AUSTRALIAN CONSOLIDATED PRESS LIMITED

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SYDNEY, 28 MAY 1981

JOURNALISM & LAW IN CHANGING TIMES

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

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WHOEVER WOULD BE A JOURNALIST?

A demanding life. When Noel Coward wrote his classical advice to the good Mrs. Worthington, he should have added to his caution about the perils of the stage, at least a passing mention of the dangers of exposing her daughter (or her son) to a life in journalism.

We start from the well known fact (for which I have absolutely no empirical data) that journalists, like all those whom the Gods love, die young. Upon this basis, the law must be singularly unloved for its stalwarts seem to continue in posts of the highest responsibility until old age. Sir Garfield Barwick would probably still be Chief Justice of Australia but for failing eyesight. Lord Denning, 83 and still Master of the Rolls, claims that he has every Christian virtue except that of retirement. Mr. Justice Norris, conducting the inquiry into press ownership in Victoria is, as the press constantly reminds us, 77. According to David McNicol, he is a living example of why there should be no compulsory retiring age for judges. The people disagreed. One of the few referenda that carried a constitutional amendment in Australia unkindly despatched Federal judges henceforth at no more than age 70.

One judge, unhappily no longer with us, said on his appointment that 'being a judge is not a bad job. I've found that the tension goes out the window with half the income'. Released from the tension and stress of the barrister's life, judges go on. Not so journalists. With some notable exceptions, the stress of meeting daily or weekly deadlines, the emotional circumstances in which they work and the severe responsibilities that are placed on them, all too frequently strike them down in full flower. There have been a number of such cases recently. In the physical and emotional toll it is a hard and demanding life.

The New Technology. To these personal problems must now be added, it seems, new pressures coinciding with a time of rapid technological change. According to one of my predecessors in this series (and one of my own teachers), Professor Henry Mayer, the print media are going through very major changes which will inevitably result in a very different kind of media structure in the lifetime of current working journalists. According to Mayer the print media in terms of the dailies have been in fairly rapid permanent decline for many years.[1] His estimate, adjusted for inflation, is for a decline of 13.5% a year in the United States in the next ten years. He implies that the same thing is happening in Australia. Though the injection of technology in North America appears to have turned some tottering journals into viable publications, it has frequently done so at a cost of journalistic jobs and by the reticulation of material, through networking, to the diminution in local content.

Changes in Media Ownership. Responding to problems such as these, we see occasional outbreaks of industrial action. And now there is a rash of inquiries to examine patterns of ownership of the media. In Canada a three-man Federal commission, headed by the former editor of the Winnipeg Free Press, has been examining the recent death of a number of newspapers in that country. In Australia the Broadcasting Tribunal and lately the Administrative Appeals Tribunal have been examining, against a criterion of the public interest, the patterns of ownership of television stations. Doubtless inspired by this form of inquiry, the Victorian Government established Mr. Justice Norris' investigation into the extent of the concentration of ownership and control of newspapers in Victoria and whether it would be in the public interest to regulate the area. Mr. Ranald Macdonald, Managing Director of the publishers of the Age, giving evidence in a personal capacity, urged the establishment of a Press Amalgamations Tribunal to vet proposals for mergers, acquisitions or amalgamations of newspapers.[2] Counsel assisting the inquiry, in his final submission, gave qualified support to such a proposed statutory tribunal, but suggested that it should scrutinise transactions involving country and suburban newspapers as well as metropolitan journals.[3] Obviously, changing patterns of ownership of the media, and possible regulation of such ownership and its incidence and the infusion of new technology, all promise to make the life of the working journalist in Australia more interesting, if somewhat more unpredictable, in the decades to come.

Pressures from Abroad. Pressures are now coming from overseas which will have to be watched. At the United Nations Educational, Scientific and Cultural Organisation (UNESCO) attempts are being made, led by Third World countries, to establish a so-called 'new world information and communication order'. The Western press, which we proudly call the 'free press', is accused of monopoly control of news outlets, distorted reporting of Third World events, with concentration on failures and disasters and

total disregard for the struggling achievements of these countries. One of the proposals made to UNESCO was for the establishment of a so-called Commission for the Protection of Journalists. If adopted in domestic law and practice, foreign correspondents would be obliged to comply with the 'generally accepted' ethics of the profession and could have to be licensed to ensure that they did so and fairly presented news 'in the public interest'. Needless to say, this proposal has ben attacked as a threat to the free press which, according to the International Press Institute at least, is flourishing in only about 20 countries, of which Australia is one.

THE MORAL DILEMMAS OF A VERY MODERN JOURNALIST

Just a casual glance at the news media in the past few weeks will disclose the many acute moral dilemmas which must be faced by the journalist today. His social duty is to bring information to the community. According to some, particularly American journalists, this is near absolute duty and a privilege which knows few, if any, qualifications. Walter Cronkite, delivering the Washington Journalism Center's Third Annual Lecture, urged that while the press may be irresponsible at times:

> We must never allow our critics to get by with their own self-serving suggestions that improvements can be achieved by imposition of restrictions from outside. A free, unintimidated and unregulated press is still democracy's failsafe alarm.[4]

Journalists and other citizens in the United States are brought up at their mother's knee with the First Amendment to the Constitution and its ringing, assertive statement of a fundamentalist creed, since expanded in its effect by powerful decisions of the Supreme Court of the United States:

> Congress shall make no law ... abridging the freedom of speech or of the press.

We in Australia, following the British approach, have no such constitutional guarantee. We must rest upon tradition and community consensus for the defence of these freedoms.

Whether it is because of the absence of a local equivalent to the First Amendment, because Australians are less idealistic and more cynical people than their American cousins or some other reason, the fact is that there is a more questioning attitude about the media in Australia than exists in the United States. For this reason, deprived of a principle in fundamental terms such as the First Amendment, the task of balancing the right to publish against other competing social interests is in some ways

more difficult both for the journalist and for the ordinary citizen in this country. There is no sure guiding star, accepted and enforced in the law and permeating our country's institutions and attitudes. Cases must be dealt with on their merit as perceived from time to time.

Take a few recent reports as illustrations of the modern journalists' dilemmas:

- The Ripper Case. According to newspaper reports, business was 'booming in the Yorkshire Ripper trade' last month. Friends and relatives of Peter Sutcliffe, now convicted of murder, were said to be 'raking in the money' from British journals desperate to scoop each other for previously unpublished details of the prisoner at the bar. The 'Daily Mail' was reported to be trying to 'buy up' Mrs. Sutcliffe for a fee of half a million dollars. One of the victims' mother wrote to the Queen, who took an unusual course of having her Secretary write in the following terms:

> Although there is nothing illegal in what is proposed and, therefore, there is no way in which Her Majesty could properly intervene, she certainly shares in the sense of distaste which right-minded people will undoubtedly feel.

In fairness to the Daily Mail, it should be said that it was just one of the journals bidding for this story. When Sutcliffe was first arrested, reporters combed the pubs of Bradford, offering $20 'on the spot' for the name of anyone who knew anything about him. Does the public's fascination with an extraordinary, notorious and bizarre murder story justify the journalists' methods used? Does the hurt done to the family of victims, for whom this tale is still a vivid one of tragic personal loss, take second place to the community's desire for information about such a strange and inexplicable human being? When one journal adopts 'cheque-book journalism' are competitors inexorably forced in the same direction? Is there anything the law could or should do to teach and uphold a different standard of journalistic conduct? If the law should not, who will?

- Inventing the News. By now everyone knows of the embarrassing withdrawal of the Pulitzer Prize awarded to Miss Janet Cooke of the Washington Post. The self-same journal that exposed the Watergate affair and kept up its inquiry against all official pressure, was duped into publishing a fake story on an eight-year-old heroin addict. Of course, the award of the prize made this disclosure notorious and damaging. But is it an isolated case? A more recent report in mid May 1981 disclosed another case. A book titled 'Self Destruction : The Disintegration and Decay of the United

States Army During the Vietnam Era' received rave reviews in most American States. It now turns out that the author who fabricated on the spot knowledge never served a day in Vietnam, his only military service being appointment as a chaplain to the Nebraskan National Guard.[5] The New York Daily News columnist, Michael Daly, was forced to resign when a story he wrote about Northern Ireland was challenged. According to Daly, a British soldier named Christopher Spell said 'Go for their heads' and 'If I'm lucky the little Fenian will die' during a shooting incident between British soldiers and a group of Irish youths. Announcing his resignation, the news editor said Daly had admitted inventing the name and that he was unable to substantiate his story. Last week we read that American and French television crewmen and photographers from other nations have been accused of paying young thugs in Northern Ireland to throw rocks and bottles at passing Army vehicles in the desire of providing a news-hungry world with colourful words and dramatic film. The temptation to distort, fabricate and dissimulate has always been a feature of the journalists' life, looking for the 'scoop' and working to severe deadlines. Faith in the media is undoubtedly damaged by instances of this kind. Yet it is to the media's credit that coverge is given to these stories (often by competitors) when they break. The questioning public ask, how much of this goes on? The lawmaker asks : should we do anything about it? Has cheque-book journalism and positive news creation yet reached the point where regulation with its own problems should be introduced? If not, how are these problems to be dealt with?

- The Springbok Tour. The other side of the coin is press silence. News editors today recollect with horror the suppression of the news of King Edward's romance with Mrs. Simpson. But are there any cases in which press silence is warranted in the name of some higher principle? James Reston, the famous Washington columnist for the New York Times and twice winner of a legitimate Pulitzer Prize, addressed this question when he talked to journalists in Auckland last month. Responding to the suggestion that New Zealand journalists should not cover the Springbok tour, because of a higher duty to the rights of the deprived people of South Africa, Reston contended that if journalists go to the stage where they cover only those matters with which they agreed, they should be out of business:

> Our job is to report what happened, not to decide what happened. We are not the government; nobody elected us. We simply have a job of work to do. The milkman delivers the milk in the morning and he doesn't try to interview the cows. We deliver the news in the morning and it is not for us to say this is a good thing or a bad thing. ... It is for the editorial page to say 'We don't like this'.[6]

Happily, the New Zealand Journalists' Union has reaffirmed the policy decided at its annual conference that all aspects of the proposed tour should be covered by reporters. But is this the end of the matter? Even in the United States, the limits of the free press guarantee and of the right of journals to publish sensitive information were tested when the freelance journalist Howard Morland sought to publish in the magazine 'The Progressive' a little piece titled 'The H-Bomb Secret'. A preliminary injunction was issued on the application of the Department of Justice. The case was subsequently abandoned. But the self righteous criticism of the attempt to secure the injunction would probably not strike all members of the Australian community as manifestly self-evident and justified. Is there never a case where the damage of publication outweighs the public's right to know?

The Prince Charles Tapes. Then, in the last month, we have had the case of the alleged tapes of conversations between Prince Charles, in Australia, and the Queen and Lady Diana Spencer, in Britain. It is said that the tapes are a fraud. They have been published in the German magazine Die Aktuelle and in the Irish tabloid 'Sunday World', which sends about 15,000 copies into Britain, despite laws hastily introduced to defend the royal privacy. The reaction in Australia was uniform. Typical was the comment of The Australian editorial:

> Australians should be united today in feeling disgust and shame that Prince Charles' telephone calls home to his fiancee ... and the Queen could have been bugged and taped. The Prince's station in life has no bearing on the subject. Every Australia and visitor to this country should feel absolutely secure when he or she picks up a telephone to make a call. The presence of sordid eavesdroppers, whatever their cause, can never be tolerated here. But while the eavesdropper's behaviour is disgraceful, our deepest anger and contempt should be reserved for the fringe journalists and authors now trying to make capital out of the Crown Prince tapes. Whatever Prince Charles might or might not have said in his unguarded conversation with his bride-to-be should remain forever their private concern. It is particularly galling to reporters who have covered the journeys of Prince Charles to find that he is being singled out for such unsavoury and unethical treatment. ... His treatment in Australia may forever blight the healthy working relationship he has maintained with most professional journalists.[8]

Yet one Australian newspaper, the Melbourne Sunday Observer did not agree. It published the alleged conversations 'in the public interest'. 'Our decision', it declared 'is based on our conviction that the public has a right to be fully informed':

> Our decision to publish was not taken lightly. The tapes, if indeed they are genuine, were obtained by illegal and despicable means which are to be condemned. Nevertheless, they have become the subject of enormous worldwide interest and must be defined as hard news. During the past week or so there has been much mischievous guesswork as to the contents of the tapes. Taken out of context, this has been more harmful and damaging to the Royal Family than the contents of the tapes themselves. We have decided to clear the air by providing the fullest possible information. This is the duty we as journalists owe to our readers. This newspaper has not paid money for the alleged extracts — nor would we ever contemplate doing so. Two other Melbourne newspapers have taken a stand on the tapes. The Melbourne Herald has decided it will not publish them. The Melbourne Age, in his story yesterday, contained extracts from the tapes. Australian Associated Press (AAP) ... is relaying an edited version which was highlighted last night on television news.[9]

Who was right? The British Government which introduced laws to stop publication or distribution of the illegally obtained and apparently fraudulent material? The freelance journalist who came upon them and thought they should be made public? Those Australian newspapers which boycotted publication out of contempt for the source? The Sunday Observer with its strong moralistic tone? The Melbourne Age with the compromised publication of part only of the record? Should the law say anything on these topics to clarify the standards of journalism and the duty of the journalist? Is it possible when such a story is out, to contain the haemorrhage?

Slanting the News. Direct editorial interference in news coverage is reported in yesterday's press to be relatively rare in Australia. Certainly, it is not so elsewhere. During the run-up to the recent French election, the Weekly L'Express published a cartoon cover showing an aged and disconsolate President Giscard gazing at a television set on which appeared a photograph of a young looking Mitterrand. The proprietor, Sir James Goldsmith, directed the editor-in-chief (who had the very French name of Todd) to 'arrange for the wrinkles on the President's face to be made less pronounced and to alter the story in other ways'. Todd refused. He was dismissed. Would such a thing happen here? Our slanting of the news may sometimes be more subtle. A recent correspondent to a letters column complained about the front page photograph and story of 400 students at Macquarie University jostling the Prime Minister in response to the Razor Gang report, whilst ignoring the peaceful demonstration two days earlier of 10,000 students in the Melbourne City Square. The correspondent lamented:

> While 400 students in Sydney reportedly maintained the student image of rash irresponsibility that the Press has deemed to bestow upon them, 10,000 students, passive and genuinely concerned, were ignored by their own Press in their own State.[10]

> In the same vein, the Vice-Chancellor of Monash University complained about the way Prince Charles' recent visit to that University was portrayed in the media. He described the press coverage of a demonstration as 'disgraceful and irresponsible'. He said the demonstration had been grossly exaggerated on television and in the newspapers. 'I walked with the Prince to his car and at no stage did the party feel threatened', said Professor Martin. Indeed, he said that a lot of pushing and shoving came from media representatives themselves as they tried to get closer to the Prince.[11]

I catalogue these recent cases not to adopt the complaints or criticisms voiced in them. Nor do I adopt a moralistic attitude. Some of the dilemmas are not easy of resolution. I suppose all of us would condemn positive manipulation of events, fraudulent invention of news stories or distortion of the truth. Yet it is a fine line between filming (and thereby possibly provoking) an Ulster mob to get a story, and undue concentration on a small demonstration to the exclusion of other less dramatic but possibly more 'balanced' news. Many of us would have our doubts about the cheque-book journalism of the Sutcliffe case, condemned by the Queen. But whilst all of us would probably agree that unhappy events such as the Springbok Tour should be covered in the media, few of us would assert that there is never a story that should be 'killed' by reason of a wider public interest. In the actual business of upholding journalistic standards, the law's role is (and properly is) a small one. Conscience, tradition, good standards upheld by dedicated superiors 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. Often the law is unclear. Rarely does it stand still.

CENSORSHIP, OFFICIAL SECRETS, FOI

I will say nothing about censorship laws which attack obscene, indecent or blasphemous publications. John Mortimer, the famed creator of Rumpole of the Bailey, delivered a lively paper to the New Zealand Law Convention last month criticising the distortions caused by censorship laws. A few extracts will give you the flavour of his thesis:

> I suppose the worst crime is murder and murder is nowhere written about more freely than in the works of Agatha Christie. ... It is a strange anomaly of the censoring attitude that murder is against the law but it is no crime to write about it. Sex is not against the law but to write about it has often been held a criminal offence.[12]

and —

> It is significant that the attempted use of force is all one way. I would not wish to compel Mary Whitehouse or any member of the Festival of Light to sit through 'Oh, Calcutta!' or read 'Gay News', although they do appear willing, no doubt from the highest motives and in the spirit of martyrdom, quite prepared to submit themselves to such works in the call of duty.[13]

Nor do I propose to talk about the limitations on journalists' freedom caused by official secrets laws. The recent litigation involving the atempted publication of extracts from the book 'Documents on Australian Defence and Foreign Policy', resulting in some scathing comments by Mr. Justice Mason of the High Court of Australia concerning the security classifications adopted in Australia, urged the Age to comment that his decision had:

> laid down general principles that may significantly advance the cause of public information. Official secrecy has long been a debased currency in Australia.[14]

The latest Annual Report of the Federal Attorney-General's Department has disclosed that a Task Force to review the Crimes Act provisions on official secrets has been 'reactivated'.[15] It is to be hoped that the Australian attempt to reform this difficult area of the law will have more success than the endeavour of the Thatcher Government. The Protection of Official Information Bill, introduced in October 1979, was hurriedly withdrawn when it was pointed out that, had it been in force, the espionage scandal involving Sir Anthony Blunt would still have been concealed from the British public.

Nor will I speak of freedom of information, a topic currently before the Federal Parliament. Nor will I debate the expanding right to information in Federal administrative law and the redefinition of Crown privilege, though these have obvious implications for the access by journalists to government information.

Let me use the remaining time available to say something about five areas of legal concern, four of them topics before the Law Reform Commission. I refer to:

- Defamation
- The protection of privacy
- The closure of courts
- Contempt of court
- Journalists' privilege.

DEFAMATION AND PRIVACY

The Australian Law Reform Commission in 1979 produced a report proposing reform of defamation laws in Australia. Attached to the report was a draft Bill for a uniform Defamation Act. The report proposed new laws and procedures, more apt to deal with defamation complaints. It proposed a single uniform Australian law, codification and simplification of current rules, the introduction of major reforms of procedure (including procedures for the speedier determination of defamation cases) and the provision of new and more effective remedies. Some of these were borrowed from European legal systems including the facility for rights of reply and court-ordered corrections instead of money damages.

By and large, the media and public reaction to the defamation proposals was favourable. Above all, there was a good reception to the proposal to express the law here in a short document, available to journalists, management and citizen alike, more clearly defining the relevant rights and duties in this area so important to freedom.

The more controversial provisions of the report were those which urged the protection of a zone of 'sensitive private facts'. These facts were strictly defined. They were facts relating to health, private behaviour, home life and the personal or family relationships of an individual which, if published, would in all the circumstances be likely to cause distress, annoyance or embarrassment. A number of defences were proposed. Amongst these were consent and proof that the publication was on a topic of 'public interest'. In essence, the Commission's view was that even public figures in Australia were entitled to a private life, unless publication was relevant to their public office or was on a topic of public interest. Generally, the media in Australia respect this rule already. But the fact that most people act properly has never been a reason for failing to provide a law for those few who act in an antisocial manner.

I am conscious of the reservations both within Australia and outside[16] concerning provision of laws for the protection of privacy in publications. I also realise that the Press Council can do valuable work for the defence of privacy in a low-key way which does not involve risks of exacerbating the hurt. But increasingly local and overseas experience suggests that mediation and conciliation are not enough. Where these mechanisms fail the individual should have the right to protect his privacy before the courts of the land. The law will come to defend a zone of privacy, thereby reflecting society's attitudes to this important cultural value. In Australia, as we move towards a uniform defamation law and drop the element of 'public benefit' and 'public interest' from the defence of justifications which has so far in some States helped to defend privacy, I believe we will seek to define as overseas countries recently have[17], an alternative approach which respects the right to privacy and provides redress where it is invaded.

COURTS CONTEMPT AND JOURNALISTS' PRIVILEGE

Closed Courts. Closure of courts has been one means of preventing journalists reporting cases involving female first offenders, divorce litigants and children and young persons. In a recent custody battle in the Supreme Court of New South Wales, the decision of Mr. Justice Helsham to close the court was criticised in the press.[18] Legislation providing for the closure of courts in the case of female first offenders has now been repealed.[19] The Family Law Act is also to be changed to permit an open court except in proceedings concerning children and a relaxation of restrictions on publication of cases, provided that the names of parties will not be disclosed. Interestingly, the International Press Institute's list of threats to press freedom in Australia asserted that more than 40% of the threats 'emanated from the judiciary'.[20]

Contempt of Court. The law of contempt limits public reporting of material pending a trial, civil or criminal, where the public disclosure in advance of the trial would be bound to affect the fairness of the trial. Although the scope of the inhibitions of the law of contempt are often exaggerated in the mind of the public and on the part of the press[21] the fact remains that the media in Australia and Britain are under more restraints than are their colleagues in the United States and many European. Following the criticism of English law in the European Court of Human Rights, the British Government introduced a Contempt of Court Bill in December 1980. Again, the reform measure coincided with events which almost appeared designed to show the inadequacies of the reforms. A legal officer of the National Council for Civil Liberties was charged with and convicted of contempt for showing a reporter documents even though these had

previously been read out in open court. Then, the widespread coverage of the Yorkshire Ripper case seemed to prove the need for some law of contempt. The Times newspaper analysed the balance to be struck between the respective rights of the public to have information and other competing rights which would restrict access to that information, by appeal to an even higher principle:

> Much of the information contained in the contemptuous articles was interesting to the public. But it was not in the public interest to publish it. There are some circumstances in which a newspaper might justifiably believe that the benefits to society of publishing articles which would or might be in contempt of court outweigh the public interest in the defendants' being entitled to a fair trial. The thalidomide case was perhaps an example. But no such issues arise in the Sutcliffe case. Public curiosity cannot be an excuse for harming an individual's right to have the presumption of innocence applied to him and to his right to a fair trial. ... What the coverage of the past three days have demonstrated is that it does not matter to many organs of the media what the law of contempt says. They will break it anyway if the case is spectacular enough and engenders sufficient curiosity on the part of their viewers or readers. Yet it is precisely in that sort of case — where a heinous crime is alleged — that the defendant most requires protection of the law. These decisions are not unconsidered. Newspaper editors are not children; newspapers have lawyers; who can doubt that many newspapers and television producers had carefully weighed up the possibility of prosecution and decided to go ahead with a known contempt?[22]

I believe that there are few in Australia, and not just in the legal profession, who would prefer the virtually unrestricted prejudicial trial and pretrial publicity which occurs in the United States to the more restrained course we have adopted, partly as a result of our law of contempt. It must be frankly acknowledged that the price of a fair trial for an individual accused may sometimes involve frustration of the public's desire for information. Determining where the inhibitions start and cease and what rules should govern them is a sensitive matter in which vital attributes of freedom compete.

Journalists' Sources. A similar tension can be seen in the claim by journalists to a privilege against revealing in court the sources of confidential information upon which they have based news or other stories. In the United States, even in the face of the constitutional guarantee in the First Amendment, the Supreme Court has held that the countervailing importance of the administration of justice in the courts displaces the

interest of the press in protecting its confidential sources.[23] In Australia a similar rule has been adopted.[24] In Britain, a recent decision of the House of Lords refused to confer on a television journalist a privilege against disclosing to the British Steel Corporation the 'mole' who had 'leaked' highly confidential internal documents.[25] A similar conclusion was reached by the Law Reform Commission of Western Australia, which recommended against granting to journalists a privilege in absolute terms.[26] The issue of journalists' privilege is now under consideration by the Australian Law Reform Commission in connection with its inquiry into the reform of evidence law. Police informers and lawyers' clients have a privilege in respect of their confidential communications. In some States of Australia, communications with a doctor or priest are privileged. The extension of privilege to other groups, including journalists, poses a risk that justice may be truly blindfolded. Should courts resolving the disputes of society, be forced to do so on inadequate and incomplete data, where some relevant material is withdrawn out of respect for confidences which are said to be even more important than the due administration of justice?

CONCLUSIONS

Where does all this lead? Journalists have chosen a hard life. To the pressures of deadline and a hypertensive environment must be added the dynamics of a rapidly changing technology, shifting media ownership, discontented pressures from abroad and daily moral dilemmas which are posed without sure answers and, in this country at least, without a clear guiding star of constitutional principle.

Added to the moral dilemmas of cheque-book journalism, balance in reportage, the suspected invention and manipulation of the news, the publication of 'leaks' and illegally obtained material must be added the ever-present risks of infringement of the law. There is the law of obscenity, indecency and blasphemy. There is the law of official secrets. Soon there may be a freedom of information law. Against the complexities and uncertainties of defamation and privacy laws, we now at least have a report of the Australian Law Reform Commission, under consideration by the Standing Committee of Attorneys-General. It has many merits and above all the advantage of collecting in a single Australian statute of reasonable brevity the basic rules by which good journalists could, with greater assurance, perform their daily tasks. I commend the report and its proposals to you.

The current law on official secrets and confidentiality and on the closure of the courts seems to be coming under fresh scrutiny with moves towards greater liberalisation. And just as contempt law was about to be reformed, the need for some restraints seems proved again by the media itself in the unhappy way in which the Sutcliffe arrest was covered. Journalists' privilege against disclosure of sources is a keenly felt issue under current examination in the Law Reform Commission.

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, aggregrate freedom is at risk. It is my hope that in the work of the Law Reform Commission and otherwise, there will be more dialogue in the future between journalists and lawyers. If I can say so, each profession occasionally falters but each is nonetheless quite indispensible to freedom.

FOOTNOTES

1. H. Mayer, Focus, July 1980, 18.

2. The Age, 21 February 1981, 4.

3. The Age, 13 May 1981.

4. W. Cronkite, reported Chicago Sun-Times, 11 December 1980, 56.

5. As reported in the Weekend Australian, 16-17 May 1981, 13.

6. As reported, New Zealand Herald, 30 April 1981, 18.

7. M.M. Mooney, 'Right Conduct for a Free Press : The Containment of Secrets', in Harpers, 260 (1558) March 1980, 35.

8. The Australian, 7 May 1981, 8.

9. The Sunday Observer, 10 May 1981, 4. Cf. Mr. Ian Sinclair's observations on the use of 'leaks' in an address at the Sydney Law School, extracted in the Age, 26 May 1981, 13.

10. N.M. Gold in The Age, 13 May 1981.

11. The Canberra Times, 11 May 1981, 3.

12. J. Mortimer, 'Censorship Laws Lead to Distortions' extracted in New Zealand Herald, 24 April 1981, section 2, 1.

13. ibid.

14. The Age, 3 December 1980, 11, referring to Mason J. in Commonwealth of Australia v. John Fairfax & Sons Limited and Ors (1980) 54 ALJR 45, 49.

15. Australia, Attorney-General's Department, Annual Report 1979-80, 29.

16. Lord O.R. McGregor, 'Conflicts of Rights : The Right of Privacy and the Rights of a Free Press', Paper for the IPI Conference, Nairobi, 1981, mimeo.

17. A note on the new Israeli legislation is contained in New York Times, 25 February 1981. For a recent report on Swedish proposals, see Statens offentliga utredningar, Justitiedepartementet, Privatlivets fred, 1980 (English Summary 15-21).

18. The Australian, 22 December 1980, 6.

19. See First Offenders (Women) (Repeal) Ordinance 1980 (ACT) which repealed the First Offenders (Women) Ordinance 1947 (ACT), and the First Offenders (Women) Repeal Act 1976 (NSW), which repealed the First Offenders (Women) Act 1918 (NSW).

20. The Australian, 22 December 1980, 6.

21. Mr. Justice David Hunt, Why no First Amendment? The Role of the Press in Relation to Justice' (1980) 54 ALJ 459, 461-2.

22. The Times, 7 January 1981.

23. Branzburg v. Hays; in Re Pappas; United States v. Caldwell, 408 US 665, 690 (1972), Cf. in Re Farber, 99 S.Ct. 598 (1978).

4. McGuinness v. Attorney-General (Vic), (1940) 63 CLR 73; Re Buchanan (1965) 65 SR (NSW) 9; Hunt, 462.

5. British Steel Corporation v. Granada Television Limited [1980] 3 WLR 774. See now Contempt of Court Bill 1980 (GB) as amended. Reported, the Times, 20 May 1981, 2, which proposes a privilege for journalists.

6. Project No. 53, Perth, 1980.