

rest of the evidence in a court case. In the ACT sexual assault case, the expert evidence relating to the DNA identification of the accused was not questioned, and the accused changed his defence during the course of the trial from alibi to consent.

*national register.* There have been suggestions that a national register of DNA fingerprinting be established. The FBI in the United States and the United Kingdom Home Office are working on computer programs to run national genetic data bases, and in some of the United States, there are plans to establish data bases of violent criminals (*Australian* 27 June 1989).

Such plans raise the question of accuracy of testing, security of data, and civil liberties. The fact that there is no recognised standard for the conduct of the tests has led to the possibility that the results obtained by different laboratories might not be compatible or even consistent with each other. This might be the effect of there being a number of competing laboratories. A national, if not international standard for DNA testing may well be required. In Adelaide, the Centre for Forensic Science is setting up its own DNA fingerprinting techniques, which, according to Dr Selinger, is a sensible opportunity for the introduction of Government-controlled fingerprinting and uniform data.

*civil liberties.* DNA testing can only take place where the person whom it is intended to test provides a sample, generally of blood. In many cases, this causes no difficulty, but in criminal investigations the rights of the accused must be taken into account. In the Canberra sex assault matter, the accused gave a sample of his blood after the police persuaded him that they were entitled to take it under the law which gives them the right to

take fingerprints. There is no certainty that this is in fact the case, and the question arises whether the police, or doctors taking a sample, could be charged with assault unless there was informed consent. A change in the law might overcome the problem but it is always necessary to take into account the privilege against self-incrimination to which an accused person is entitled. The question is highlighted in cases where the person to be tested is not actually a suspect.

Pre-detention law is one of the areas which the Review of Commonwealth Criminal Law (the Gibbs Committee) is currently studying, and recommendations regarding DNA testing will be made in the Committee's report. The Australian Institute of Criminology is also considering conducting a seminar on DNA testing later this year.

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### children's evidence by video link

One would be in less danger  
From the wile of the stranger  
If one's own kin and kith  
Were more fun to be with.

Ogden Nash, 'Family Court', 1929

The ALRC has published a discussion paper on the use of video link technology when children are required to give evidence in court (see [1989] Reform 102). Discussion paper number 40: *Children's Evidence by Video Link* was published in July. It outlines the Evidence (Closed Circuit Television) Ordinance 1989 (ACT) which commenced on 23 July 1989. Where the Magistrate decides that the requirements of the Ordinance are satisfied, the child witness can give some or all of his or her evidence in a room linked to the courtroom by closed circuit television monitors,

without being subjected to the strange and frightening courtroom environment or, in criminal cases, direct confrontation with the person accused of the crime. At the same time, the rights of the parties to the proceeding, particularly an accused in a criminal proceeding, must be considered. The procedure can only be used if the Magistrate considers that its use would not be unfair to a party.

A number of questions exist as to the impact of the technology. However, the Commission in consultation with the Government, the Magistrates Court and interested organisations and individuals concluded that the potential advantages of video link are sufficient to introduce it on a trial basis. This trial will allow the technology to be assessed for 12 months to determine its actual advantages and disadvantages and whether any modifications to the procedure are required. It may help resolve some of the questions such as children's reactions to the technology, its effect on the quality and impact of evidence given and its effect on the interests of the parties.

Justice Elizabeth Evatt, the Commissioner in charge of the project, said

Our increasing awareness of the extent of child abuse has led to more and more cases being notified and brought to court. It is vital to protect children who are so vulnerable in our society and to ensure that justice is done to all concerned.

The Commission believes that the use of video link is only one method of dealing with the problems arising from the need for children to give evidence in court proceedings. Child witnesses have already experienced multiple interviews, disruptions and delays and other 'strange' procedures before the court hearing occurs. While video link is a valuable aid at the hearing, there is a need to look at reducing or eliminating all forms of unnecessary harm that may

be caused to a child from the investigative process through to the requirement that he or she testify.

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## review of the NSW court system

Delays have dangerous ends

Shakespeare, Henry VI, Pt 1, III

*delays in NSW courts.* Delays and inefficiencies in the court system prompted the NSW government to commission an independent inquiry to examine the issue and make recommendations. The review, undertaken by Coopers & Lybrand and WD Scott, was completed in May 1989. The proposals were welcomed by the government, however the Attorney-General, Mr Dowd, acknowledged that

The positive side might be the reduction of delay in having matters dealt with but the negative side would be a possibility of penalising litigants for reasons beyond their control and related to the behaviour of lawyers.

The dilemma was put succinctly in an editorial in the *Sydney Morning Herald* on 29 May, 1989.

There is no doubt that the greatest injustice at present is delay. The difficult task for the Government will be in preserving the fairness of the system as it hastens people through the courts.

*extent and causes of delay.* The average time taken from committal to trial in the Supreme Court is 9 months for those in custody and 12 months for those on bail. Delays in the District Court are even longer. In the Supreme Court non jury trials in civil cases are taking 40 months from the time the matter is set down until hearing. For cases involving a jury the