or "gagging" orders, made in individual cases after argument on both sides, represent more of a limitation of free speech than an unvarying general prohibition covering the same types of material over the same period. The possibility of occasional suppression orders of this nature is a small price to pay for the enjoyment of a general right to conduct discussions of a public interest affecting court cases during the period between the laying of the charges and the commencement of the trial.'

fair and accurate reporting. Professor Chesterman stated that he did not envisage a 'broad public interest' defence. But he would endorse generally the defence of 'fair and accurate reporting' of judicial proceedings, so long as a report does not relate to matters disclosed in the absence of the jury.

This defence should be subject to the proviso that the reporting of actual evidence given at bail hearings (as opposed to the mere outcome) and, perhaps, at committal proceedings should be prohibited if the accused (or anyone of a number of co-accused) so requires.

other defences. Two further defences suggested by Professor Chesterman were: first, that the media organisation prosecuted for contempt did not know of the trial which its publication allegedly prejudiced and was not negligent in failing to discover that the trial was or would be taking place; and secondly, that the publication was necessary in order to protect the safety or other immediate interests of the member of the public. 'A formal defence along these lines reflects current practice' he said. The existence of a warrant for the arrest of a dangerous suspect should not inhibit the media from publishing the information that the escapee may be dangerous and from furnishing relevant details'.

Further matters raised by Professor Chesterman were:

- publicity before proceedings were instituted;
- protection of jurors after verdict;
- a suggestion that harrassment of jurors, whether by the media or anybody else, with a view to inducing them to disclose what occurred in the jury room should be an offence;
- restrictions on publicity affecting trials held by judges or magistrates without a jury;
- the publication of photographs of a suspect or accused person whether before or after arrest or the laying of charges and whether by newspaper or television;
- the reporting of interviews with witnesses or potential witnesses before a trial takes place; and
- the present procedure in contempt matters.

unsworn statements

> The truth is impossible to comprehend even when one is willing to tell it. For the truth resides in memory and the memory is clouded with repression and a desire to embellish. The recollections of any individual are conditioned by the general truths by which he or she has tried to live. To recall an event is to interpret it, so the truth is altered by the very act of remembering. Therefore, the truth, like God, does not exist – only the search for it.
>
> Frank Hardy, *Who Shot George Kirkland?*

The New South Wales Law Reform Commission recently sponsored a public meeting in Sydney to discuss the right of an accused person to make an unsworn statement, rather than give evidence on oath subject to cross-examination. The timing was appropriate. South Australia is about to join Queensland, Western Australia and the Northern Territory in abolishing the right. The Australian Law Reform Commission, in its recently tabled Interim Report No26, *Evidence,* has come out in favour of retention with restrictions on what might be said from the dock. It is interesting to note that at the meeting in Sydney there was almost unanimous support for retention.

Proceedings began with retired Supreme Court judge, the Hon Mr RG Reynolds QC, putting the case for abolition. Mr Reynolds argued that the right is an historical anachronism, developed at a time when the accused could not give evidence on oath. Since an accused can now give such evidence, and be liable to cross-examination, there is no good reason, he argued, for retention of the right. All factual material put before a jury should be able to be tested by cross-examination, the 'best test yet devised' to assess truth in statement and to deter lying. Retention of the right, in his view, would only help those who are guilty of the crimes with which they are charged.

Among other criticisms that have been made of the right, a primary one is the difficulty of controlling the content of the statement. This difficulty has resulted in what are seen to be abuses of the right. Thus a frequent complaint has been, particularly in relation to sexual offence trials, of scurrilous and unfounded assertions made by the accused about other persons. It seems that unsworn statements often include hearsay and otherwise inadmissible evidence. Absence of effective control also occasionally results in unduly long statements, with perhaps the five day effort of John Stonehouse in his trial in England setting a record.

In those jurisdictions where the trial judge is not permitted to comment on the failure of the accused to give evidence on oath, the trial judge is faced with a very difficult task in referring to the unsworn statement. The judge may point out that the statement was not made on oath and was not tested by cross-examination but must avoid calling attention 'directly or indirectly to the fact that the accused has not submitted himself to cross-examination'. [*Bridge v R* (1964) 118 CLR 600, 605] If a jury asks the trial judge why the accused did not take the oath, as it did in the New South Wales case of *R v Greciun-King* [[1981] 2 NSWLR 469], the judge may find it almost impossible to avoid infringing the statutory prohibition without misleading the jury.

But Mr Reynolds was the first and last speaker at the NSWLRC meeting to support abolition. Fourteen other speakers, including barristers, politicians, academics and members of the public, favoured, sometimes vehemently, retention of the accused's right to make an unsworn statement. Perhaps the strongest argument against abolition was the increased risk of convicting innocent persons. The former Chief Justice of the Supreme Court of South Australia, Dr JJ Bray, argued in 1981 that:

> The plausible, the suave, the glib, the well-spoken and the intelligent would be unduly favoured as compared with the unprepossessing, the nervous, the uncouth, the halting, the illiterate and the stupid. Most people in the dock of a criminal court fall into one or more of the latter classes: many people in the dock have something to hide, even if innocent of the crime charged, and the consciousness of that may give a misleading appearance of shiftiness. It may be said that this applies to all witnesses; but failure to pass the ordeal of cross-examination has not the same consequence for the other witness. The very knowledge of the consequences at stake is likely to multiply the chances of a bad performance.

The ALRC's Interim Report on Evidence considered psychological research which casts considerable doubt on the value of demeanour in divining whether a witness is lying or telling the truth. There is in fact evidence that the manner and appearance of a witness may actually mislead the fact-finder about the value of the testimony.

Other arguments in favour of retention may be briefly noted. The basic principle of the criminal trial is that the prosecution has the burden of proving guilt, the accused being presumed innocent and under no obligation to give the prosecution any assistance. Statistical studies of jurisdictions retaining the right do not suggest that an accused obtains any significant advantage by making an unsworn statement. Participants at the Sydney seminar also suggested that it is a good idea

to let accused persons have their say and participate in their trial in order to maintain their acceptance of the legitimacy of the system.

However, the ALRC concluded in its Interim Report, while the right should be retained, that substantial reform to the practice and procedure associated it is required to meet some of the specific criticisms made of it. The unsworn statement should be governed by the normal rules of evidence (relevance, hearsay, etc), the penalties and rules regarding perjury should apply, and judicial comment in respect of the statement should be less restricted.

mental health services

One might peer back a league
and know no change except fatigue.
It is too bright by day, too dark at night;
like life and death. Such contrast of light
blinds in the living day as in the dark.
It is no place to ask other than stark
reality of life; where men have built
their customary tenancies of glass and gilt.

John Blight, *the Beach, Gold Coast*

implementing the reform of mental health services. The implementation of reforms to mental health services recommended by the Richmond Report in 1983 are causing controversy. Nurses at ten of the 15 fifth schedule hospitals in New South Wales have been on strike during the last 3 weeks and recently doctors have also joined them. During the strike the psychiatric and mentally retarded patients have been cared for by volunteers. The nurses' action has been condemed as selfish, neglecting the needs of the patients – but the nurses argue that the reforms, if introduced without sufficient back-up services, will have a drastic effect on the provision of mental health services.

community care. The Richmond Report (coupled with the Mental Health Act, 1983 which is yet to be proclaimed) proposed a significant change in approach to the provision of mental health services. The Report recommended deinstitutionalising the care of patients by moving about one third of mentally ill and mentally retarded patients into community based hostels, group homes and subsidised boarding houses over the next five years. This new system would be supported by community 'crisis teams' to visit patients regularly and answer emergency calls.

The editorial in the *Sydney Morning Herald* commented:

> As a means of helping these people to live more self-reliant lives and to regain their dignity, the switch in emphasis seems altogether admirable. But there are serious reservations ... about how the policy will be implemented, what will be its scope and what resources the Government will make available to make it work now and in the future.

funding. The Richmond Implementation Unit (RIU) recently released a discussion paper on implementation of the Report suggesting that the new policy could be funded by transferring state funds used for institutional services to the community. This has been criticised as an oversimplification on the basis that:

- Moving patients into the community will increase the burden on Commonwealth funding through medicare and community service funds.
- The experience overseas is that community based care is more expensive – with the loss of economies of scale.

The *Herald* reports that with the $16 million provided to the project jointly by the State and the Commonwealth governments only 100 psychiatric patients have been placed in the community and 130 staff employed. Five community crisis teams have been set up. Mr Tim Wootton, Director of the RIU, has said that the money is being used to buy houses and hostels.

In a study of overseas community based programmes by Mr Alex Glen (whose findings have until recently been suppressed) the former Director of the RIU concluded that