rection to give up the name of his silent partner. In these circumstances, a court reaches the end of the road it may well have to give up seeking compliance, once having extracted sufficient retribution for the non-compliance. This raises the question whether in the Family Court, and indeed in all civil jursidictions, there should be a statutory upper limit placed on terms of imprisonment.

Turning to the programme of research, there is little or no statistical material, or for that matter writings and commentaries, on contempt in the family law area. Research will therefore rely heavily on interviews with a range of people who are involved in dealing with non-compliance and contempt, including judges of the Court, registrars, barristers and solicitors, counsellors, police, community workers and where possible, some of the clients of the system. The Commission will seek views on how the present system works, what are its advantages and disadvantages and how it could be improved.

Research will also include:

- administering a questionnaire to judges in addition to the general contempt questionnaire;
- examining files in which a sentence of imprisonment has been imposed;
- examining three months of contempt applications in the Sydney, Parramatta, Brisbane and Melbourne Registries.

It is envisaged that the research paper will be finished by November. Specific proposals for reform relating to the jurisdiction will be included in the Commission's general discussion paper on contempt.

industrial democracy

If you want to understand democracy, spend less time in the library with Plato and more time in the buses with the people.

Simeon Strunsky

technological consensus. The full bench of the High Court recently gave approval to a landmark industrial award which compels employers to consult employees and their union about the feasibility of technological change and the consequences of its implementation. The decision, *Federated-Clerks Union of Australia and the Registrar of the Industrial Relations Commission of Victoria v the Victorian Employers Federation* (unreported, 20 August 1984), endorsed the validity of a set of provisions dealing with technological change inserted in 1982 into Victoria's Commercial Clerks Award. It did so in the face of opposition from some of the most powerful employer organisations in Australia – including the Victorian Chamber of Manufacturers, the Metal Trades Industry Association, the Victorian Employers' Federation and the Melbourne Chamber of Commerce.

The decision expands the reach of awards made by the Victorian Industrial Relations Commission and opens the way for both state and federal awards to be extended into what were formerly considered to be 'management areas'. Justice Wilson commented:

> The award does not challenge the right of the employer to make decisions with respect to the introduction of technology into his business. But it does oblige him in cases where the introduction of that technology may have material effects on his employees to notify and inform the Union, and any employees who can be identified as being likely to be involved, of the steps that are being taken and to provide the opportunity for appropriate consultation.

Justice Mason said it was well known that termination of employment and diminution of job opportunities are the consequences of technological change and that these consequences and the apprehension of them 'is a continuing and important cause of industrial disputation and disruption'. Justice Murphy went further:

> It is an error to regard managerial prerogatives and industrial matters as mutually exclusive areas. In the history of industrial law many matters which were within the exclusive managerial prerogative of employers have been brought within the scope of industrial regulation, by the legislature or industrial tribunals. During this generation, there has been an accelerating trend towards concentration of

> economic power in fewer and fewer persons. ... The growth of the great national corporations, their mergers and expansion into transnationals have transformed the methods of production, distribution and exchange. The power of the greatest corporations transcends that of most governments. A reaction to the submergence of the individual worker is the demand by organized workers for some share in deciding what work is to be done, by whom and when, where and how it is to be done. ... [I]t is a demand to be treated as more than wage-hands – to be treated as men and women who should be informed about decisions which might materially affect their future; and to be consulted on them. It is a demand to be emancipated from the industrial serfdom which will otherwise be produced by the domination of the corporations; a demand to be treated with respect and dignity.

The Victorian Secretary of the Federated Clerks' Union, said the decision fully vindicated the stand that the Union had taken. He said that early consultation to allay workers' fears concerning job security was essential.

The only dissent within the High Court came from the Chief Justice, Sir Harry Gibbs, who would have limited the scope of the award by excusing the employer from the obligation to notify the Union of the course of feasibility investigations of the introduction of new technology.

more worker participation. In the same vein, employers will be encouraged to give workers details of mergers involving their company as well as information about production and investment plans under new voluntary guidelines proposed by the Federal Government. The guidelines were revealed by the Prime Minister, Mr Hawke, at a special seminar on employee participation in management and were drafted with the help of the ACTU and employer representatives. The guidelines are part of the Labor Party's commitment to industrial democracy. At the same seminar, Dr Crombie of the Australian National University, who has just completed a report on Industrial Democracy in Australia 1972–1992, called on employers to join the ACTU and the government in negotiating an industrial democracy accord that would secure shared decision-making as an irreversible right. Dr Crombie claimed that there is a growing demand within the workforce for the democratisation of work and proposed that the new accord should set down standards covering such matters as job security, information disclosure, the rights of union representatives, worker education, and the provision of extra resources to unions so that they can cope with the additional load. Rather than advocating prescriptive Commonwealth legislation, though, he was in favour of a negotiated 'accord'.

sacking with notice. The right of employers to sack an employee on a week's notice or a week's pay in lieu will soon be a thing of the past as a result of a recent Arbitration Commission decision, *Termination, Change and Redundancy Case,* unreported 2 August 1984, described by the President of the Commission, Sir John Moore, as 'the most complex case on which I have ever sat'. A full Bench of the Commission ruled that extended notice be written into federal awards covering 2.5 million workers. The decision is expected to flow on to 3.5 million other workers under State awards and will have an effect on:

- unfair dismissals;
- consultation on dismissals; and
- severance-pay provisions.

The ACTU put the union case during a nine-month Commission hearing last year where it described the one week's notice or pay-in-lieu standard, which allowed employers to fire a person for any reason, as 'archaic and not in accord with reasonable community standards'. The Confederation of Australian Industry said the decision was a severe blow to employers and would make them reluctant to take on new staff.

The changes mean that a person with four years' service will be entitled to three weeks' notice of dismissal if aged under 45, and if over 45, four weeks as well as eight weeks' severance pay. Major features of the decision include the following:

- dismissal should not be harsh, unjust or

unreasonable;
- employers will have to give employees who have been less than one year in the job one week's notice;
- employees who have been in the job for more than a year will be entitled to one week's notice for each two years of service, with a maximum of four weeks;
- payment in lieu will have to be provided if the appropriate notice period is not given;
- during a notice period, an employee must be given one day off a week to look for another job;
- employers will have to notify, inform and consult with employees and unions when major changes in production, including technology, affect employment;
- employers will not be able to dismiss for discriminatory reasons such as race, colour, sex, marital status, family responsibilities, pregnancy, religion, political affiliations, national extraction and social origin;
- employers and employees will have to follow procedures set down for settlement of dispute over dismissal;
- an employee made redundant can be entitled to up to eight weeks' pay, depending on the period of service.

odds and ends

■ ***legal aid.*** Speaking at the opening in Adelaide of the new office of the Legal Services Commission of South Australia, Senator Evans released details of a Commonwealth discussion paper on legal aid. He said that it was designed to reshape the distribution of Commonwealth legal aid funds and better ensure equal access to the law for all Australians.

The discussion paper proposed that the basis of future Commonwealth funding should include an evening up between States of the number of persons assisted per head of population, and a guarantee that no state would be reduced below its 1983/84 level of persons assisted. It suggested:
- that the Commonwealth should provide legal aid funds without regard to whether matters proceeded under Commonwealth law or in courts exercising Commonwealth jurisdiction, or involved 'Commonwealth persons', but on the basis of the application by each State or Territory Commission of uniform assistance guidelines prepared in consultation with and endorsed by the Commonwealth;
- that changes to fee scales affecting Commonwealth funding should not be made without prior consultation with the Commonwealth Attorney-General; and
- that funding should be by way of a special purpose grant subject to certain conditions including compliance with assistance guidelines.

The discussion paper has been circulated widely among the legal aid community for comment. Senator Evans said that continuation of present funding would involve an expenditure of more than $250 million for legal aid over the next three years. During his speech, the Attorney-general remarked that the South Australian Legal Aid Commission was in the forefront of efficient legal aid delivery. He cited the fact that 6.8 per 1000 population received legal aid in South Australia compared with 5.2 in Western Australia, 4.2 in Victoria and 4.0 in Queensland. In addition, the average cost per Commonwealth-funded matter referred to a private legal practitioner in South Australia was $375, compared with $913 in Victoria, $476 in Queensland and $596 in Western Australia. Furthermore, in South Australia 26.2% of Commonwealth funded matters were handled 'in-house', compared with 20.9% in Western Australia, 9.7% in Victoria and 9.6% in Queensland. Senator Evans said that he believed the success in South Australia was 'due in no small measure to the degree of co-operation that has been achieved ... between the Commission and the private legal profession'.

■ ***new law reform commission.*** The Victorian Attorney-General, Mr Jim Kennan, announced