are the governments of Australia. (Perth *Daily News*, 17 March 1981).

Mr. Medcalf said that he nevertheless expected a single defamation law to be finalised 'within the next six to twelve months'. In a statement issued in Canberra on 10 April 1981, the Standing Committee of Attorneys-General affirmed its agreement to work towards a uniform defamation law, saying that while it might not be possible to achieve uniformity immediately 'it should be possible to reach early agreement on a number of the issues. Officers have been asked to prepare a paper.

contempt reform. Apart from defamation law, other issues affecting the media are under the reformer's microscope. In Britain, the pressure of the European Court of Human Rights, and its criticism of English law over the Thalidomide decision, has led to proposals for a new law of contempt. The Bill has now passed through the House of Lords and has emerged from examination by a Committee of the Commons. Among issues unresolved are:

- the variety of tribunals and bodies to be entitled to contempt;
- the 'cut-off point' for media discussion of civil cases.

The Old Thunderer led the press endeavour to secure legislation more favourable to publishers. With unaccustomed emotion it described the law of contempt as 'the ligature round the neck of the British press'. On 28 April 1981 the *Times* thundered:

> Since the 18th century there has been trenchant and well-informed criticism of contempt of court in its always erratic and often arbitrary development as a constraint on public discussion and as a threat to liberty. No other offence is triable summarily by a judge alone — a procedure derived from the Star Chamber — with powers to impose unlimited penalties and without statutory definition.

Lord Hailsham does not give up easily. Writing to the *Times* (30 April 1981) he lamented:

> It is understandable that the press should wish to get the Bill to go further in their favour. ... But government and Parliament have to consider both sides of the coin, one of which is the need to uphold the integrity of the administration of justice and to protect the right to a fair trial. The publicity which attended the arrest of Mr. Peter Sutcliffe in early January ... is a good illustration of the fact that things can go badly wrong with the administration of justice when, with some provocation from those who ought to have known better, a sensational story is inconsiderately handled.

journalists' sources. One matter under consideration of the ALRC in its inquiry into reform of Federal evidence laws is also pertinent. In Australia, as in Britain and even the United States, the law does not presently uphold a claim of absolute privilege by journalists against revealing in court the sources of confidential information upon which they have based news or other stories. The rule denying such a privilege was lately affirmed in the House of Lords. *B.S.C.* v. *Granada Television* [1980] 3 *WLR* 774. A similar conclusion was reached by the WALRC in its report on *Privilege for Journalists* (Project No. 53, 1980). But now the pressure is on in England to include in the contempt legislation a restraint on the courts so that they will not be able to compel journalists to reveal their sources 'except in the interests of justice, national security or the prevention of disorder and crime'. On 19 May 1981 such a clause was added in the committee stages of the Contempt of Court Bill. Avowedly the clause was proposed to overturn the law established by the House of Lords. Tabled by Labour Front Benchers, it was carried after the Attorney-General, Sir Michael Havers, withdraw his opposition because of support for it from amongst Conservative MPs. Amongst other concessions offered by the Attorney-General were:

- the need for the Attorney-General's consent before contempt proceedings can be brought in some cases;
- provision permitting tape recorders to be used in court; and
- amendment of the Bill to restrict the scope of contempt only to a few specified courts.

Back to the ALRC Chairman's address to Consolidated Press Journalists:

> Inevitably, journalists tend to stress the importance to freedom of a vigorous and vigilant media and of expanding access to information. They are perfectly right to do so. Lawyers tend to stress the countervailing social claims to respect for confidentiality, privacy, honour and reputation, a fair trial, the due administration of justice and so on. When these values collide, aggregate freedom is at risk. Lawyers and journalists occasionally falter. But both professions are quite indispensable to freedom.

odds and ends

■ ***courtroom t v?*** Addressing a dinner in his honour given by the NSW Bar on 29 May 1981, the former Chief Justice of Australia, Sir Garfield Barwick, urged a 'dignified silence' by the legal profession in the face of so-called 'investigative journalists' scrutinising the law. But throughout the common law world, the media are now turning increasing attention upon the law, its institutions and personnel: whether they are ready or not. In Australia, specialist journalists have been appointed to the major print media. The orthodox law journals are now supplemented by 'insider' information bulletins (such as *Justinian*) and in its new permanent home,