Response - Bret Walker SC

The Law Council of Australia has established a small task force to contribute to the Australian Law Reform Commission's enquiry into the adversarial system. The task force consists of myself as convenor and two other members of the profession, namely Tony Abbott from South Australia and Rod Smith from Victoria, both of whom bring a considerable breadth of experience in different jurisdictions. In addition to the task force, the Law Council has established a larger reference group which contains solicitors and barristers drawn from around the country. At this early stage of the ALRC reference there is no group view and, as you can imagine, achieving a national group view on such topics is a very difficult matter. Nothing I say today should be taken as representing a Law Council of Australia view, or at least not yet.

We intend to contribute to the ALRC enquiry in a helpful fashion. To coin a phrase, we wish to be co-operative rather than adversary. But we also intend to start pushing at some of those labels. We will, of course, have different points of view among ourselves as well as against some of those tentative views expressed by Mr Rose and Justice Davies today. Above all else however, and whatever the fate of the ALRC reference, the Law Council and the New South Wales Bar Association intend to contribute practical suggestions for the improvement of the justice system. And we are not ashamed of being accused of resorting to a band-aid method. The reforms in Victoria which Judge Jones has described could equally be regarded as the application of a band-aid. Even if it is conceded that the reforms in Victoria are more radical than that description, nevertheless, they are recognisable as an improvement to a recognisable system. The revelation provided by a national perspective today is that reforms already operating in New South Wales are similar to those we have heard described in Queensland from Justice Davies and to those described by Judge Jones which have taken place in Victoria. This is not to suggest that New South Wales set the lead, but the national perspective reveals how Australia can sometimes suffer from federalism. It takes a seminar such as this to demonstrate that the various jurisdictions are unaware of what is occurring in other States. There is a lack of national intelligence about the litigation process which is to our detriment. It is hoped that the investigation made by the ALRC, and the Law Council's initiative in responding to it, will ultimately overcome this disadvantage.

The Law Council does not believe that because the system needs improving it necessarily follows that it is in crisis. Nor that it should be described as a bad system. We do not believe that it demonstrates there are defects in the adversarial culture or in the adversarial imperative. In a civilised democracy, it is axiomatic that all institutions will need improving. Improvements need to be continuously discussed and anticipated. Where the institution being appraised is not responsive to popular voice by a simple popular vote, it is even more essential that we continue to keep it under review. That is not a sign of crisis. It is not a sign of inherent vice. Nor is it retrograde to understand that we benefit not only from anticipating future needs but also from comprehending the past. The 19th century was the great era of law reform. Procedures were instituted then, as reforms, which we still use today. In their time *Judicature Act* pleadings were the best and most intellectually rigorous way of bringing a case to trial. The relevant issues, only those truly in contest, were isolated for investigation and decision. Pleadings still conceptually and therefore intellectually track our causes of action. They were once ideal for Common Law actions but we must recognise that as the causes for action become more discretionary, more dependent on individual cases of conscionability, *Judicature Act* pleadings are revealed as out of date. In short, it may not be the system which is at fault, but rather that we are asking it to do so much more than it was ever designed to encompass.

Another example is the balancing act, which is attempted by the great Evidence Acts, where the discovery of truth on the one hand is offset by expediency - "let us have an end to the case" - on the other. It is a balance which continually needs to be struck and restruck. It is not a cause for us to beat our breasts with self-criticism. The task of establishing balance is something we will always have to undertake. We should not be daunted by the size of it.

We reject the idea that the legal profession is conservative. The law is subject to constant change both procedurally and substantively. Lawyers deal with changes more often than anyone else. But lawyers also hear from clients, particularly business clients, about the need for stability. They are told of the attraction, compared with some others, of the Australian legal system which operates with relative predictability. It follows that incremental change should be be disparaged as timid and insufficient, but as beneficial. Disruptive reform comes at too high a price, particularly in relation to business.

Social demands embodied in legislation, rather than lawyers, have over-strained the legal system. Sophisticated taxation laws and the Corporations Law require a sophisticated legal system to deal with them. Just as you cannot have clean water without paying for dams, nor can you cope with complex modern laws in courts which are not properly resourced.

For all these reasons the Law Council will argue against any radical "Year Zero" approach which erases the past and the present in the name of the future. Reinventing the courts, in short, must not be reinventing the wheel. Calls to revolution often end very quickly as calls to the barricades, ie conflict and resistance. Incremental change will not encounter the same resistance. The last 15 years' experience in Queensland, Victoria and New South Wales has demonstrated that considerable changes can be achieved within the existing system and the profession will be among the first to welcome them. It is the profession who then introduce the benefits of these changes to their clients.

Nor should it be forgotten how much parliamentarians have pushed courts beyond their capacity to meet expectations. Legislation has added enormously to the substantive rights and obligations of a citizen of Australia, or of a corporation doing business in Australia. But rights and obligations are worthless unless they can be enforced. They cannot be enforced unless they are justiciable. And in a civilised democracy they are justiciable only in courts. In our system, courts are expected to make case law not only to fill the gaps but also to satisfy an innate sense of justice. That is Common Law. That is Equity. The combined effect of community expectations, if you assume that parliament reflects the people's will, results in courts being required to do more and more. Laws such as the *Trade Practices Act, Contracts Review Act*, the *Family Provision Act* and the *Family Law Act* are increasingly designed to introduce discretions and fine gradations of judgment for individual circumstances. Fewer and fewer cases are being determined by black and white rules. More and more evidence must be considered to arrive at an individual outcome. Yet we are still working with the structure envisaged by the 19th century law reformers.

Reinventing the Courts should be interpreted, first, as re-endowing the courts. They must be given resources commensurate with their present task, on a scale proportionate to the resources made available to meet their 19th century tasks. In the days of pen, ink and paper last century, the resources allocated to the courts were not dissimilar to the resources available then to the highest reaches of executive government and business. Today there is an appalling gap between the logistic and information services available to the courts and those which serve the highest levels of executive government and business. Yet courts are still expected to perform the same adjudicatory role in relation to executive government and business in this century as they were in the last. Indeed, they are expected to interact at a more complex level.

Once again, it is clear that just as you cannot have clean water without paying for your dams, you cannot have a proper justice system, which adjudicates on the community's rights and obligations, without providing the primary resource of more judges. The public cannot expect more justice from fewer judges. Politicians have an obligation to educate the electorate that just as you cannot have medicine without doctors, so you cannot have justice without judges. And the profession must join with the politicians to educate the community to understand how changes in the legal system change the nature and style of the judges' workload.

There are fewer cases now in the civil jurisdiction which are decided by juries. That requires more reasoned judgments, and so judges must do more writing. There is more written evidence-in-chief and this will increase if some of the planned reforms are carried out. That means more reading for judges. There is more written argument and there will be a great deal more written argument at all levels of the system. That, also, is more reading for the judges. Nothing is more lowering than the spectacle of a quiet courtroom in which, if there was a real clock, you could hear the tick while a judge reads a document in the presence of parties, witnesses, court staff and lawyers. It is a sorry spectacle, and yet the pressure on the judge merely to skim read makes it even worse. Time is wasted, and not used well.

Judges must be able to read these papers out of court, with an appropriate amount of time, at a proper time of the day and of the week. It is monstrous to expect our judges to get up at dawn and stay till midnight and to work at the weekends reading documents so that they can then put on a performance during the week. The public must be educated out of the notion that unless a judge is sitting in court, the

Members' Suggestions Invited

The Law Council of Australia effort to contribute to the ALRC inquiry into the adversarial system needs your help. The purpose of having the wider reference group drawn from the bodies which constitute the Law Council - ie the various Bar Associations and Law Societies - is to enlist the collective thinking of experienced practitioners. The emphasis is on our practical experience and the valuable perspective it should give to what might otherwise by an excessively academic, theoretical or sociological exercise.

Ruth McColl SC is our representative on that wider reference group. With Walker SC, she will co-ordinate the collation of members' suggestions and the presentation of our collective views. All suggestions are very welcome. They will all be carefully considered. We hope to arrange interim drafts for discussion in the new term. Please send your suggestions, in writing, to Ruth McColl SC, DX 399 Sydney. If you wish to discuss the matter before going to print, Walker SC (02 9233 8760) and McColl SC (02 9233 2847) will be happy to receive your calls.

What kind of suggestions do we want? Anything of any kind which you think could improve our present system of civil litigation. (Criminal justice cannot be dealt with by the ALRC because of its limited terms of reference stemming from the Commonwealth's limited role in crime.) You might find it useful, say, to list three areas where in your experience doing things differently would make litigation quicker to conclude, less costly to conduct and more calculated to achieve fair justice. Preferably, you would describe each suggested improvement, with brief reasons for its adoption. ❑

public's money is being wasted and a scandal is being perpetrated. Judging has to be understood as something which largely involves quiet reflection in chambers, both before and after the oral occasion. The latter must be seen as a small, very important, but peak experience in litigation and by no means the whole of the judging task.

May I turn very briefly to questions about the adversarial system in itself. Today we have heard a couple of definitions of what "inquisitorial" may mean and how it may compare to "adversarial". Adversarial is used, I suggest to you, because of its propagandist purposes. It makes it sound like a combat and a brawl and that is nasty, or so we are told. Inquisitorial, I have to say, also sounds like interrogation or torture. That is nasty too. At least you can say, if you want to trade connotations, that an inquisitorial process sounds like one where the judge wields the red hot pincers. By contrast, even its critics concede that the adversarial process is defined by the aloofness of the judge - ie his or her impartiality. I think these labels, particularly the connotations that are sought to be drawn from them, are quite useless. Worse than that, they confuse and delay the analysis we all need.

It seems to me that Mr Rose's definition of inquisitorial is something which really doesn't go beyond what all of us, at least in New South Wales, are used to, as a proper measure of judicial activism in litigation. Unless and until you forbid parties bringing the fruits of their private investigations to court in a relevant, ordered, timely and efficient fashion, then our system of justice will still possess the true essence of an adversarial system, namely that the State appointee, the judge, is not a sole ringmaster of the material that can be considered to determine the dispute.

There are some fundamental values about the function of the courts which should inform us when we talk about something as radical as reinventing them. There are some things that courts are not and must never pretend to be. Courts are not wide-ranging debating clubs. They are not public policy forums. They are not endless, private Royal Commissions. Everyone can agree on these. But I would stress also that courts are not social workers. They are not community counsellors and they are certainly not priests, or for the secular they are not your venerable uncle or aunt. They are there to determine those disputes which remain after those which can be settled have been screened out by all the other mechanisms. Courts will decide them according to law, not according to palm tree justice or what seems to the judge to be in the so-called interests of parties, but according to the rights and obligations which parliament and the common law accord to the community. If we refuse to adjudicate these rights and obligations properly, then we betray them by revealing they have no force.

When we talk about a court's role in dispute resolution, we must remember that there are, first, disputes and, second, resolutions. The courts are only a small part of the dispute resolution business. If the adversary system is something which is seen as bad, because it is bad to be adversarial, then behind it all must be some notion that being in dispute is bad. We should reject that. In a civilised democracy, differences of opinion in business, differences of interest, and above all, in the dealings between citizen and State differences of perception, are the mark of a healthy society. Colloquially, Australians are stroppy enough to claim their rights. Of course, they are only perceived rights when an individual claims them. That is why we have courts: to determine which side's perception is correct. If rights and obligations are worth having at all, they must be capable of being enforced. The court's role, therefore, must be to decide them when they have to be decided.

The better courts do that, we may rest assured, the more business courts will have. Courts are going to be the victims of their own success. For those reasons, the crisis of which the Chief Justice speaks is, in my view, a phoney one. It is, after all, a curious crisis which has persisted for so long. Or is there someone who says it has arisen only in the last year or so? If we improve the system as we all wish, so that people aren't put off disputing their rights because dispute resolution is barbarous - if we improve the system, we will have those people in the lists, as it were. A better way of looking at it, in my view, is that they will be asking for justice in a way which should not be a matter of shame in a civilised society. The better service we give litigants, the less disincentive there will be for litigants. We have to get used to that paradox. It means that we will never be satisfactory to everybody.

Grievances or disagreements cannot be prevented by pretending that they have no right to exist. Talk of consensus models must not degenerate into the farce of insisting that people must be forced to agree. That would amount to denying people the full measure of their rights and obligations by traducing them as anti-social and adversarial. Nor can we allow the idea to develop that to push a dispute to a final decision will result in the complainant being punished by costs or some other sanction. That would be an abrogation of the justice which the system should provide for the public.

This does not mean that we are against compromise. Every litigator knows that without compromises the system would grind to a halt. The adversarial system is characterised by huge settlement rates in the vicinity of 90%. This is a percentage from the total of cases which are commenced in the first place. Yet some people would assert that the adversarial system foments disputes, or maintains or prolongs them. On the contrary, the evidence of high settlement rates suggests that the system is very, very unsuccessful at any such thing. Not only do 90% of cases commenced, settle. Every solicitor knows that those which are actually commenced are themselves a small percentage of the disputes that arose in the first place. It is time we were less apologetic about the litigation system and the rate of its dispute resolution. Litigation is only the most spectacular form of dispute resolution. It must never be seen as the most important. The aim should be to shrink the tip of the iceberg, ie the unsettled cases. The techniques used in Victoria and Queensland as

well as those in New South Wales lend themselves to that goal. On its own behalf and in the interests of its clients, the profession supports those reforms.

The terms of reference of the ALRC include the requirement to canvass the advantages and disadvantages of the adversarial system. It is notable that there is so far great reticence from the ALRC as to the advantages of the present system. That suggests two possibilities. First, that the advantages are so obvious they go without saying. Alternatively, it suggests that the ALRC has pre-determined that the adversarial system is one which has only disadvantages. That might be true, as I suggested earlier, if you regard disputation as inherently bad, or if the resolution of disputes must never be in accordance with an individual's insistence on rights or obligations but always result in compromise. If so, it would logically follow that any dispute resolution which resulted in winners and losers was detrimental. But lawyers, particularly those of the profession who are litigators, should not see themselves as workers in some social abattoirs because they participate in occasions where there are winners and losers.

If someone has a right which is being denied, are we too coy to maintain that it is the proper outcome of justice for that person to win a case against the individual who is denying their right, or refusing to discharge an obligation? To achieve compromise, someone must always pay the price of not obtaining their full rights. We should not cast a sentimental glow over compromise. Or feel that agreement is always better than a dispute. The small citizen oppressed by the large State may have rights which ought to be fully vindicated. That does not mean there is not a place for compromise, but we should not take pride in a system which pushes people into compromise simply because it is seen as socially divisive to have winners and losers. We ought to be proud that there is no recourse to firearms, no reliance on bribery, but trust in an impartial justice system to determine those cases which really do need to be decided. Every barrister who has ever urged compromise, every solicitor who has ever urged settling before the barristers are involved, knows that the way you persuade your client is to say that there is certainty by compromise which will otherwise not be achieved until final appellate judgment in litigation. But you buy certainty at a price, and that price is giving up something to which you believe you are entitled. Compromise is entirely healthy - but it must be recognised as very different from the vindication of rights and enforcement of obligations.

There are fundamentals which ought to be considered in the context of reinventing the courts, particularly if criticising the adversarial system, or seeking to change it more towards the inquisitorial method.

"To achieve compromise, someone must always pay the price of not obtaining their full rights."

The first question which must be raised by any would-be reformer is what we want from a justice system. In other words, what are the values of the administration of justice? I suggest they are to be deduced from the nature of our society as a civilised democracy, civilised in the sense of being sophisticated and encompassing disparate interests. A democracy because every citizen has an essential equality before the law and a voice in government. On that high plane, it is possible to discern values which place the adversarial system in a good light. We want truth as to the facts. Furthermore, our adversarial system is not just about winning. It is about persuading the impartial adjudicator by a mixture of inherent credibility, among other things, and by cogent criticisms of the other side's version, that the truth is more likely to lie with one side than the other. Any litigator knows that, at the end of the day, what we sometimes laughingly call the merits have more than a passing resemblance to what we also suspect may be the truth. That is the first value: truth as to the facts.

The second value is an obvious one in a society governed by the rule of law. There has to be some predictability and equality of application as to the law. Parliament plays a role there. Perhaps there should now be litigation impact statements for parliamentarians. Every time they legislate they should ask themselves what it is which has now become justiciable which was not formerly justiciable. What can now be argued about which was not formerly argued about? What circumstances are now relevant as evidence, not formerly relevant as evidence? It would be a very long catalogue if one did that backwards for the last 25 years.

Finally, the third value ought to go without saying, but if we are talking about inquisitorial models, shouldn't go without repeating. The adjudicator must be impartial. Every step the court takes closer to preventing a party challenging a prima facie view of the facts, or not being permitted to argue an unpopular view of the law, is a step the court takes closer actually, not just apparently to being identified with one side or another. And at that point, I suggest, such social consensus as we have about the administration of justice will start to unravel.

From time to time, each generation will need to work out its own principles to achieve these values, or at least to come as close as mankind can. The cardinal principle, it would seem to me, which needs to be retained while we experience what some call a crisis, is that procedural and substantive fairness must be preserved. There must also be a reasonable opportunity for parties to present cases, although with a closer scrutiny on what reasonable means. There must be value for money. And of course, there must be early or faster

determination.

Concern for a faster process is presently focussed on time limits: pre-trial limits on what the parties can do, and time limits during a case. The judiciary must also be aware that sooner or later it will be suggested that there is a third phase which has not been touched. Pre-trial, during the trial, and (next) after the trial. Sooner or later someone is going to say early determination means early decision. Judges will have to understand that for them to propose time limits for the other players in litigation means they may need to propose time limits overtly for themselves. I am not proposing that there should be time limits. I am suggesting that the rhetoric which often accompanies judges' criticisms of parties making their own decisions about what should or should not be done is rhetoric which can very easily, word for word, be turned against them.

Fundamental among the policies by which we seek to implement these values must be the recognition that change needs to be incremental. This must be a persuasive exercise. Clients, who are consumers of the legal system, will need persuading that they will receive better value for money when their lawyers are required to do more and different things pre-trial than is presently required. Personally, I am a partisan for very intensive case management before and during a trial, but it must be recognised by those of us who litigate at the big end of town that large commercial cases do not resemble the average case, and should not be allowed to skew the reform agenda. Too much discussion about litigation reform is based on the notoriously large cases. They are the atypical cases, and thus the worst possible bases for reform. Any civilised system would rather pitch the level of its resources to the ordinary case.

Thus, for example, concerns about discovery, at least in New South Wales, are perhaps overstated. I personally believe that discovery, like interrogatories in New South Wales, should be transformed. Discovery should be upon demand, on demonstrated need only and then by a fairly limited period of "hits" on particular issues, or categories of documents. We have done it with interrogatories. When I started at the Bar, interrogatories were 19th century and atavistic - and very common. We have got rid of them. We don't have US-style depositions of witnesses. We seem to get on well without them. A huge number of cases in New South Wales have no discovery at all. Many in the Supreme Court don't have it, and no case in the Local Court. We are kidding ourselves if we think that discovery is essential to the efficient adjudication of the facts, but it has to be said that discovery features in the complaints of practically everyone who talks about the spectacular cases that reach the newspapers. Discovery can be a most terrible weapon used by the rich against the poor - and the other rich. It has to be recalled, however, that it is a weapon that is used in most cases to improve our approach to determining the truth.

There are no easy answers. We cannot evade the prospect that the better the courts are at deciding disputes the more likely they are to be utilised by a free citizenry. What some people call the crisis in our system is probably more accurately the natural rhythm of social discontent with imperfect institutions. The rhythm becomes urgent from time to time, but we should certainly not see the system as one which must be castigated as malign or as exhibiting an anti-social tendency.

There are huge tensions in this area, and in my view working out how those tensions are to be balanced from time to time will be the task of the law reformers. But all law reformers must accept that their solutions are essentially temporary, because the tensions need to be struck in different places at different times. For example, we all wish that litigation would as closely as possible ascertain the truth of the facts in question, but none of us wishes to spend years and years investigating people and, then, reinvestigating them to see what they say six months later about the same events. And yet, can it be doubted that if you could have somebody back on a weekly basis for a year, you might have a better idea of what really happened if you could interrogate them every week? That is a caricature of the kind of tension that governs the subject. It is an example of how we must be very careful that we don't claim our reforms are more likely, for example, to uncover the truth. That is a very slippery slope towards returning to a 19th century no-holds-barred system. Another example is time limits, which in my personal view ought to be applied much more than they are now. There ought to be bids for the available time which has been set aside for the trial. The bids should be agreed initially by the parties and finally adjudicated by the case management judges. Time will be divided up and where people can't agree on how to divide it, the judge can rule. Good advocates and good litigators can work out in advance how to allocate time and resources to realise those limits. It is another part of the professional skill of the litigator. There should be more emphasis on forcing people, in advance, to set down a timetable within the trial - a process which is now second nature to all of us before the trial.

There ought to be positive encouragement from appellate tribunals for trial judges to be much more interventionist in their critical comments during cross-examination - argument too, for that matter, but particularly cross-examination. We have the tools now: section 41, paragraph 135(c) of the *Evidence Act*, and we've had precursors of them for decades. Judges should be much more free to say, "I don't think I have been helped by that Mr Walker" or "Do you really think pursuing that line is going to help?" And half an hour later when Mr Walker has not taken the hint, to simply say "You've got two minutes on that issue". I appal some of my colleagues by suggesting this should happen, but if one trusts the judges it is very difficult to see how that would cut across the proper determination of issues. Bearing in mind that advocacy is meant to be the art of persuasion, it is very difficult to see how one could resist the persuasive force of such judicial intervention. It is entirely proper for a judge to be able to

look at his or her watch and say, "I think I have heard enough on that issue". Of course, it will not happen unless, or until, the appellate tribunals make it quite plain that the judges will not cross the illegitimate line, down into the arena, by making comments about what they need in order to make a fair decision.

The final suggestion for reform today is to echo what has been said by a number of speakers this morning about the appalling deficiency in the collection of data about our justice system. All talk of law reform and particularly litigation reform is cursed by anecdotal material. Our opinions of what should or should not be done in court are all skewed by the last big or horrendous case in which we appeared or adjudicated.

Very few of us have time to remind ourselves, by talking to others or finding out about other cases, that the horrible case in which we appeared is exceptional and that lessons learned from it should not be extrapolated to the rest of the justice system. We need proper data collection, and we need it on a national basis so that the jurisdictions can learn from each other, rather than by just telling stories at forums like this one. We need a national data system which is created by all the judges reaching agreement among themselves on how the information can best be gathered, analysed and made available. We cannot afford four more years of committees before the courts get their national data in some consistent and compatible form. It really just ought to be done by courts having the courage to know that they won't sacrifice autonomy by allowing somebody to be a dictator and say, "Your software must be this, must be that, and cannot be this other thing". We can no longer manage with statistics which only allow us to know the plaint number, the date it was lodged, perhaps the way the case was disposed of, and the date this occurred, but practically nothing qualitative in between. Nothing about how many experts, and what kind of experts, nothing about the extent to which there was any actual dispute about the primary facts - and nothing about how long it took to cross-examine on elaborate witness statements, rather than on evidence-in-chief presented briefly by the witness speaking himself or herself.

For all those reasons, it seems to me that we ought not be embarrassed about the state of our litigation system to the point of regarding it as riddled with inherent vice. Rather, we should see it as a case of us using the 19th century model for too long and needing to adapt it for a 21st century model, understanding that it should be a child recognisable to its 19th century parent. Clichés, as we all know, are often used because, to use one myself, they hit the nail on the head. Litigation reform is an area where there is a constant danger of throwing the baby out with the bath water, where there is a danger of seeing justice as just another market commodity, or service, which it manifestly is not. There is also a danger that we may treat reinventing the courts as simply an expensive and embarrassing reinventing of the wheel. ❑

Reality Revisited -
The Repressed Memory Controversy

"If there is one area of Psychiatry where truth really matters, this is it! One only has to deal with a few families torn apart by allegations of abuse, with or without subsequent litigation, to appreciate the level of our responsibility in these cases." (Dr J Gelb.)

At the June 1996 Scientific Meeting of the Medico-Legal Society of New South Wales, the medical and legal controversies surrounding repressed memory as reality and as evidence, were discussed and debated.

The evening's two speakers were Dr Jerome Gelb, a Consultant Psychiatrist from Melbourne and Mr Charles Waterstreet, a barrister in the Supreme Court of New South Wales. Both speakers have considerable experience on this topic from their respective medical and legal perspectives. From Dr Gelb's presentation we heard that:

- There is no scientifically sound evidence of repression.
- False memories can be easily created.
- Memories, both true or false, are responded to as if they were true.
- Therapists cannot distinguish true, false or mixed memories.

Mr Waterstreet commenced his paper by reminding us that in recent years trial lawyers have been "confronted with a disturbing phenomenon that seemingly contradicts the received wisdom of years of legal practice". He said, "traditionally, it was a forensic rule of thumb that memory fades with time. ... However, in the last decade or so, victims of sexual abuse have emerged claiming that they have recently remembered events from many years before that were unconsciously repressed." This evidence has, on occasion, been used to convict persons of these alleged offences and send them to gaol.

Mr Waterstreet spoke about the Tillot Guidelines and their application by the courts.

During question time, Forensic Psychiatrist Dr Bob Strum likened the prosecution of alleged perpetrators of abuse akin to the acts portrayed in Arthur Miller's play *"The Crucible"*. On the other hand, barrister Glen Bartley stated that he had a case "where there was spontaneous retrieval and the perpetrator subsequently admitted it, despite about 15 years of loss of the memory".

The vigorous nature of the questioning demonstrated the great interest that the medical and legal professions have in this topic.

All members of the Medico-Legal Society of New South Wales receive the full text of the proceedings of the Quarterly Medico-Legal Society Scientific Meetings.

To join the Medico-Legal Society of New South Wales, contact the Executive Secretary, Ms Janet Burke, PO Box 1215 Double Bay NSW 2028, or telephone (02) 9363 9488. ❑