to agree with Mr Armstrong and that he would bring the matter to the Attorney General's attention.

The last issue also included an article by **Glenn Bartley** expressing the view that the sexual assault communications privilege was under siege. **Phillip Priest QC** has written a critical letter in response.

The last issue also included the address given by **Ellicott QC** at the dinner to celebrate his 50 years at the Bar. That address included some rather critical comment on certain aspects of the role of Malcolm Fraser as prime minister in relation to the Sankey proceeding. Mr Fraser has indicated to *Bar News* his concern at the inaccuracy of some of Ellicott QC's comments. Mr Fraser has been offered a right of reply.

The present issue includes a shortened version of the paper delivered by **Robertson Wright** and **Michelle Painter** at a recent meeting of the Trade Practices Section of the New South Wales Bar. It is hoped that members will continue to contribute to the ongoing legal development of the whole Bar by delivery of such papers and allowing them to be published in this journal.

For those members, like the editor, for whom the notion of a country circuit is a strange and rare beast, considerable enlightenment is provided by the article in this issue from **Stephen Stanton** concerning his years of practice in the Pacific Islands. Members should also be interested in **Rena Sofroniou's** interview with **Paul Daley** which gives insight into his extraordinary success as a clerk over 40 years at the Bar.

Justin Gleeson S.C.

LETTERS TO THE EDITOR

Dear Sir,

Several aspects of Glenn Bartley's article in Summer 2000/2001 *Bar News* ('Sexual assault communications privilege under siege') require comment. He wrote:

> A common criticism of the privilege, encountered by the author, is that it would prevent disclosure of a counselling note revealing that the complaint of sexual assault was 'recovered memory', which arose after hypnotherapy. However, these cases do not occur often and in nearly all of them there is other evidence of hypnotherapy having led to a recovered memory.

The first thing to note is the tacitly expressed suggestion that cases of recovered memory occur only where hypnotherapy has been employed. This is not so. Research has demonstrated that false memories are relatively easy to create in the course of therapy or counselling, without the need for hypnotherapy or similar techniques.

Secondly, the assertion that 'these cases do not occur often' is highly questionable. No evidence is offered in support of this statement. In my experience, the recovery of repressed memories of sexual abuse (or the creation of false memories of abuse) is all too common.

Thirdly, the suggestion that 'in nearly all of them there is other evidence of hypnotherapy having led to a recovered memory' does not accord with the experience of those who regularly practise in the area of sexual assault. Indeed, other than a client's denials, often the only objective evidence one has available that memories are, or might be, false, are the notes of counsellors produced in obedience to a subpoena. I have had personal experience of several cases where the first clue that memories may have been the product of 'therapy' came from the therapists' notes. There is no doubt in my mind that, in a number of cases in which I have been involved, potential miscarriages of justice were avoided by access to therapists' notes and other records. (My experience has been in Victoria, although I doubt NSW is any different.)

As a counter to the Bar Association's submission, Glenn Bartley somewhat emotively asks:

> How many tens of thousands of innocent sexual assault victims deterred from reporting the crimes committed against them or from maintaining their complaints, or traumatically humiliated in court, are sufficient to justify the legislation?

Again, two things ought to be noticed.

First, the statement seems to assume that innocent victim will be deterred from complaining by the legislation permitting access to records. Experience seems to suggest, however, that if anything, it is the curial process itself which may act as a deterrent to some victims.

Secondly, the implied suggestion is that tens of thousands of putative victims may be deterred from bringing or maintaining complaints as a result of the legislation. The extravagance of this assertion is manifest.

If innocent men are to avoid wrongful conviction and punishment (and make no mistake, it is principally fathers and grandfathers who are accused after repressed memory is 'recovered'), then further restriction upon access to counsellors' records is undesirable.

Yours sincerely,
Phillip Priest QC
20 April 2001