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. ❑