later this year and the Commission expects to move to a final report on all aspects of its Evidence Reference in 1986.

western australian case. At about the same time as rape was in the news in Victoria and New South Wales, a Western Australian jury found a male intruder not guilty of the rape of a girlfriend of a policeman in a flat which he was convicted of breaking into. He also admitted stealing $100 from the woman's purse, and having intercourse with her, but claimed she had undressed him and forced him to have intercouse with her. (*Sydney Morning Herald,* 19 September) According to a newspaper report the policeman raced from the public gallery of the court after the decision was announced towards the man in the dock shouting: ' I will kill you, you bastard'.

Western Australian civil rights campaigner Mr Brian Tennant urged that contempt charges be laid against the policeman over the incident. Mr Tennant was bashed unconscious at his home shortly afterwards. Mr Tennant is a former President of the Western Australian Council for Civil Liberties. Mr Tennant was attacked by a masked man wielding a club and suffered a fractured leg, fractured cheekbone, cuts and concussion. He is quoted by the *Sydney Morning Herald* as saying he believed the attack was connected with his public criticism over the courtroom behaviour of the policeman but he was not accusing the policeman of being involved with the bashing. (*Sydney Morning Herald,* 24 September)

contempt and juries

The jury says 'he's guilty'
And says the judge, says he,
For life Jim Jones I'm sending you
Across the cruel sea.

trad song, *Jim Jones at Botany Bay*

revelations of jurors. The law of contempt has once again become a matter of controversy in recent months with the possibility of contempt proceedings being brought against media organisations that publish the revelations of jurors. Considerable doubt as to the parameters of the law of contempt was expressed by journalists after the trials of High Court Justice Lionel Murphy and the Secretary of the Builders Labourers' Federation Norm Gallagher. In relation to the *Murphy* case, four jurors, together with a number of politicians, academics and public figures, gave their views on the course of the trial, the merits of the Crown case, the adequacy of the law and the abilities of the legal representatives.

As well, members of the Federal Opposition called for Justice Murphy's resignation from the High Court, while other forces came to the support of the High Court Judge to declare that the jury had made an error, that the trial Judge had misdirected the tribunal of fact or simply that 'something dreadfully wrong had happened'. Newspapers ran stories on 'the history of the man' and the rights and wrongs of the Murphy jury's decision became a matter of national controversy. All of this took place before the accused had been sentenced and the appellate processes had had a chance to begin.

Part of the controversy was itself generated by the preparedness of four of the jurors in the *Murphy* case to come forward and air their distress at the press reaction to the jury decision and to explain the difficulty that they had experienced in coming to their verdict. With the 'sensational revelations from the juryroom', press interest in the case took a new tack, asking what harm had been done to the public's confidence in the administration of justice by the events of the trial. Professor Chesterman of the ALRC expressed his surprise at the level of comment and pointed out that the legal processes were far from being exhausted. (*Sydney Morning Herald,* 22 July 1985) In August at a seminar on *Directions in Media Law* conducted by Longmans Professional Books, Professor Chesterman went on to point out that the legal system can be in a 'position of some embarrassment' if the media disclose details of jury deliberations before legal proceedings in the case have concluded. Mr Freckelton, also of the ALRC, ap-

pearing on the Carlton-Walsh Report, pointed out, though, that the *Murphy* case, while unusual, was not without parallels – jurors had disclosed what had happened in the juryroom on a number of occasions in recent years in prominent trials in both England and Australia. He called for a period of reflection upon the ramifications of the Murphy trial without 'knee-jerk reactions'. He pointed out though that after similarly sensational circumstances, the English Parliament had passed restrictive legislation in 1981 preventing the disclosing, obtaining or soliciting of information about juryroom discussions. He noted that the Canadian Criminal Code, after a similar series of articles based on interviews with jurors, had made it an offence from 1972 for a juror to disclose any information relating to the proceedings of the jury when absent from the courtroom.

anonymity of juries. Reactions to the disclosures by the Murphy and Gallagher jurors have varied. Much concern has been expressed that the anonymity of the jury has been pierced and that an incentive has been given to the media to encourage jurors to make known the thoughts and feelings of jury members have had in coming to their verdicts. On the other hand, calls have been made that the courts in appellate proceedings should be able to take into account misunderstanding, misbehaviour or misconceptions demonstrated by the interviews given by jurors. At present such information is not admissible in evidence. The rationales for such refusal to look behind the reasons for jury verdicts were identified by the Australian Law Reform Commission's Interim Evidence Report (ALRC26) as:

- the desirability of promoting finality in decisions;
- protection of jurors from pressure to explain the reasons that actuated individual members in arriving at their verdicts; and
- the need to maintain confidence in the decisions of jurors.

However, the need for so complete a rule of evidentiary exclusion has been questioned by Professor Enid Campbell in the 1985 *Criminal Law Journal.*

role of the jury. The Murphy trial, in particular, provides an excellent opportunity for reassessment of the role of juries in the 1980s. As Rod Campbell (*Canberra Times,* 8 September, 1985) commented:

> Never before has the spotlight of public opinion been so determinedly aimed at the system, highlighting its strengths and weaknesses. No one really knows what goes on in the juryroom (and some would argue that we should not try to find out) but a thorough review is probably well overdue.

Pressure has grown in recent times, probably inevitably in the scientific, technological, 'rational' age in which we live that juries should be obliged to give a greater account of their stewardship. The jury has been called the amateur component, the wild card in the criminal trial process. This was noted by Loretta Re of the ALRC, addressing the Congress of the Australian and New Zealand Association of Psychiatry, Psychology and Law in Melbourne late in 1984, who concluded that if jury review was introduced, citizen participation in the legal process would be maintained, while the possibility of error arising from ignorance or prejudice would be minimised. Professor Glanville Williams has criticised the 'inscrutability' approach of juries and argued that if reasoned verdicts were required from juries, it would be possible to feel some assurance that the members of the jury had properly addressed the various issues in the case. At present, the danger is that when a jury returns its verdict, bias, illogicality and error are effectively concealed from view.

The Murphy and Gallagher trials, therefore, have functioned to allow a small shaft of light into the mysterious proceedings of the juryroom that the centuries of legal tradition have cloaked in so much mystique. The experiences of 1985 have reminded us of the

fact that juries are constituted of 12 different individuals, all coming to their task with different abilities, views and preconceptions. They have reminded us, too, that the task of jurors can be a painful and distressing one in prolonged and notorious cases. Under the scrutiny of the press microscope, flaws have indeed been exposed but the most lasting consequence of the Murphy and Gallagher trials may be the recognition of the need for a humane consideration to be given to the public and private roles of jurors. Debate on the reviewability of jury decisions and the need for complete retention of juror anonymity in the Anglo-Australian legal system is overdue. It may be that the public hearings to be conducted by the ALRC as part of its Evidence and Contempt references toward the end of 1985 and during 1986 will offer the necessary opportunity for that debate to take place.

plain english

Yet all world languages die at last:
Greek of grammar and factions; Latin
of clotted syntax and Renaissance purism;
French of bad admirals and over-subtle vowels;
English and Chinese of their written forms;
Russian of subject people's hate.

Mark O'Connor, *Lingua Romana*

In the last issue of Reform (1985 [*Reform*] 111) the Commission described the efforts being undertaken within the executive Government in Victoria towards achieving plain English statutory drafting. The Victorian Government has now announced that it will ask the Victorian Law Reform Commission to advise it on how the Government can extend its policy on plain English to cover Government legal documents and agreements. The Victorian Attorney-General, Mr Jim Kennan, announced from 17 September 1985 that the Law Reform Commission would enquire into principles and practices which currently impede drafting of legislation, legal agreements and Government forms in plain English.

'Since many of these documents affect legal rights and obligations, it is appropriate that the Victorian Law Reform Commission (VLRC) look at this area before the Government extends its plain English policy,' Mr Kennan said.

Mr Kennan introduced new rules for Parliamentary counsel in April which mean that Latin words, superfluous and repetitious phrases will be dropped from future State Government Bills and Acts.

The Residential Tenancies Bill, which will be introduced in the Spring Session of Parliament, will be the first piece of Victorian legislation written in plain English.

'The plain English used in the Bill will benefit tenants and landlords alike by clearly stating the rights and obligations of both parties,' he said. 'It has been drafted in language that is economical and simple to understand'. He also said a new Coroners Bill, written in plain English style would also be introduced in the session of Parliament which begins in September.

Mr Kennan said the Law Reform Commission would inquire into practices and procedures of Parliament, Government Departments and the Chief Parliamentary Counsel's office which presently impede the adoption of plain English drafting.

It would also examine:

- whether any changes to common law and statutory maxims, principles or rules of interpretation are needed to complement the adoption of a plain English drafting style; and
- whether laws should be introduced requiring certain categories of agreements and Government documents to be written in plain English, and if so, the desirable content of these laws.

Mr Kennan said he would also direct the Law Reform Commission to investigate the feasibility of incorporating the principles of plain English drafting into university law courses.