ORMSBY WILKINS SCHOLARSHIP FUND

LAW INSTITUTE OF VICTORIA

RADIO MELBOURNE 3AW

SEMINAR ON THE LAW FOR THE MEDIA

16 JULY 1981, MELBOURNE TOWN HOUSE

MEDIA LAW : FUTURE DIRECTIONS

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

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OUR DEBT TO GOOD JOURNALISTS

My task is to look into the future. As a lawyer, I always have a hankering desire to look over the shoulder into the past. Can I therefore start by saying how well I remember Ormsby Wilkins in whose name this seminar series is established? I had often heard him on the radio. Soon after my appointment as Chairman of the Law Reform Commission, he contributed to the process of cajoling me out of the judicial tradition of anonymity and media silence into public discussion on his morning current affairs programme on 3AW concerning the projects before the Commission. Of course, the judicial tradition of media silence has many supporters, not least in Victoria. But in its blanket application, it was recently criticised in Britain by a serious law teacher who, commenting on the radio and television appearances of Lord Denning, asserted that they had 'served only to enhance respect and admiration for the institution of the judiciary amongst a wider audience than those who frequent the law courts' and that 'our judiciary is strong enough to withstand the glare of television lights'.[1] However that may be, the price of judges leading inquiries into matters of social controversy is that they must be prepared to submit to media scrutiny and, through the modern means of communications, to engage the community in a thoughtful debate. Ormsby Wilkins saw this, as an experienced journalist, long before I did. My first tentative ventures into public debate of law reform issues were aided by his encouraging efforts. We all do well to remember him. He was an accomplished journalists with a passion for ideas.

I also want to pay tribute to Professor Geoffrey Sawer. Many years before I came on the scene, he was writing and teaching about law reform in Australia. Furthermore, long before the wave that led to the establishment of law reform bodies at a Federal and State level in this country, he was writing about the need for a better system of improving the law. Specifically he was urging that we should look to North America where a more genuine attempt was made to develop the law in discussion with interested lobby groups and those members of the community concerned to participate.[2]

Tony Smith and Bernard Teague are also well known to me. Each has accepted appointment as a consultant to the Australian Law Reform Commission in its inquiry into defamation law. Though they are not responsible for our proposals on defamation aw reform, each of them made his invaluable experience available to the Commission, free of charge. They sat down with Commissioners, journalists, law professors and others to help fashion a proposal for a better system of defamation law in this country. In the age of the razor, it was just as well they offered their services without fee to the Commonwealth.

My colleague David Jones I have collaborated with in the inquiry of the Administrative Review Council concerning the improvement of the procedures of the Australian Broadcasting Tribunal. This seminar is well timed. There are many controversies affecting the media and its law. In little more than half an hour, I can sketch only a few prognostications. In doing so I will bear in mind Kenneth Clark's assertion in his book 'Civilisation' that futurology is the most disreputable form of public utterance. Even amateur futurologists do well to anchor their prognostications to existing or clearly foreseeable events. That is what I shall attempt to do.

JOURNALISM IN A TIME OF CHANGE

Befor venturing into the future, let me sketch a few important issues of the present. I will concentrate on the print media, leaving it to Mr. Jones to speak of the future of the electronic media, in which he will play a significant part. Some of my observtions will, however, be relevant to both forms.

In June 1981 reports suggested that the circulations of the major metropolitan daily newspapers in Australia had continued to wane. Of the 18 major metropolitan dailies, all but six experienced a drop in circulation compared with 1980. For the first time in the last three audits, the two Sunday newspapers in Sydney lost circulation. Even the Melbourne Age, one of the most consistent circulation growths in the newspaper industry in recent years, registered a drop.[3] These developments are not just a local concern. They are reflected in the shifting ownership of major world newspapers such as the London Times and, now, the Observer. A lament on the sale of the Observer by an American oil company which owned it to a 'disastrous man' named Tiny Rowland, led Michael Davie, editor of the Age, to the conclusion:

> 'The Observer' has now been sold like soap by one businessman to another.[4]

The chief foreign correspondent for the London Daily Mirror, John Pilger, told a recent media conference in Melbourne that in his view 'concentration of media ownership in Britain and Australia was a growing problem'.[5] This opinion was supported by Ranald Macdonald who suggested that diverse media ownership was the best protection against what he saw as 'an intense campaign' to discredit the media in Australia 'as a prelude to further government restrictions'.[6] Moreover the threats he perceived came not only from governments but from other institutions — he names universities, unions and business institutions — which had the desire 'to restrict circulation of values from areas of information that they feel is detrimental to their own personal interests'.[7]

Mr. Macdonald sketched a disturbing scenario:

> It's my very sincere belief that we are witnessing in Australia now a quite concerted and co-ordinated attempt to impose further restrictions on the media and discredit them. Because of mistakes that are made and because of ... overseas cases ... one shouldn't therefore say you can't trust the media'.[8]

In the last column he wrote before he died recently, Guy Harriott, a former editor of the Sydney Morning Herald and a weekly columnist in that journal, hit back at the effort to make the press a 'scapegoat for bungling politicians'

> It is a truism of Australian politics that when a political party makes a mess of things and attracts criticism, the press is made the scapegoat. It is not the politicians at fault, but a bias press. ... In a politician's mind the only fair and impartial press is a press which supports his point of view, right or wrong. ... This, when you come to think of it, is a pretty startling proposition in a democracy. It represents, in horrid fact, the politicians' approach to public accountability, irrespective of party. May I suggest to my readers, when they complain about inadequacies of the press, they consider a situation in which the only print record of government activities was a government gazette.[9]

This is one side of the coin. The other is well known to you. Deliberately or by accident people are defamed unjustly. Their privacy is invaded either by actions of investigating journalists, whirring television cameras entering their premises or by a story which, though interesting to the public, unduly invades the individual's private realm. Prejudicial and unfair pretrial publicity occurs. Standards of good taste are seriously breached. What are we to do about this? Should we simply shrug our shoulders and say that because the harm done is exceptional and legislation may diminish the freedom of responsible journalists, we should look the other way?

No-one under-estimates the importance of good example by experienced journalists conscious of high professional standards. At the 'workface' the influence of sound and reasonable journalists upon younger members of the profession is probably much more important in the long run than laws and guidelines. In practical terms, a rebuke from the editor or one of his assistants is likely to have a far greater impact upon modifying behaviour of the working journalist than the dimly perceived prospect of litigation, whether by private suit or public prosecution. In fact, John Pilger's view was that journalists' self-censorship often went too far in Australia, merely reinforcing official and legal attempts to restrict the press. He attributed this phenomenon to the poor preparation of most journalists for their task:

> In my view journalists are badly prepared because their early education gives them ... particular deference — it doesn't give them the scepticism that they need, to be a journalist. ... They feel they have to protect the system rather than stand back from it, be sceptical about it and comment on it.[10]

It is scarcely surprising that journalists in Australia are accused of self-censorship. The multitude of laws that surround them represent a heavy daily burden they have to bear. If a single word they write or say is published beyond the jurisdiction of one State, they must comply with the laws of the other States of Australia, sometimes differing in significant respects. In such a world, it is little wonder that there is a strong tendency to caution and self-censorship. There is nothing equivalent in Australia to the ringing assertion of the First Amendment of the United States Constitution which guarantees freedom of the press and free speech in every corner of that country. Our freedoms rest on tradition rather than legal guarantees upheld in the courts when the tests come.

I have said that in practice good example and editorial discipline reinforced by (sometimes excessive) self-censorship remain the best protections against wrongful or unfair media conduct. That was so in the past. It will remain so in the future.

But just as in society a very small number of criminals exists, and cannot be ignored by society, so it is in the media. It is to deal with such cases that something beyond self-discipline is necessary when the procedures of self-regulation are claimed to have broken down.

One brave attempt to deal with such cases was the establishment of the Australian Press Council. Under the distinguished chairmanship of Sir Frank Kitto, one of the greatest Australian judges of this century, it deserved better success than it has had. It provided a system of peer review. Its procedures were cheap, speedy and much more accessible to ordinary citizens than expensive, frightening and time-consuming litigation. Procedures of conciliation and education can play a part not only in correcting errors that have occurred but also in setting good standards that will be observed in the future. The fact remains that the Australian Press Council has suffered from major weaknesses. The membership of the Full Council (though not of the Complaints Committee) comprises a majority of newspaper executives. No opportunity is afforded for the hearing or testing of evidence. Above all, two of the three major Australian publishing interests are not participants in the Council. Only this week, in answer to a question in the Administrative Appeals Tribunal, Mr. Rupert Murdoch said that his newspapers were no longer in the Australian Press Council 'because it had attempted to get too much control over them'.[11]

Even journals which do participate, such as the Sunday Observer, when publishing the ruling of the Press Council, do so under such headings as 'Editor Challenges Council Ruling' and carry a signed rebuttal, which is given prominence, rather than the opinion of the Australian Press Council. This happened recently when the Council criticised the Sunday Observer for publishing tape recordings of alleged conversations between Prince Charles and Lady Diana Spencer.[12] Far from setting peer standards the Council is merely expressing another opinion. Far from modifying behaviour, the editor stands unrepentant and gives pride of place to his own opinion, not the Council's. No effective sanction can be imposed upon media interests which do not participate in or respect the Council's views. The electronic media have never been involved.

In this week's television and radio supplement to the Sydney Morning Herald, Harry Robinson comments on the report of the Senate Standing Committee on Education and the Arts concerning the impact of television on children.[13] He criticises the Senate Committee's examination of children's television and its call for more government action and more action from the Broadcasting Tribunal:

> The Senators, I suggest, are falling for the Great Australian Fallacy. It says you will right social wrongs and move closer to heaven if you make enough regulations and have enough controls and guidelines and commissions and petty do-gooding tribunals. The fallacy is responsible for half our troubles. We hardly need more institutionalised do-gooding even for T.V., the Jezebel of the century.[14]

Despite that splendid prose, no alternative is offered by Robinson — simply the suggestion that we ought to try to change our society so that it does not like 'plastic values'. No hint is given of the way this endeavour may be started.

So here we are. Things do go wrong in the media and will continue to do so. Many hurts, unfair reports, undue intrusions, unjust pretrial coverage, unfair editorial comments and so on will simply go unredressed. Journalists know, or should know, that ordinary citizens of our country rarely feel able to take on and fight the enormous power of the media whether in court or elsewhere. Analyses of defamation actions show how very few of them are brought by ordinary citizens : the overwhelming majority of those that get to trial in Australia are brought by politicians and other public figures. The fact that in the great bulk of cases wrongs go uncorrected imposes, as it seems to me, a special obligation of self-discipline and high standards on journalists. They should be constantly striving to be worthy of the great power they have. Surveys in Australia confirm that the public's perception of power, rightly or wrongly, is that it rests with the media and unions as much as with the constitutional institutions of the country.

Some injustices and wrongs are dealt with by the intervention of experienced, thoughtful journalists. This is the way most vocations are taught. A small number are corrected by the Press Council. The Australian Broadcasting Tribunal has some fairly dramatic (if not particularly well graded) sanctions available to it to deal with public complaints. The need for a greater variety of sanctions available to the Australian Broadcasting Tribunal was recently called to notice in the Administrative Review Council's report on that tribunal's procedures.[15] I have no doubt that a better range of sanctions will become available to Mr. Jones and his colleagues in due course.

That still leaves us with a small number of cases involving resort to courts of law. We have a tradition of 800 years of independent courts, standing as guardians of the individual against the great power of government or private interests. The law will continue to have an impact, if a sometimes spasmodic, unpredictable and unexpected impact, upon journalism in Australia. What we have to hope is that, for the better education of journalists and the clearer appreciation of fair standards, a greater effort is made in this country to secure uniform laws affecting the daily work of journalists.

The former Chief Justice of South Australia, Dr. Bray, himself a participant in a celebrated case affecting journalists' freedom[16] once described diversity as the 'protectress of freedom'. The Federal Constitution of Australia makes for legal diversity and experimentation in a way that would not be possible in a unitary state. It allows the development of novel legal ideas in different parts of this continent. But as the law affects the media, whether electronic or print media, this diversity can sometimes be inconvenient. It can lead to uncertainty as to what the law is. This in turn can contribute to poor standards of journalism, undue timidity by journalists or breaches of the law arising from simple and reasonable ignorance of what the law is. To adapt a comment made by Lord Devlin in another context, it is not much good expecting journalists, who must frequently act to severe deadlines, to obey the law, if it takes a day's research to find out what the law is. In Australia, we do not have a particularly distinguished record of uniform laws. Attempts to secure uniform credit laws began in the 1960s. Now, 15 years and three committees later, we are still waiting. I hope our record in the area of media law will be better, for there the interests at stake are even more critical for a free society. The need for simple, up-to-date available and uniform laws is greater than in most other areas of the law that could be mentioned.

Let me in the remaining time available say something about five areas of legal concern of which journalists will surely hear more in the years to come. Four of them are topics before the Australian 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 were 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[17] 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 justification which has so far in some States helped to defend privacy, I believe we will seek to define as overseas countries recently have[18], an alternative approach which respects the right to privacy and provides redress where it is unreasonably invaded.

I am confident that before too long we will see the uniform defamation law in this country. Mr. Medcalf, the Attorney-General for Western Australia, said in March 1981 that he expected a single defamation law to be finalised 'within the next six to twelve months'. The Standing Committee of Attorneys-General on 10 April 1981 affirmed its agreement to work towards a uniform defamation law saying that whilst it might not be possible to achieve uniformity immediately 'it should be possible to reach early agreement on a number of issues'. For the interests of good journalism and the setting of standards without the need of expensive legal advice let alone litigation, the first necessity is that there should be clear rules.

COURTS, CONTEMPTS 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.[19] Legislation providing for the closure of courts in the case of female first offenders has now been repealed.[20] 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'.[21]

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[22] 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 countries. 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?[23]

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. The efforts to define more closely the law of contempt and to modify the British law of contempt which was criticised by the European Court of Human Rights has not yet attracted a counterpart movement in the law in this country. However the calls for reform become more insistent. The Canberra Times recently put its point of view:

> The crime is undefined. One judge hears the case immediately, and sentences immediately. The accused has little or no right to be heard or to be represented. The punishment is unlimited imprisonment. It sounds like an 'emergency' law proclaimed by some fledgling dictatorship. In fact it is the English, now Australian, law of contempt. No-one seriously questions that a judge should have power to deal with disorder and disruption in court. ... The main problem with the lack of clarity in the law of contempt is in the area of sub-judice. ... The lack of clarity leads the media to err on the side of caution and not to publish it: thus public discussion is muted.[24]

In a more practical vein perhaps, the Melbourne Age pointed out that the opening of an inquest into two recent murders in Victoria had, on its legal advice, prevented the publication of material that could be helpful to the police:

> Newspapers in publishing sketches and other information can be helpful to the police in solving murders. ... The effect of the adjournments [of the inquests] is that both inquests are now 'sub-judice'. As a result by publishing material that could prejudice the coroner's hearings when they reopen, this newspaper could find itself in contempt of the court. Indeed, our legal advice suggests that if the Chief Commissioner of Police, Mr. Miller, asks for our assistance, by publishing a police sketch or other police details to help track down the offenders, we shall have to refuse or risk being in contempt of the Coroner's Court. The penalty for contempt is limitless. Not long ago this newspaper and its editor were fined a total of $80,000 on a contempt matter in the Supreme Court. It would be stupid to expect this newspaper to pay such a price to help the police to catch murderers.[25]

I make no comment on the legal advice nor on the distinct note of sour graps about the earlier fine. The fact remains that the law of contempt in Australia is in need of re-examination. Governments, looking at the calumny that has been heaped upon Lord Hailsham's attempt at reform in Britain, may retreat from the effort. The Yorkshire Ripper case and other notable abuses of pretrial publicity do not make the path of the reformer any easier.[26] But things have changed. Our law of contempt is quite out of line with that existing in the United States and much more restrictive than that in most parts of Europe. Shortly, it will be out of line with the reformed British law. A popular demand for information and the utility to which information can be put in assisting the administration of justice are seen more clearly today than they were in the past. Without pandering to an impartial adjudication, I believe we could see significant reform of the law of contempt. But how it will come and whether it will come on a uniform basis is not at all plain to me at this vantage point.

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.[27] In Australia a similar rule has been adopted.[28] 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.[29] A similar conclusion was reached by the Law Reform Commission of Western Australia, which recommended against granting to journalists a privilege in absolute terms.[30] This recommendation was recently criticised by Professor Sawer who described it as having been based on hunches that were 'excessively bald'.[31] He urged:

> There is a great deal to be said for a rule that in civil defamation actions refusal to name sources should be permissible on terms that a defendant cannot rely on any ground of qualified privilege, but in such cases plaintiffs should not be allowed to demand disclosure of sources if the sole purpose is to obtain aggravated damages. In the case of criminal trials before a judge and jury, the judge sitting alone in chambers should be empowered to uphold the claim of privilege if the journalist satisfies him that the evidence of the informant will not be admissible in the trial; otherwise he should require the naming of the informant.[32]

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? It is still too early for me to prognosticate how this debate will go. Extending a privilege to journalists will add urgency to the claims for privilege by all doctors, priests, accountants, bankers and others. It seems appropriate to give legal protection to confidences which advance the greater public good. But I doubt that we will see a privilege in the absolute term called for by some journalists. Not even the United States, with its cherished constitutional protection for the press, has gone so far.

CONCLUSIONS

Journalists of today must perform their difficult vocation in a time of rapidly changing media ownership, dynamic technological advances which affect the media and changes in social attitudes which, sooner or later, impact the law.

That there is need to reform media law in Australia is scarcely open to debate. Federation, so convenient and appropriate in many other areas, is a source of confusion and uncertainty when it comes to media law. Because a great many newspapers, magazines, radio and television broadcasts proceed across State borders nowadays, there is a need to bring greater harmony into the law affecting the media from one jurisdiction of Australia to another. This is not just a case of uniformity for the sake of lawyerly neatness. This is yet another case of technology presenting a problem for law reform which was simply not conceived at the time the Australian Constitution was designed.

I repeat that it is not just to expect journalists to comply with the letter of the law if it takes a day's research to find out what the law says. Journalists must often work to very severe deadlines and in situations of great emotion and significant public importance. Confusion and uncertainty about the law governing them must affect standards and produce timidity and unevenness. It must diminish their capacity to serve the public well.

In one area of operations, there is hope. It arises, I believe, from the report of the Australian Law Reform Commission proposing a new defamation law, which also includes new and more appropriate procedures of redress and certain limited protections against invasions of personal privacy. We are told that this report, which was delivered in 1979 after an unprecedented national debate, will shortly emerge from the Standing Committee of Attorneys-General. I have always believed that the availability of a single uniform defamation law, with modern procedures and a clearer statement of rights and duties, would be the best possible contribution to an improvement of journalistic standards in Australia. It will provide the means by which cadet journalists could learn the legal boundaries within which they must operate. I confess at once that I should not want to be a journalist today, trying to keep in my head eight different systems of defamation law. Of course few, if any, do. Most 'muddle along', occasionally guided by highly talented but expensive lawyers and sometimes stung into concentration upon the law by the receipt of a Supreme Court summons.

Where such an important freedom is at stake, the law ought to do better. The report of the Law Reform Commission on defamation and privacy points the way.

I believe we will see legal protections for privacy. I am sure we will see greater readiness in open courts, presently closed, but on condition that litigants in the Family Court and Childrens Court are not identified by journalists' reports. There is an urgent need to reform the law of contempt to bring it into closer line with the law as it obtains in other developed Western communities, but without removing altogether the inhibitions against trial by the media. Finally, we must come to grips with the difficult issue of journalists' claims for the secrecy of confidential sources. This too is a matter under consideration by the Law Reform Commission.

Clive Robertson, a Sydney breakfast announcer for the ABC, with a large following of devotees, recently announced:

Journalists are not godlike. There is no evidence that God was ever a journalist.

All the same, journalists are the 'ministering angels' of a free society. Some fall from grace. Some get lost in the clouds. Most get on with the business of bringing news, views, opinion and entertainment to an information-hungry nation. There are few vocations with greater power and responsibility. And that is precisely why the law, stating society's ultimate standards, has things to say to journalists. But the question remains. Need those statements be so Delphic and obscure? The effort of law reform for the next 20 years should be modernisation, clarification and unification of media law. The technology of the media marches on in an advance party. The law limps along at the tailend of the line.

FOOTNOTES

1. D. Pannick, the Guardian, 3 November 1980, cited [1981] Reform 101.

2. G. Sawyer, 'The Legal Theory of Law Reform'[1970] 20 Uni.Toronto Law Journal, 183, 188.

3. Australian Financial Review. 4 June 1981, 12 ('Dailies are still feeling the pinch').

4. M. Davie, 'Lament for a Newspapers, the Age, July 1981.

5. The Age, 1 June 1981, 5.

6. ibid.

7. id.

8. id.

9. G. Harriott, 'On the Other Hand', cited in Focus, June 1981, 11.

10. The Age, 1 June 1981, 5.

11. As reported, Sydney Morning Herald, 14 July 1981.

12. Sunday Observer, 5 July 1981, 9.

13. Australia, Senate Standing Committee on Education and the Arts, 'Children and Television Revisited — A Review of the Report of the Impact of Television on the Development and Learning Behaviour of Children'. 1981.

14. H. Robinson, 'Concern Over Children's T.V. and all that Junk', in See, Hear!, Sydney Morning Herald, 13 July 1981, 1.

15. Administrative Review Council, Report on the Procedures of the Australian Broadcasting Tribunal, 1981.

16. See e.g. 'Former Chief Justice Reviews Famous Libel Case', on Focus, June 1981, 10.

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

18. 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, Justitiedepartementete, Privatlivets fred, 1980 (English Summary 15-21).

19. The Australian, 22 December 1980, 6.

20. 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).

21. The Australian, 22 December 1980, 6.

22. Mr. Justice David Hunt, 'Why No First Amendment? The Role of the Press in Relation to Justice' (1980) 54 Australian Law Journal 459, 461-2.

23. The Times, 7 January 1981.

24. Canberra Times, 15 June 1981, 2 ('Contempt of Court').

25. The Age, 9 July 1981, 13 ('Murders and contempt').

26. See the Times, 16 May 1981 ('An Unproven Case for Contempt'; G. Robertson, 'The Contempt Bill and Press Freedom' in the Listener, 5 February 1981, Vol. 105, No. 2698, 162 ('It is easy to exaggerate the horrors of trial by newspaper').

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

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

29. 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.

30. Project No. 53, Perth, 1980.

31. [1980] 4 Criminal Law Journal 324.

32. ibid, 323-4.