JUSTICE

23rd

annual report

JUNE 1980

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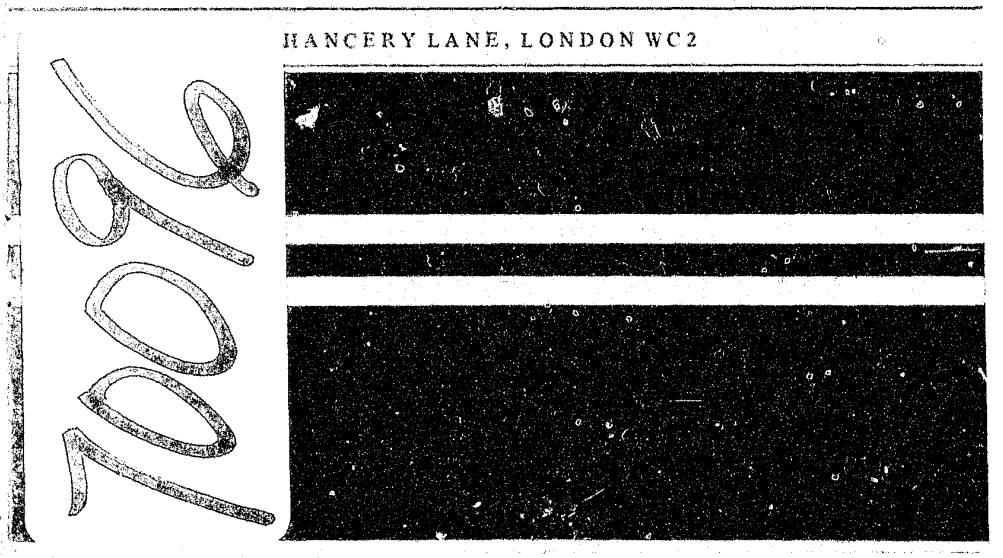

JUSTICE

British Section of the International Commission of Jurists

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Extracts from the Constitution

PREAMBLE

Whereas JUSTICE was formed through a common endeavour of lawyers representing the three main political parties to uphold the principles of justice and the right to a fair trial, it is hereby agreed and declared by us, the Founder Members of the Council, that we will faithfully pursue the objects set out in the Constitution of the Society without regard to considerations of party or creed or the political character of governments whose actions may be under review.

We further declare it to be our intention that a fair representation of the main political parties be maintained on the Council in perpetuity and we enjoin our successors and all members of the Society to accept and fulfil this aim.

OBJECTS

The objects of JUSTICE, as set out in the Constitution, are:

to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible; in particular to assist in the maintenance of the highest standards of the administration of justice and in the preservation of the fundamental liberties of the individual;

to assist the International Commission of Jurists as and when requested in giving help to peoples to whom the Rule of Law is denied and in giving advice and encouragement to those who are seeking to secure the fundamental liberties of the individual;

to keep under review all aspects of the Rule of Law and to publish such material as will be of assistance to lawyers in strengthening it;

to co-operate with any national or international body which pursues the aforementioned objects.

CHAIRMAN'S INTRODUCTION

This has been a busy year for JUSTICE and the members of its committees, and in the last three months their work has borne fruit in the publication of four reports on a wide variety of subjects.

We thought it appropriate that, after a period of five years, we should study the working of the Commission for Local Administration which, when it was set up, closely followed the pattern recommended in the JUSTICE report *The Citizen and his Council*. With the aid of a generous grant from the Leverhulme Foundation we were able to commission extensive research into the reactions of complainants and council officials, and our committee's evaluations were greatly helped by the co-operation of the Commission. In my view the most important of its conclusions relate to means of access and the powers of the Commission to enforce its findings.

Two other recent reports have taken longer to produce than we had originally hoped.

The problem of British Nationality proved to be one of great complexity to which there are no obvious and simple solutions. It is difficult to disentangle it from the related and highly emotive problem of immigration control and to strike an acceptable balance between the claims of hospitality and the practical realities of today's world. I think that our report has achieved this balance and we hope that, when the Government takes its Bill to Parliament, it will at the least accept the basic principle that all those persons who, though citizens of the United Kingdom and the Colonies, do not have the right to enter the United Kingdom, should have the right of entry and abode in a specific country.

The report on Decriminalisation has been delayed because of the ambitious nature of the research undertaken by the Committee. This has involved classifying and feeding over 7,000 criminal offences into a computer with such relevant data as will enable researchers and would-be legislators to extract the information they need. The report advances powerful arguments for taking out of the criminal law, and out of the criminal records, a wide range of 'criminal offences' which do not involve any dishonesty or other moral turpitude, and classifying them as 'contraventions'. This would remove an immense burden of work from the lower courts, save a great deal of public money, and enable the forces of law and order to concentrate their efforts on the prevention and prosecution of crimes which do real harm.

Our fourth report of the year is *'The Truth and the Courts'* which sets out our evidence to the Royal Commission on Criminal Procedure on preparation for trial and some aspects of the trial itself. As with our evidence on police powers and the prosecution process, our further recommendations are designed to make our criminal trials

less of a game, more of an enquiry into truth and more closely controlled by statute. The major obstacles to their acceptance are that the police wish to retain their existing powers, lawyers enjoy their tactical battles and the judges do not want their areas of discretion to be limited. We can only hope that the Royal Commission will have the courage to surmount these obstacles and open the way to genuine reforms based on statutes rather than directives and guide-lines which are not observed.

One has only to read the accounts of some of the cases in the body of this Annual Report to appreciate how unjust our trials can sometimes be and the extent to which the scales are loaded against a man who falls victim to the irregularities at present permitted. He is virtually made to feel that he has no right to complain of unfairness and, whether guilty or innocent, he has virtually no rights once he enters the prison gates. His channels of complaint are blocked, his letters are restricted and censored and not even his nearest relatives are allowed to know what is happening to him. The May Committee did not attempt to grapple with the real evil of our prison system, which is the wall of secrecy that surrounds it and the lack of any effective and independent grievance machinery such as exists in other countries of Europe and the Commonwealth. It is only in the U.K. that the deprivation of liberty is accompanied by deprivation of most of the prisoner's civil rights.

We have often found that our legal institutions have fallen behind those in other countries. One example is compensation for wrongful imprisonment and we have recently set up a committee to make a comparative study of this problem. In this country any award of compensation lies entirely in the discretion of the Home Office, whereas under the terms of the European Convention it should be an enforceable right.

We are naturally gratified that so many of the recommendations of the Royal Commission on Legal Services are in line with those which JUSTICE has pressed over a period of years, but it will have laboured in vain if the authorities to which they are addressed adopt them only half-heartedly or quietly bury them.

Turning to domestic matters, I would like on behalf of the Council to express warm appreciation of the generous and encouraging way in which so many of our members have responded to the appeal to make voluntary increases in their subscriptions to JUSTICE or in their covenants to the JUSTICE Educational and Research Trust. This has removed our immediate anxieties but we shall need still more help in the coming year.

For the past eighteen months, Ronald Briggs' energies have been largely devoted to the Review of Administrative Law which is being

carried out in conjunction with All Souls College, Oxford. When added to the work involved in the subscription-raising exercise, this has put an additional burden on Tom Sargant and Peter Ashman, and we are indebted to all of them for the achievements of the past year. I would also like to pay a tribute to Kie Sebastian who, during the two years that she was with us, carried out a much needed reorganisation and up-dating of our membership and subscription records. She left in April to take up other work and we are lucky to have found in Gillian Nobbs an enthusiastic and capable successor.

Finally, I have to thank most warmly all those members and friends of JUSTICE who have freely given of their time and experience to the work of our committees, or helped in the study of case papers and in the preparation and presentation of appeals.

JOHN FOSTER

REPORT OF THE COUNCIL

HUMAN RIGHTS

Abroad, the ebb and flow of oppression continues. The Iranian revolution has overthrown the Shah's secret police state, only to commit its own gross violations in the form of summary executions and the taking of diplomats as hostages. The genocide in Democratic Kampuchea came to an end with the overthrow of the Pol Pot regime, to be succeeded by mass starvation under the Vietnamese military occupation, but there is at least some evidence that successors to tyrants need not always set up new tyrannies. The Sandinistas of Nicaragua are a commendable improvement on the iniquitous Somoza family, though regrettably there are now some doubts about their full commitment to human rights. According to the ICJ observer, even Macias, the butcher of Equatorial Guinea, received as fair a trial as could be expected there before he was executed. Idi Amin was succeeded as President of Uganda by Godfrey Binaisa, himself a member of the ICJ; though he in his turn has now been deposed. We have every hope that the Government of Prime Minister Mugabe in independent Zimbabwe will realise its promise of reconciliation and harmony between races and factions. It is encouraging that he has invited Mr. J. R. Fieldsend, who is Secretary of the Law Commission for England and Wales and was a judge of the High Court of Rhodesia until his resignation after U.D.I., to return as Chief Justice. But far too many tyrannies still continue in power—in all continents, among all races and religions, and under a wide range of economic systems.

Meanwhile, the international human rights institutions are making slow but steady progress. Ratifications of the UN Covenants and the new American Convention continue to accumulate. The UN Human Rights Committee is hard at work, and the Commission under the American Convention is making an excellent start. The UN Human Rights Commission in Geneva is again increasing its activity, and the ICJ is making a growing contribution to its work. The proposed International Convention on Torture makes steady progress and we especially welcome the decision of the recent conference of Commonwealth Law Officers in Barbados to set up a Working Party on a Commonwealth convention of human rights.

Of most interest to us in the UK, the Strasbourg Commission and Court under the European Convention continue to do splendid and important work. One has only to read their published reports and judgments in cases from many European countries to see how often they achieve the highest standards of legal excellence. Our own

Government comes in for its fair share of petitions in that forum on a variety of subjects, and occasionally judgment is given against it. The most recent example was the *Sunday Times* case, with the result that we must now at last overhaul our law on contempt of court—but no more than the Phillimore Committee recommended as long ago as 1974, and as JUSTICE has been urging for even longer than that.

Later this year, our Government will have to decide whether to renew the right of individual petition to Strasbourg from which such cases arise. That right has been renewed, for a few years at a time, by both Conservative and Labour administrations ever since 1968. It is unthinkable that it should not be renewed again: indeed, the renewal this time should be permanent, and no longer for a limited period. Yet every time this matter comes up for decision, there are voices to be heard against renewal, whose stridency is matched only by their ignorance of what international human rights law is about. Fortunately, those with whom this decision has rested have so far known better.

Sadly, among the practising legal profession, there is still widespread ignorance about all this. In a nation that has led the world in respect for individual freedom, that is perhaps not surprising: it is in countries like Czechoslovakia and Chile that lawyers have to be, and are, much better informed.

For that, they often pay a high price, and find themselves disbarred, imprisoned or murdered because of the clients for whom they act, or the arguments they put forward in court on those clients' behalf. Such persecutions of our professional brethren are now being dispassionately documented by the ICJ's Centre for the Independence of Judges and Lawyers in Geneva. Increasingly, Bar Associations in the free world are supporting that Centre's work, either financially or by responding to appeals to make their own protests on behalf of their beleaguered colleagues.

But not, so far, either our Bar Council or our Law Society. We think it is high time they did.

ADMINISTRATIVE LAW

British Nationality

A Working Party to examine the Government Green Paper of April 1977 on British Nationality was set up three years ago. Its report, *British Nationality*, has just been published.

It is certainly time that the law relating to British nationality was reviewed. The problems involved in it are a legacy of the dissolution of the British Empire; in the effort to solve those problems it is important to avoid creating new ones.

Any new nationality law should above all ensure that no one will be any worse off after than before its enactment. British Imperial history imposes upon it an obligation to ensure that all British subjects and persons under the protection of the British Crown should obtain a nationality investing them with all the normal attributes of citizenship, and above all with the right of unrestricted entry to, and abode in, a particular country or territory with which they have a close connection. For the benefit of persons closely connected with a dependency, such as Hong Kong, Gibraltar or the Falkland Islands, a citizenship of the particular dependency should be established by legislation both in the dependency and in the United Kingdom.

Criteria used in immigration laws for deciding who has the right of entry to the United Kingdom should not be used as a basis for conferring citizenship. Energetic efforts are necessary to secure a right of abode for citizens of the United Kingdom and Colonies who have acquired their citizenship overseas, British Protected Persons, and British subjects without citizenship who do not have a right of abode in a territory or in the United Kingdom. Such negotiations are a prerequisite of any change in British nationality law. If they leave a small residue with no right of abode anywhere, persons in that category should qualify for citizenship of the United Kingdom.

In view of the impression that legislation on the subject was imminent, a letter was sent to the Minister by the Chairman of JUSTICE last September summarising the provisional conclusions of the Working Party.

The members of the Working Party were: Sir Amar Maini, CBE (Chairman), Bernard Budd, QC, Mrs Ann Dummett, Michael Ellman, Miss Sarah Leigh, Mrs Blanche Lucas, Michael Meredith-Hardy, David Sagar and Ronald Briggs (Secretary).

The Commissions for Local Administration

The Local Ombudsmen: a review of the first five years is the report of a committee appointed in 1977 to consider the work of the Commissions for Local Administration in England and in Wales and the Commissioner for Local Administration in Scotland. The report is divided into two parts—the report proper, contained in the first seven chapters, and an account of the research conducted on behalf of the Committee by Dr Wyn Grant of Warwick University assisted by Mr Robert Haynes of Wolverhampton Polytechnic, which comprises Chapter 8 and which is of about the same length as the aggregate of the preceding seven chapters. The research was made possible by a generous grant from the Leverhulme Trust Fund.

The Committee was favourably impressed both by the high quality and dedication of the staff of the three institutions whose work

they reviewed and by their general effectiveness. Though quite satisfied that they are working well, it concluded that there were a number of improvements that would enable them to operate even better. Among these were the following:

(1) The Local Ombudsman's jurisdiction should be extended, when resources permit, to bring within the scope of his review a number of matters at present excluded from it such as parish and town councils, the commencement, failure to commence and conduct of proceedings falling short of any matter over which the court itself has jurisdiction, contractual and commercial matters, and internal school matters.

(2) The cost of the Commissions for Local Administration for England and for Wales, and of the Commissioner for Local Administration in Scotland, should be charged to the Consolidated Fund.

(3) The Representative Bodies are unnecessary and should be abolished.

(4) Complaints to the Local Ombudsmen should be either through an elected member as at present, or direct.

(5) The Local Ombudsman's findings should be enforceable through the courts at the suit of the complainant.

The members of the Committee were: Victor Moore and Harry Sales (joint Chairmen), Albert Chapman, Prof. J. F. Garner, Dr Philip Giddings, Dr Wyn Grant, Matthew Horton, Prof. Norman Lewis, K. A. Oates, David Widdicombe, QC, and Ronald Briggs (Secretary). The late Prof Frank Stacey was a member of the Committee until his untimely death in January 1978.

Parliamentary Commissioner for Administration

In last year's Annual Report, we welcomed the appointment of a distinguished lawyer to this office, and expressed our confidence that Mr. Cecil Clothier, QC, would continue to increase its usefulness and influence. Both the welcome and the confidence remain, but they have become a little dampened by an episode which we feel bound to recount here.

This concerned the case of Roy Binns, described in detail in our last two Annual Reports. To recapitulate, Binns was sent to prison for arson in July 1976. In November, following the belated identification of some fingerprints, another man admitted that it was he, and not Binns, who had committed the offence. The Chief Superintendent in charge of the investigation told Binns he would be out of prison by Christmas, and reported to his Chief Constable that Binns should be pardoned. The Chief Constable reported to the DPP. The DPP reported to the Home Office. By then, it was March. Nonetheless, Binns remained in prison until he qualified for parole at the end of July. In August, on his application (out of time) and with the consent

of the prosecution, the Court of Appeal quashed his conviction. But when his solicitors applied to the Home Office for compensation, they met with a flat refusal on two grounds: first, that the Home Office does not pay compensation when a conviction has been quashed on appeal, and second, that Binns' innocence had not necessarily been established.

Everyone concerned, including the prosecuting solicitor, was shocked by this case, and so were we. We therefore decided to help Binns' MP, Mr. Michael Shaw, in preparing a factual memorandum to support a complaint to the Parliamentary Commissioner. For that, we naturally made all the enquiries we could, and reported what we had been able to find out for ourselves. In our recital of the relevant events, we included a note saying that, according to the prosecuting solicitor, the Home Office had been advised of the contents of the Chief Superintendent's report even before it went to the DPP.

When the PCA investigated, he found that the Home Office had not in fact heard about the Chief Superintendent's recommendation of a pardon until March—four months before Binns' release on parole. He also found that the case had been dealt with throughout at the Home Office by an official 'of a junior management grade'. Nonetheless—and somewhat to our surprise—he found that there had been no maladministration. But the surprise was as nothing to the shock we received when we read the PCA's Annual Report to Parliament earlier this year. There, in a paragraph which clearly refers to the Binns case, he says that people sometimes try to use his office unjustifiably, 'usually when they have taken inadequate care to ascertain the facts.' He casts doubt on their *bona fides*, and relates that he was 'sadly disillusioned' in this particular case, because the complaint alleged that Binns had been kept needlessly long in custody while the Chief Superintendent's report was considered, 'and in particular that the report had been in Home Office possession for some months before any action at all was taken. Although this allegation was made by an organisation generally considered reputable I found not only that it was untrue, but also that it had been put forward without any reasonable grounds for doing so. The complaint, in fact, should never have been made.'

On reading this we wrote to Mr. Clothier more in sorrow than in anger. In his reply, he told us that he regretted that we should have taken what he said as a reflection on our integrity, and that nothing could have been further from his mind. But he went on to elaborate why, in his view, we should not have helped Binns' MP to make the complaint: apparently, in deciding to investigate the case at all, he was strongly influenced by the possibility that (if what the prosecuting solicitor said was right), the Home Office might have known about the Chief Superintendent's recommendation for a

pardon for six months, and not merely four. In a further letter, he has told us that he regards us as having committed 'a serious error of judgement', but he repeats that he has never doubted our honesty of purpose.

Having started and led the campaign for the establishment of the PCA's Office, we shall continue to support it, and its work, in every way we can. But, for the rest, we are unrepentant. If, on a future occasion, we find that someone has languished in prison for months after the Home Office receives a report from a senior officer of an independent force recommending a pardon because he believes him to be innocent, we shall still regard that as a major injustice. And if, on such an occasion, an MP wishes to ask the PCA to investigate the matter, we shall give him any help we can. We shall report any relevant information we have received from any reputable source. Only the PCA can discover what happens inside the departments, and he alone is charged with the task of deciding whether the injustice is brought about by maladministration. But unless people draw manifest injustices to his attention, he cannot even investigate that question.

The irony of all this is that in the case of James Stevens, (related in last year's Annual Report) in which the course of events was very similar to that of Binns—except that the Chief Superintendent's recommendation was not supported by a confession—the Home Office has since agreed to pay £7,500 compensation.

The Big Public Inquiry

This Report, prepared by a joint Working Party of the Council for Science and Society, JUSTICE and the Outer Circle Policy Unit, was published soon after our last Annual Report. Its purpose was to examine the increasing problems experienced with public inquiries into controversial projects having substantial and complex national and international implications, especially in the light of the Roskill Inquiry on the Third London Airport, and the Windscale Inquiry.

For future projects of that kind, the report proposes a new procedure of public investigation in the form of a 'Project Inquiry', to be appointed by the Secretary of State for the Environment well *before* the time at which statutory local planning inquiries are now held, in order not to cause any unnecessary delay. A Project Inquiry should have about 7 to 10 members chosen above all for their impartiality, and for their expertise in different fields. Its terms of reference should be wide. Its task would be to investigate, impartially, thoroughly and in public, all the foreseeable economic, social and environmental complications and repercussions of the project, including its benefits, and its costs and risks of all kinds. It should consider all feasible alternatives, and seek to ensure that all the

assumptions, material facts, issues and arguments are brought out, tested, and fully and fairly discussed.

Such an inquiry should be conducted in two stages: an 'inquisitorial' stage of investigation, designed to elicit, exchange and clarify all the relevant information; followed by an 'adversarial' stage of argument, including any necessary cross-examination on oath on disputed issues. Both stages should be characterised by openness, and equality of opportunity for all parties. The Project Inquiry's report should be published, and fully debated and voted on in Parliament, preferably before the Government announces its decision about the project.

Although the members of the Working Party represented a very wide range of interests, some of which had conflicted in the past, the report was unanimous. It was published with the endorsement of all three of the sponsoring organisations, and submitted to Government. Since then, no major project meriting the use of the new procedure has been announced, but we hope that it will be used whenever the next one comes forward.

The JUSTICE representatives on the Joint Working Party were Paul Sieghart (Chairman), David Widdicombe and Sir Denis Dobson; its other members were Stephen Bragg, Professor James Cornford, David Hall, James May, Professor David Pearce, Martin Stott, Dr. Leonard Taitz, Peter Taylor, Dr. Brian Wynne and Professor John Ziman, FRS.

Justice-All Souls Review of Administrative Law

The Review suffered a grievous loss by the death of Sir Otto Kahn-Freund who died suddenly on 16 August last. The contribution that he made to its work was of the greatest value and his thorough, but never solemn, approach to the task in hand was an encouragement to all his colleagues on the Review Committee. His wisdom and experience are sadly missed.

Sir John Boynton, and Paul Sieghart have joined the Committee. The following have joined the Advisory Panel: Dr. J. M. Benn, Mr. Justice Brennan (of the Federal Court of Australia), Sir William Murrie, Sir Idwal Pugh, Mme Nicole Questiaux and Sir Harry Woolf.

In the course of the year a considerable amount of library material has been collected, copied and considered by the Committee. Research on specific matters has been commissioned and discussed. The Committee has had full-day meetings about once a month.

There have been discussions with Sir Ian Percival, QC (the Solicitor General), Sam Silkin, QC (former Attorney General), Cecil Clothier, QC (the Parliamentary Commissioner for Administration)

and Sir Basil Hall, KCB, MC, TD (the Procurator General & Treasury Solicitor). Contact has been established with a large number of bodies and interested individuals especially in Australia and New Zealand where there has recently been much development in the field of administrative law.

A Scottish Working Group has been formed to consider matters particular to Scottish law and administration. Its convener is Professor A. W. Bradley and other members of it are Professor Gordon Cowie, W. Douglas Cullen, QC, R. H. Fraser, Ivor Guild, WS, and William Prosser, QC. Professor D. S. Greer and Mr Peter Smith, QC are the Special Advisers to the Committee on the law of Northern Ireland.

A Seminar was held at All Souls College and was attended by all but three members of the Advisory Panel and the Review Committee. It provided an opportunity for the consideration in depth and by people of widely varying experience of the complex problems and the proposals for overcoming them encountered in the course of the Review.

A first working paper is in preparation at the time of writing and will be published in July. Its purpose will be to stimulate comment both on the general structure and on the detail of administrative law in the United Kingdom, on what reform is needed and how best it may be achieved.

INFORMATION LAW

For several years now, we have complained about the failure of successive governments to carry out the reforms proposed by official committees in various branches of the law, including official secrets, freedom of information, privacy, contempt of court, and defamation. During the past year, only two things have happened in this field: the presentation by the Government of a new Official Information Bill, which had to be withdrawn following the Blunt scandal; and the decision of the European Court of Human Rights in the *Sunday Times* case, leading to a promise now at last to reform the law of contempt of court, on which the Phillimore Committee made its recommendations six years ago.

But rather than repeat our annual plaintive litany, we have a different point to make this year. What all these branches of our law have in common is that they deal with the flows of information within our society—among private interests (including the press and the media), and between those interests and government. These flows are about to be revolutionised by technology. For an additional rental of around £3 per month, every TV household can already call up on its screen nearly 1,000 pages of up-to-date information on a variety of

subjects, provided by the BBC Ceefax and the ITV Oracle services. But that is nothing to the 150,000 screen pages which are just becoming available through the Post Office's Prestel service—to be expanded, by next year if all goes well, to 500,000 pages, accessible to 60 per cent of all households having both a television set and a telephone, at no great cost.

The legal problems which this new technology—compendiously called Viewdata—could (and probably will) create are enough to boggle any lawyer's mind. If defamatory material is put into the system, how will a plaintiff prove whether it has been 'published', and to whom, unless he can find out who has called up that page in the privacy of his home or office? The Post Office will have that information through its billing system—from which, incidentally, it could discover a great deal about its telephone subscribers' tastes and interests, as well as their expenditure patterns if they use the system's 'electronic mail order' facility. Should it ever make any of that information available? If so, when and to whom?

Should anyone—and if so who—have an editorial responsibility about who should be allowed to put what information into these systems? The Post Office has so far taken the view that, with its monopoly of the telephone network, it must conform to the 'common carrier' principle and exercise no more control over information flowing through Prestel than it does over the contents of letters, telegrams or telephone conversations. Yet when it became public knowledge that one of the Prestel 'information providers' had put in some pages (not themselves obscene) on where to buy pornography, those pages were rapidly removed from the system. What would happen if an information provider wished to put in a list of people who had spent more than £5,000 on a motor car in the last year, or who had recently been divorced, or had recently had abortions—or instructions (taken from published technical literature) on how to build an atomic bomb?

Both medical and legal advice are already available through Prestel. Who will check whether it is right—and who will be liable, and for what, if it is wrong?

That is only a small selection of the possible problems. Lawyers have not even begun to work out how they could be resolved. No Royal Commission or Departmental Committee has yet been asked to consider them. In the past, different branches of the law have dealt with the problems presented by news media, encyclopaedias, advertisements, and mail order. Viewdata will combine all these, and much more—including perhaps, one day, instant electronic referenda. The benefits could be great, but so could the risks. To avert them, we shall eventually need something in the nature of a comprehensive and coherent law of information. That will take a great deal of work to

prepare. The sooner we start on it, the more likely we are to get it in time—and to get it right.

CIVIL LAW

Royal Commission on Legal Services

The long-awaited report of the Royal Commission on Legal Services contained no revolutionary proposals for the restructuring and greater accountability of the legal profession. For this reason it is to be regretted that its views on matters like fusion, rights of audience and conveyancing should have diverted attention from the many useful and potentially far-reaching recommendations it made in a number of other areas.

Contingency Legal Aid

We were ourselves disappointed that the Commission turned down our recommendations for a Contingency Legal Aid Fund which would meet the needs of would-be litigants who cannot afford to risk having to pay heavy costs with or without the help of legal aid, and for a Suitors' Fund which would relieve a litigant who wins at first instance but loses on appeal from paying the costs of the appeal. It did however agree that the costs thrown away by the illness or death of a judge should be met out of public funds, as should the costs of determining points of law of public importance.

Professional Standards

We had good reason to be gratified by the Commission's recommendations covering complaints against the legal profession, which reflected many of the recommendations made in the JUSTICE report *'Complaints against Lawyers'*. Thus, it proposed that there should be an independent element both in the investigation and the adjudication of complaints and that the two processes should be separated. It further proposed that, to fill the present 'no-man's land' between negligence and professional misconduct, a new ground of complaint, i.e. bad professional work, should be created. The Commission's response to our recommendation that the Law Society should set up a legal ambulance service to rescue the casualties of the system was to ask the Law Society to ensure that legal advice is available to those who allege negligence against their solicitor.

Because of the many complaints received of late delivery of briefs in criminal cases and of defendants seeing their counsel for the first time on the morning of the trial, we recommended that senior partners in solicitors' firms and heads of chambers should be made responsible for ensuring that adequately prepared briefs are delivered in good time and competently dealt with when received, including arrangements for

consultation and advice on evidence in appropriate cases. The Commission's response was to recommend that the two branches of the profession should draw up standards of conduct and that their non-observance should be regarded as professional misconduct.

Legal Services

The Commission's proposals for the extension of civil legal aid are generous, but they are unlikely to be accepted in the present economic climate. Perhaps the most practical one is the enlargement of the Green Form Scheme to allow for up to four hours' free consultation, but it is difficult to understand why it should not allow for an appearance in court. The majority of the suggested improvements in criminal legal aid have been urged by JUSTICE for many years and among those we particularly welcome are that:

(a) The Law Society should accept responsibility for setting up duty solicitor schemes in all magistrates' courts, and for settling requirements and standards. They should be paid on an attendance basis rather than case by case, and there should be a 24 hour service to cover attendance at police stations;
(b) there should be a rota system of duty solicitors for prisons;
(c) prisoners should have the right of representation in disciplinary proceedings before Governors and Boards of Visitors except for minor offences;
(d) there should be a statutory right to legal aid in all cases where there is a danger of a custodial sentence or deportation order, or of loss of reputation or livelihood;
(e) the duty of solicitors and counsel to advise on appeal should be clarified and the provisions extended.

General

We also welcome the Commission's recommendations that there should be a comprehensive review of tribunal procedures by the Council on Tribunals, with criteria for the granting of legal aid administered by Law Society committees, and that both civil and criminal legal aid should be the responsibility of the Lord Chancellor and administered by a Council for Legal Services.

Finally, we record our pleasure that, instead of ignoring as outside its terms of reference the many representations it received on almost every conceivable aspect of civil procedure, the Commission classified and summarised them in an appendix and recommended that civil procedure should be kept under constant review by a specially appointed body.

Company Law

The main activity of the Company Law Committee during the

year under review was the preparation and submission to the Department of Trade of a memorandum in response to the Green Paper on Company Accounting and Disclosure (Cmnd 7654). The committee limited its comments to the suggestions relating to 'proprietary' companies (i.e. small private companies). It did not agree with the proposal that there should be a significant reduction in the amount of disclosure required of proprietary companies or with the proposal that they should be exempted from audit requirements. The committee welcomed the suggestion that (subject to safeguards) it should be made possible for proprietary companies to buy their own shares. It also suggested that it should be made possible to wind up proprietary companies in any circumstances specified in the Articles, so as to give the same freedom to liquidate quasi-partnership companies as to dissolve partnerships.

The Companies Act 1980 at last (after the abortive Companies Bills of 1973 and 1978) brings on to the statute book, along with other useful amendments of company law, the prohibition of insider dealing. This was originally advocated by JUSTICE in our report *Insider Trading* published in 1972, and we therefore give it a warm welcome. Unfortunately that warmth has to be tempered by criticism of the drafting, important parts of which lack the necessary clarity.

The members of the Company Law Committee are:
William Goodhart (Chairman), Philip English, Geoffrey Lewis, Stephen Hood, Barry Rider, Laurence Shurman and Paul Sieghart.

Illegitimacy

An *ad hoc* sub-committee was set up by the Council to consider the Law Commission's Working Paper No. 74 and to prepare a memorandum which was duly submitted. In general we welcomed the recommendations of the Working Paper designed to eliminate such disadvantages as the law now contained for the child born out of wedlock. However, opinion was divided on the recommendation that the status of illegitimacy itself should be abolished. One view supported this, but another considered that this status was a reflection of the institution of marriage and would exist so long as marriage itself did. The proposal was an attempt to remove an unfortunate social stigma and it would be a mistake to try to use legislation as a means to effect changes in social attitudes. We agreed with the Working Paper that there should not be a class of 'unmeritorious' fathers, e.g. rapists, and that the court rather than the unmarried mother should have the final decision on whether to exclude a father from parental rights. We also welcomed the recommendation that there should be a right to apply to the court for a declaration of parentage and that this should bind all who are made parties to—or have notice of—the proceedings,

but not other parties.

In view of the different legal consequences of illegitimacy in Scotland, our views were restricted to the position in England and Wales.

Duplicated copies of this memorandum are available at a cost of 20p.

Committee on Debt Counselling

This Committee, under the chairmanship of David Graham, Q.C., has held a number of meetings and is in the process of formulating its proposals. It has received valuable evidence from a representative of the Finance Houses Association, Prof. Gordon Borrie (Director of Fair Trading) and Mr. C. J. Blamire (Director of the Birmingham Money Advice Centre).

CRIMINAL JUSTICE

Decriminalisation

After many vicissitudes, this committee has at last been able to complete its work, and its report has just been approved and published under the title *Breaking the Rules*. It finds that, among the 21 member countries of the Council of Europe, there are only three which treat every single breach of every single regulation as a criminal offence: Eire, Malta and the UK. Every other national system described in the report makes some distinction, usually between crimes properly so called and one or more categories of breaches of mere regulations involving no moral turpitude.

The catalogue of criminal offences in the law of England and Wales is scattered through hundreds of statutes, statutory instruments and bye-laws. In the course of its work, the committee assembled over 7,200 offences and used a computer to record and classify them. There are probably far more than that, but no one knows how many, nor even where they can all be found. Over half of those collected by our committee need no criminal intent of any kind for their commission—yet all of them are prosecuted before criminal courts, and lead to criminal convictions and criminal records.

The report therefore makes the following recommendations:

(i) An appropriate government department should publish as soon as possible, and thereafter keep up to date, a complete list of all criminal offences known to the law (other than merely local ones), with all their relevant characteristics and a compendious index and cross-referencing system. Copies should be available for reference in public libraries, and for sale in Government Bookshops at an affordable price. Although this would be a substantial task, its cost could probably be much reduced through the use of computers.

(ii) The existing criminal statute book should be divided—progressively, if it cannot all be done at once—into two categories: crimes and contraventions.

(iii) The category of crimes should be confined to those offences about which reasonable people could credibly hold the view that the conduct concerned involves some real and deliberate moral turpitude.

(iv) The category of contraventions should not include any conduct requiring an intent of deliberate dishonesty, deliberate physical injury to others, or sexual gratification (of which we have found about 750 in our list). It should include many of the present offences which require no criminal intent of any kind (of which we have found about 3,750), and some of those which require only carelessness, omission, failure, or other kinds of intent involving no moral turpitude (of which we have found about 2,700).

(v) Thereafter, and subject to important safeguards, the enforcement of regulations and the imposition of penalties for contraventions could gradually be transferred to the public authorities charged with the relevant sectors of public conduct.

(vi) New kinds of penalty for contraventions could be designed in order to ensure greater conformity to Parliament's policies.

(vii) The imposition of any penalty by a public authority for a contravention should always be subject to judicial review, at the option of the alleged contravenor, by his local magistrates' court.

(viii) Apart from reversing the current trend of disrespect for the criminal law, the adoption of our recommendations should also save a great deal of time and public money, and could reduce the total annual number of criminal convictions by more than half.

The computerised files prepared for this report, and the programs for retrieving information from them, form a unique research tool which can now be made available to others.

The members of the committee were:
Paul Sieghart (Chairman), Sir William Addison JP**, Mrs. Mark Bonham-Carter JP, Chief Superintendent D. M. Carter, John Clitheroe, A. E. Cox*, Anthony Cripps QC, Lord Foot, Ralph Gibson QC*, Tom Harper, Mary Hayes JP, His Honour Gerald Hines QC, Prof. R. M. Jackson, B. J. Reason, Alec Samuels and Ronald Briggs (Secretary).

* resigned on appointment to judicial office
** resigned through pressure of other commitments

Royal Commission on Criminal Procedure

In April of this year we published, under the title *The Truth and the Courts*, five more memoranda of evidence which had been prepared by JUSTICE working parties and submitted to the Royal Commission. Like our earlier submissions on police powers and the prosecution process, they were designed to ensure that our criminal procedure should be a more effective instrument for establishing the truth than it is at present, and that within the framework of the accusatorial system all the available and relevant evidence about the crime and the accused's connection with it is brought to the knowledge of the jury and presented to it in its most trustworthy form. We believe that, if our proposals were adopted as a whole, fewer innocent persons would be convicted and fewer guilty persons acquitted because juries distrust the evidence put before them by the prosecution. The more important of our recommendations are set out below.

Pleas of Guilty and Changes of Plea

(a) All charges and summaries should contain sufficient particulars to indicate in clear language what are the essential elements of the charge, and the facts on which the prosecution will rely. This is already done in the majority of Road Traffic cases.

(b) Whenever it is practicable, the defendant or his solicitor should be provided with the statements made by prosecution witnesses in time for them to be studied before the defendant is required to make his plea.

(c) In all cases the prosecution should state its case briefly in open court after the charge has been put and before the defendant is asked to plea or make his election.

(d) When the defendant is not represented, it should be the duty of the Court to satisfy itself that the defendant understands the nature and extent of the charge and is aware of any defence to it.

(e) The defendant should be told that he must make his own free choice, and, after a plea of guilty, he should be specifically asked a question along the following lines:
'Are you pleading guilty entirely of your own choice and not because of any pressures to do so?'
If there is the slightest doubt, a plea of not guilty should be entered.

(f) A person who has pleaded guilty should be allowed to change his plea, provided there are reasonable grounds for believing that he had a valid defence and can satisfy the court that he pleaded in ignorance, or misunderstanding, or by reason of some circumstance which in truth vitiated his free decision or judgement.

(g) After a plea of guilty has been taken and accepted, there should be a more thorough investigation into the facts of the offence, and the part played by the accused, before sentence is passed. If the accused wishes to challenge the police account, he should be allowed to do so and both parties should be examined on oath.

Mutual Disclosure

(a) Subject to considerations of security, the prosecution should be under a statutory duty to disclose to the defence in good time all relevant statements taken from witnesses it does not propose to call.
(b) In addition to the existing 'Notice of Alibi' the defence should be required to give advance notice of defences of disputed identification, insanity, automatism and diminished responsibility.
(c) Greater use should be made of the provisions for admissions and pre-trial reviews.
(d) The Home Office instruction that the police should not interview alibi witnesses without giving the accused's solicitor an opportunity to be present should be more widely publicised and given statutory force, and the defence should have the right to interview prosecution witnesses after giving due notice to the police.

Evidence of Identification

The more important of the recommendations of the Devlin Committee should be given statutory force and the guidelines laid down by the Court of Appeal in *R. v Turnbull and others* more strictly enforced.

Evidence and Statements of Co-accused

(a) Statements (or parts thereof) made outside the Court by a defendant should be excluded or edited if the prejudicial effect against a co-defendant exceeds the probative effect against the maker of the statement.
(b) Such exclusion or editing should not prevent such statements being used in cross-examination of the maker if and when he gives evidence.
(c) If, contrary to our earlier recommendations, the right to make an unsworn statement from the dock is retained, a defendant should be given full opportunity to rebut and reply to allegations made against him by a co-defendant and, subject to the discretion of the judge, have the right to adduce evidence of the latter's propensity to the type of offence before the court.
(d) Co-defendants who may be required to give evidence for the prosecution or for the defence should be sentenced at the beginning of the trial.

Court Witnesses

The inherent power of the Court to call witnesses should be clarified and the following rules should be laid down:

(a) The Court should be able to call a witness on the application of a party or parties to the proceedings even if any other party objects thereto.
(b) The Court should be able to call a witness of its own volition.
(c) When a witness is called by the Court the following rules should apply:
    (i) All parties should have the right to cross-examine witnesses generally.
    (ii) If the witness is called upon the application of one party only, that party should cross-examine the witness first;
    (iii) otherwise the order of cross-examination should be determined by the Court.

The following members of JUSTICE working parties took part in the preparation of the above submissions:

Bramwell Bartlett, Richard Beddington, Patrick Bucknell, Anthony Burton, Christopher Critchlow, Stuart Elgrod, Jeremy Fordham, Andrew Geddes, Robert Hardy, Christopher Hordern, QC, David Howard, Richard Jenkins, Alan Levy, Gavin McKenzie, Barry Press, Alec Samuels, JP, Tom Sargant, Stephen Solley and Peter Weitzman, QC.

In February of this year Lord Gardiner, Patrick Bucknell, Gavin McKenzie and Tom Sargant gave oral evidence to the Commission in support of the JUSTICE recommendations on police powers and the prosecution process.

Copies of this report are obtainable from JUSTICE at £1.50 (members £1).

The Private Security Industry

During the year, the Home Office published a discussion paper raising the question whether some new form of regulation and control should be established over the private security industry, and invited our comments.

Yet more regulation than we already have can only be justified if the existing law is shown not to protect the public from known risks. The two main risks to which the discussion paper drew attention were, first, that 'private armies' might exercise special powers requiring special control; and, second, that those who held themselves out to prevent crime might themselves commit it or facilitate it.

But in fact, as the discussion paper itself showed, members of the private security industry have no greater legal powers than any other

ordinary citizens. Nor is there any evidence that more crime is committed within that industry than in other enterprises handling valuable goods or large sums of money. That being so, we concluded that no case was made out for any form of statutory regulation or control over this industry.

Copies of the memorandum are available at 20p.

Compensation for Wrongful Imprisonment

A committee has been set up under the chairmanship of Charles Wegg-Prosser to look into the existing provisions for compensation for wrongful imprisonment and to make recommendations.

Its members are Peter Danbury, Jeffrey Gordon, Ronald Greaves, Mrs. Carol Harlow, Gavin McKenzie, Andrew Martin, Q.C., Robert Rhodes, Dr. S. Saeed, Alec Samuels, Stephen Solley, Gregory Treverton-Jones, Christopher Wright, Nicholas Yell, and Miss Jacqueline Levene (Secretary).

Members who have had experience of submitting claims for compensation are asked to provide details of them.

Miscarriages of Justice

In recent Annual Reports we have been able to tell of the righting of a number of wrong convictions, either by the sponsoring of successful appeals or as the result of representations to the Home Office.

This year we have to report that, apart from one or two minor successes, our efforts have been largely in vain. We have found the Court of Appeal unresponsive to clear indications of innocence, particularly in cases where the quashing of a conviction would involve an admission of police malpractice, and that it is difficult to conduct a dialogue with the Home Office on equal terms and logical grounds so long as it can rely on police investigation and reports which are not made available to us and which we cannot therefore effectively challenge.

We have thus had to come increasingly to the view that, once a man has been convicted of a serious crime, however inadequate and contradictory the evidence may have been, all the gateways to freedom are firmly closed against him unless the trial judge has made a serious error in law or has gone a long way beyond the reasonable bounds of fairness in his summing-up. We have consistently maintained that authority should accept that it has a positive duty to provide effectively for the innumerable hazards inherent in our accusatorial system and that it should not place such blind faith in the verdict of a jury particularly if it has not heard all the available evidence.

In our evidence to the Royal Commission on Criminal Procedure we have described the more important of these hazards and recommended appropriate safeguards. The cases we cite in this Annual Report provide, in our view, compelling evidence of the need for them, and there are many other disturbing cases in our files.

Because of the above, we were greatly concerned by the former Lord Chief Justice's practice direction which warned appellants of the likelihood of their being ordered to lose time spent in prison pending appeal if they refused to accept a refusal of leave by the Single Judge, even if their grounds of appeal had been drafted by counsel.

As our Secretary pointed out in a letter to *The Times*, counsel vary greatly in competence and concern and in their knowledge of how to present an effective application. Not infrequently the appellant's main ground of complaint is that his real defence was never put to the jury either for tactical reasons or because his counsel had been given the papers only on the night before the trial. It is further our experience that refusal by a Single Judge does not necessarily mean that an application has no intrinsic merit. The cases of Hercules and King are examples of this.

We are fully aware of the difficulties and denials of justice caused by the present overloading of the appellate machinery and of the need to cut down the number of unmeritorious appeals, but is it right that a man who protests his innocence should be penalised and on occasion branded as impertinent for exercising his legal rights or that his counsel should be deterred from encouraging him, as is now happening?

As we have previously maintained, the fairest and most effective remedy lies in the willingness and ability of judges and trial lawyers, both prosecution and defence, to eradicate the irregularities and deficiencies which cause a convicted man to feel that he has not had a fair trial.

The greatest burden in the present situation lies on the Registrar and his staff, and we would like to pay warm tribute to their unfailing helpfulness and courtesy not only in cases assisted by JUSTICE, but whenever a meritorious appellant has been let down by his trial lawyers. We are confident that, if the Registrar was given the power to grant legal aid for counsel to argue an application before the Full Court, this power would be carefully exercised and the cause of justice would be well served.

Eric Abbott

Eric Abbott was found guilty of taking part in the hijacking of a lorry at a lay-by near Sevenoaks in the early hours of a Sunday morning, having been identified by two men who with good reason could be suspected of being accomplices. One was the driver who had made an

unexplained telephone call and was treated unusually well by the hijackers. The other was a young man to whose flat he was taken.

The driver described the man whom he later identified as Abbott as having a full beard and a round face with no distinguishing features, whereas Abbott has a flattened boxer's nose and according to at least six independent witnesses was clean shaven on the night of the hijacking. He and his brother were arrested on suspicion on the following Wednesday. In the corridor of Sevenoaks Police Station they encountered the driver, who later told the police that he thought Abbott was the man with the full beard despite the fact that he was then clean shaven. There was in fact good reason to believe that he had indicated the brother who was later released.

Abbott was then put on an identification parade and the driver picked him out. Evidence to this effect was given at the trial without any adverse comment by the judge. Two weeks after the hijacking, the owner of the flat said in a statement to the police that he had had drinks in a pub with Abbott and recognised him as one of the men who had brought the driver to his flat.

Among the statements served at the committal proceedings was a statement from a police officer in the Flying Squad who said that on the Monday after the hijacking he had seen Abbott in the street and that he had a full beard, but for reasons best known to the prosecution, and without any explanation, this was superseded shortly before the trial by a notice of additional evidence in precisely the same terms but giving the date of the sighting as the Monday before the hijacking.

Abbott's counsel advised him that, if he challenged the honesty of this statement, he ran the risk of having a previous conviction disclosed and that it would do no harm to admit that he had a beard on the Monday before the hijacking. Despite Abbott's protest, his counsel made the admission and the Inspector's statement was read without challenge. This turned out to be a fatal mistake. Apart from his wife and brother, Abbott had six alibi witnesses who verified that they had been drinking with him in a public house that night until 11 p.m. and had stood outside talking until 12.30 a.m., when, because he was so drunk, one of them had sent him home in a minicab. They all said that he had no beard and when prosecuting counsel asked them when they had last seen him with a beard they all said that they could not remember. Then when the judge summed up the evidence he effectively destroyed their credibility by reminding the jury six times that Abbott had admitted having a beard on the previous Monday. He further added that their evidence did not help Abbott over timing, as he could still have got to Sevenoaks by 6 a.m. This was in spite of the evidence of one of the hijackers who had pleaded guilty and had told

the jury that Abbott had nothing to do with the hijacking, that the third man was called Harry and that all the men involved had been in the area between the Surrey Docks and Sevenoaks from 10.30 p.m. onwards.

Abbott was found guilty and given five years' imprisonment. Two counsel advised him that he had no grounds for appeal and his wife eventually sought the help of JUSTICE. Extensive grounds of appeal were prepared and submitted. They included valid criticisms of the identification proceedings and the way in which the judge had dealt with them, a number of serious mis-directions, and a full explanation of how the mistaken admission came to be made. The Single Judge refused leave to appeal and counsel who had helped in drafting the grounds readily offered to take the application to the Full Court. In the meantime, Abbott's wife and brother had provided a statement to the effect that the Inspector who had given evidence about the beard had told them that he might well have been mistaken, and the prosecuting solicitor had confirmed in a letter that the two prosecuting witnesses both had convictions for dishonesty.

It was feared that the admission would be a difficult obstacle to overcome but, as there were clear indications of a miscarriage of justice, it was hoped that the Court would think it right to quash the conviction. This hope was not realized. The Court brushed aside all the matters in Abbott's favour and ruled that the admission constituted binding evidence in law and could not be withdrawn. The jury were consequently entitled to doubt the credibility of the alibi witnesses and to convict.

Martin Foran

In June 1978, Martin Foran, an Irishman who lived in Birmingham, was found guilty of an aggravated robbery and two burglaries and given three concurrent sentences of ten years. He was arrested in October, 1977 on a minor charge of which he was later acquitted, but while being questioned, he was alleged to have made a detailed confession to having taken part in the robbery of a jeweller's shop owned by a Mr. Rice and to have named a West Indian accomplice named Campbell. He did not claim that the confession had been extracted from him by force, but that he had never made it.

Foran was kept in custody until April 1978, when Campbell was arrested and pleaded guilty to a series of burglaries. On being told that Foran had put him in the Rice robbery Campbell agreed to make a statement implicating Foran in two of the burglaries he had committed. Armed with this statement, which in its accounts of the offences differed substantially from those given by prosecution witnesses, police officers visited Foran in prison, read the statement to

him against his will and gave evidence at the trial that he assented to it. Campbell did not give evidence, but its contents were impressed on the jury.

Out of seven witnesses to the Rice robbery only one had picked out Foran on the identity parade. He has two or three moles on his face, of which the largest is the diameter of a cigarette. The witness who picked him out had said it was the size of a 10p piece, which the prosecution overcame by suggesting that Foran could have treated it. A police officer gave unsupported evidence that Mr. Rice's daughter, who had picked out another man on the identity parade had previously picked out Foran's photograph, but admitted that his was the only photograph of a man with a mole because he knew Foran was guilty. Despite these defects, the judge invited the jury to accept the evidence of identification as corrobation of the confession. Foran's defence was an alibi which was not shaken in any important particular.

The victim of the first burglary (a Mr. Apechis) had given a description of the white man which, as the judge remarked early in his summing-up, bore little resemblance to Foran. The victim of the second (a Mr. Trikam) said that the white man's face had been covered, but he had grappled with him and had described a man much smaller than Foran.

To Foran's surprise, the prosecution did not call either of these witnesses and, although they had been fully bound, his counsel allowed their statements to be read without comment. Mr Apechis was not even in court, having been told by the police that there was no need to come because Foran had confessed. As it later turned out, they would both have said categorically that Foran was not the white man who burgled their houses.

Foran was found guilty on all three counts and his leading counsel advised him that he had no grounds of appeal. He consulted two new firms of solicitors with similar results and eventually sought help from JUSTICE. The case was a complicated one but grounds of appeal were eventually drafted, and later perfected by an experienced counsel who offered to argue the application before the Full Court. Having been shown a photograph of Foran, Mr. Apechis provided a statement to the effect that Mr. Foran was not the man who broke into his house. Statements were also obtained from two prisoners saying that Campbell had told them that he had falsely given Foran's name for the two burglaries at the instigation of the police.

Before the hearing, the presiding judge directed that Foran should be brought to Court, that the prosecution should be represented and that a witness order be issued for Mr. Apechis. This was an encouraging sign. Shortly before the hearing Mr. Trikam provided a

statement to the effect that he knew Foran very well and that he was not the man who robbed him. Both these witnesses travelled to London at considerable inconvenience and financial loss.

Contrary to expectation, the Court was wholly unreceptive. After an argument which lasted the whole morning, it refused to give leave and to hear the two witnesses on the grounds that, although the prosecution did not call them, the defence could have done so. In the afternoon, however, Mr. Apechis was asked to come into court and to look at Foran in the dock. The presiding judge asked him, 'Is that the man who robbed you?' and he replied, 'No Sir, definitely not.' He was then led out.

After further submissions by counsel, and without calling on the prosecution, the Court retired and on returning gave judgement dismissing all the applications. The reason it gave was that it come to the conclusion that this was not an identification case but a confessions case. The judge had clearly directed the jury that, if they believed the confessions, they could convict. Mr. Apechis and Mr. Trikam went back to Birmingham in indignation and with a badly shaken opinion of English justice.

William J. Smyth

William James Smyth was convicted on 2nd December 1976 at Maidstone Crown Court of aggravated burglary, grievous bodily harm and robbery and sentenced to ten years' imprisonment. His co-accused, Leslie Rayfield, who had pleaded guilty before Smyth's trial and been sentenced to nine years' imprisonment, was the main witness for the prosecution. He named Smyth as his accomplice and attributed to him most of the violence.

The prosecution case was that the two men had entered the house of a Mr. Rampling, brutally assaulted him and robbed him of £30. They had been seen leaving Mr. Rampling's house together. Smyth's defence was that Rayfield's accomplice was a man called Jock McKenzie who had made off when Smyth passed Mr. Rampling's house on his way home and was asked by Rayfield to come and help him stop McKenzie beating up Mr. Rampling. He alleged that Rayfield had named him to protect McKenzie. Although there was substantial evidence that McKenzie existed, the police said they could not trace him. Rayfield admitted at the trial that he had tried to smuggle out of prison three letters to potential witnesses asking them to support his story and that he had done this to 'stitch up' Smyth.

Smyth was not well defended and this was reflected in the summing up and in the grounds of appeal drafted by his counsel. His application for leave to appeal was refused by the Single Judge and on 10th March, 1977 he asked the Registrar to delay the listing of his

application to the Full Court until he could get it properly prepared and presented. He set to work making enquiries about new witnesses and drafted some 50 pages of submissions and explanations. On 18th May he posted a large parcel of papers to JUSTICE asking for help in drafting his final grounds of appeal. Three days later the Secretary telephoned the Registrar saying that he would need time to deal with the case, only to be told that the application had been dismissed by the Full Court on 19th May.

The reason given by the Registrar in a subsequent letter was that there was an unexpected gap in the list for that day and Smyth's case had been inserted into it. A notification had been sent to the discipline office at Wandsworth but Smyth had been moved to Parkhurst and never received it. As it is accepted practice to set a time limit some weeks ahead, the Registrar was asked if the hearing could be re-listed but he replied that the only way that the case could come back to the Court was through the Home Office.

Smyth then asked for an investigation into the conduct of his case. After a long delay he was informed by the Chief Constable that the Director of Public Prosecutions had cautioned two witnesses in respect of their roles at his trial and did not propose to charge the third because he was already serving a long prison sentence. Smyth was not however told whether the findings of the investigation helped him in any way.

At this point a solicitor member of JUSTICE in Newport was asked to help. He obtained a legal aid certificate and made further enquiries about Smyth's alibi. With the help of the Secretary he compiled a fully detailed 10-page analysis of every aspect of the case, including 12 omissions or misdirections in the summing-up which would form cogent grounds of appeal if the case was referred back to the Court of Appeal. This was submitted to the Home Office without result.

Smyth finally asked his M.P., Mr. John Cartwright, to intervene on his behalf. Eventually, in February of this year, Mr Leon Brittan gave Mr. Cartwright and the Secretary a personal interview. After a long discussion he said that the point which impressed him most was the denial of Smyth's right of appeal to the Full Court and that he would consider the possibility of referring the case back to the Court on that basis.

At the end of May, he informed Mr. Cartwright that he had decided against this course, but had asked the Registrar to ask the Court if it would agree to have Smyth's application relisted and to take into account such new material as had become available. In the meantime Smyth has served three and a half years of his ten-year sentence.

Tracey Hercules

At the Central Criminal Court, on 11th October 1978, Tracey

Hercules was convicted of malicious wounding occasioning grievous bodily harm and sentenced to life imprisonment. The victim, a Mr. McDowell, received wounds requiring 90 stitches and has suffered permanent injury.

The wounding took place in the course of a fight between two coloured men and a number of white men who were waiting in a taxi queue. Both coloured men made off. Hercules had been in trouble with the police and they were watching his house when he returned home. The other man, whom he knew only as Bill, was never traced.

There was a conflict of evidence as to the cause of the fight, but all six prosecution witnesses agreed that one of the coloured men had attacked McDowell with a cutlass and that the other man had remained passive. The issue therefore was whether the man with the cutlass was Hercules or Bill.

The descriptions given of the two men were somewhat confused but on balance they pointed to Bill. Furthermore, all six witnesses said that the man with the cutlass was wearing a light coat and the other man a dark coat. Hercules, when arrested, was wearing his wife's black fur coat and had had no reasonable chance to change into it.

No identity parades were held, and when Mr. McDowell went into the witness box he pointed to Hercules and said, 'That is the man who attacked me'. Defence counsel should have intervened and asked the judge to stop the trial, but he failed to do so, and it fell to prosecuting counsel to voice his concern. After a discussion in the absence of the jury, it was agreed that they should be given an appropriate warning, but in the outcome Mr. McDowell was invited to return to the box and confirmed his identification. The judge later gave a quite inadequate warning and there is no doubt that this dock identification influenced the jury's verdict.

On grounds drafted by his counsel Hercules applied for leave to appeal against conviction and sentence but both applications were refused by the Single Judge. He wrote to JUSTICE and a new counsel settled extensive grounds of appeal and offered to argue the application before the Full Court. He expected to obtain leave without difficulty, but the Court refused it, saying that all the points canvassed had been decided by the jury and that the dock identification did not necessarily require the judge to stop the trial. In the view of the court there was no lurking doubt.

The Court did however allow the appeal against the life sentence and, on the grounds that the medical report did not meet the requirements laid down by Lord Widgery for life sentences in cases other than murder, reduced it to seven years.

Stephen King

Stephen King was convicted at the Inner London Crown Court on

April 14th 1978 of the burglary of a vicarage and sentenced to 18 months imprisonment, on the evidence of a disputed verbal admission made during an interview in a police station outside normal solicitors' office hours. King claimed that during this interview he had twice been refused permission to telephone a solicitor, whose name, address and telephone number he had supplied to the police. D. C. Martin, however, the police officer supervising the interview, denied that these requests had been made but said that he would have given his permission, if asked. He admitted though that he had not at any stage indicated to King that he might telephone a solicitor.

At the trial, his counsel forcefully argued that the interview had been conducted in breach of paragraph 7 of Appendix B to the Judges Rules (Home Office Circular 31/1964) and should be excluded. This paragraph states that a person in custody should be allowed to telephone his solicitor or a friend, provided no hindrance is reasonably likely to be caused to the processes of investigation, and that persons in custody should be informed orally of the rights and facilities available to them. The trial judge rejected this argument, ruling that the paragraph placed no obligation on a police officer, before questioning a person in custody, to inform him that he might speak to a solicitor on the telephone before answering questions, where that person had not first raised the matter with the officer.

King's counsel applied for leave to appeal on the ground that this ruling was wrong in law in that it effectively nullified what limited value that paragraph had in controlling the interrogation of suspects. His second major ground was that the judge made so many interventions while King was giving evidence in chief that he cut the ground from under counsel's feet and entered so fully into the arena that King could not have had a fair trial. The transcript revealed that while his counsel asked King 120 questions the judge intervened with comments and questions 197 times.

The Single Judge refused leave to appeal on both grounds. King approached JUSTICE for help and trial counsel willingly agreed to argue the application before the Full Court *pro deo*. At this hearing the Court upheld the trial judge's ruling on the Home Office circular, commenting that as the Administrative Directions had been appended to the Judges Rules without consultation with the judges who formulated them it was doubtful if courts had any discretion to exclude evidence obtained in breach of them, as was the case with the Judges Rules themselves. Leave was however granted in respect of the judge's interventions and at the subsequent hearing King's conviction was quashed and he was immediately released. A full report on the Administrative Directions point can be found at 1980 Criminal Law Review p. 40. The significance of this comparatively minor case is that

King would have remained in prison if he had heeded the recent practice direction of the Lord Chief Justice, and counsel had not agreed to press the application to the Full Court.

Mohinder Singh Sidhu

On 9th December, 1979, Mohinder Singh Sidhu and his nephew Ravinder Singh were found guilty of the murder of Lember Singh in the course of an affray in Plumstead, Kent. They will hereinafter be referred to as Mohinder, Ravinder and Lember.

Mohinder's account of the matter, from which he never deviated, was that he and his nephew had been out drinking. On coming out of an off-licence Ravinder had seen Lember on the other side of the road and went over to him. They were old enemies and started to fight. Mohinder went across to separate them and as Ravinder ran off, Lember grabbed him. He managed to disengage, went to his car and drove home.

Lember later collapsed. He was found to have been stabbed five times and he died shortly after he reached hospital. Witnesses who saw the last stage of the fight took the number of Mohinder's car. On reaching home he had noticed blood on his coat and when the police arrived he pretended not to be at home and, they alleged, had hidden his clothes in the loft. On being taken to the police station for questioning, he told them what had happened and denied any knowledge of a knife having been used in the fight.

Ravinder, for his part, had made for his uncle's house and told his aunt that he was in trouble. She did not want him to stay as he was an illegal immigrant, so he then went to the house of Mohinder's father who put him to sleep on the sofa. In the morning, having found that Lember had died, he went to the house of Jugtor Singh, a friend of his uncle who told him to give himself up and plead that he was very drunk and stabbed Lember in self-defence. He telephoned the police and before they arrived Ravinder telephoned a friend in Birmingham, Balbir Singh Bains, told him the full story and was given the same advice. He signed a full confession which ascribed no blame to his uncle. The prosecution nevertheless took the view that the killing was a joint enterprise and charged them both with murder.

It was agreed and fully expected that Ravinder would give evidence at the trial in accordance with his confession, and as there was no conflict, both men had the same solicitors. But on the day before the commital proceedings, a legal aid form was left at Brixton prison for Ravinder to sign and, without warning, another solicitor and counsel appeared to represent him. From there onwards Ravinder's attitude to Mohinder changed. There were hints that he was going to change his line of defence, but Mohinder's counsel was not informed or consulted.

At the trial, after the prosecution had closed its case and Mohinder had given his evidence, Ravinder went into the witness box and to Mohinder's dismay completely reversed his story, saying that his uncle had attacked Lember and that he had gone to the rescue. He went on to claim that he had confessed to the killing under pressure from members of the family in order to protect his uncle.

Mohinder was powerless to rebut this accusation. Balbir Singh Bains had attended the first four days of the trial but had not expected he would be wanted and gone off on a previously planned trip to India. The owner of the off-licence, a fully bound prosecution witness whose evidence at the committal proceedings had supported Mohinder's story, had been allowed to go abroad (where he later died) and the judge would not allow his statement to be read. Ravinder's counsel became in effect a second counsel for the prosecution. In the outcome Ravinder's tactics availed him nothing and both men were found guilty.

Mohinder's appeal was inadequately presented, being based mainly on a request to call two prisoners to whom Ravinder had confessed while awaiting trial, and the witness who had gone off to India. The Court refused to hear the two prisoners because of their convictions and Balbir Singh Bains because he could have given evidence at the trial and should not have gone to India. This refusal took no account of the last-minute change in Ravinder's story which could not reasonably have been foreseen.

After his appeal was dismissed, Mohinder approached JUSTICE, and from information obtained it appeared highly probable that Ravinder's change of solicitor and story had been engineered by a cousin from India. Mohinder's wife was asked to provide the names and addresses of all the two men's relatives and friends who had visited them in Brixton. Letters or statements were obtained from twelve of them saying that Ravinder had consistently exonerated his uncle. More importantly, one of them, a Mr. Dhesi, gave a detailed account of the conspiracy which led up to the change of story.

With the full support of the Chairman, our Secretary submitted representations to the Home Office asking for the case to be referred back to the Court of Appeal so that the new witnesses could be heard and the element of surprise properly taken into account. The response was wholly negative and has remained so despite further repeated representations. The new witnesses were disposed of by the argument that they contributed nothing new to what was already known despite the fact that Ravinder had not told any of them that he had confessed to protect his uncle.

The question of a possible conspiracy was then pressed. The Commissioner for the Metropolitan Police was asked to investigate

and reported that he could find no evidence to support the allegation. Much of the information had been obtained in the first place from Mohinder's junior counsel, but the Commissioner reported that when he was interviewed he had denied giving our Secretary any information about a conspiracy. When asked about this report, counsel said it was not true and further that he had given the interviewing officer full information about the activities of the key figure in the affair, who it later transpired, had not been questioned. Mr. Dhesi confirmed that he had given the interviewing officer precisely the same account of the matter as he had given to JUSTICE.

Ways and means are still being sought to secure Mohinder's release but there is little hope of success. The difficulties have undoubtedly been increased by the fact that there have been two changes of Minister in the period covered by the representations.

Old Cases Still Unresolved

Robert Kennedy

As described in two previous Annual Reports, Robert Kennedy was found guilty of wounding a police officer and sentenced to 10 years imprisonment on the sole evidence of P.C. Menary, who said that, when he saw Kennedy and another man called Mott being loaded into a police van after an affray in a club, he recognised him as the man who had attacked and wounded his colleague inside the club. He further said that the loading of the two coincided with the arrival of an ambulance to take his colleague to hospital.

After the trial, evidence was obtained that the ambulance arrived outside the club at about 12.30 a.m. whereas Kennedy and Mott had been arrested at 12.15 a.m. and were in Harrow Road Police Station by 12.20 a.m. The Court of Appeal refused leave to appeal on the grounds that ambulance and police station clocks were not necessarily reliable, and that no evidence had been produced to show that two other men were loaded into a police van at 12.30 a.m. It also took no account of police evidence that Kennedy and Mott had been loaded after a violent struggle with them and their wives, whereas P.C. Menary had observed a peaceful loading.

All this happened in 1977, and we have been trying ever since by direct approaches to the Commissioner of Police and the Director of Public Prosecutions to obtain confirmation that there were two other men arrested that night and the statement (not served on the defence) describing the events in the police station which resulted in Kennedy being charged. After a long interval we were told that there was no evidence of two other men being arrested but as yet we have received no explanation of P.C. Menary's unsatisfactory sighting and how it led to the charging of Kennedy. The D.P.P. had taken over the

prosecution from the Metropolitan Police and there are indications that neither authority has wanted to take responsibility or to involve the other.

This is a disturbing situation which could have been resolved one way or the other in 24 hours by an independent lawyer with full powers of investigation.

George Naylor

This is the case of the Bradford man who in 1976 was convicted of a particularly brutal rape of an elderly lady who lived in the flat below him and sentenced to 15 years imprisonment.

The outstanding feature of it was that Detective Inspector Senior, who was in charge of the case, admitted to the Court of Appeal that he had suppressed the victim's original description of her assailant which in four respects clearly pointed away from Naylor, substituted for it a new statement which pointed towards him and, at the trial, had denied any knowledge of the first statement although he had it in his pocket at the time. He had further discarded an opinion of an independent odontological expert from Leeds University that some bite marks on the victim could not be attributed to Naylor and substituted for it the evidence of the police surgeon that he strongly suspected that they could.

Despite these two admitted material irregularities, the Court of Appeal had declined to quash Naylor's conviction because of forensic evidence which in its view was incompatible with his innocence. It nevertheless ordered an enquiry into Det. Insp. Senior's conduct of the case.

In due course, Naylor's solicitor received a brief note from the Chief Constable of West Yorkshire to the effect that he had found it necessary only to give Det. Insp. Senior an appropriate warning. The Police Act 1964 requires the Chief Constable to send the report of any such police investigation to the D.P.P. unless he is satisfied that there is no evidence of criminal offence. In the light of this, representations were made to the Home Office which, in its turn, said that it accepted the Chief Constable's assurance that he had found no evidence of a criminal offence.

In an attempt to bring the matter to a head, JUSTICE then sent all the main documents in the case to the D.P.P., asking him if he would require the Chief Constable to send him the full report of his investigations. Technically he had no power to do so, but he complied with our request and ordered a full independent investigation into every aspect of the case, including the question of Naylor's guilt or innocence. Midway in his investigations, the Chief Superintendent visited the offices of JUSTICE to discuss the case and was given the whole file of Naylor's letters. Our Secretary however gained the impression that,

although he was examining the forensic evidence very thoroughly, he had made up his mind that Naylor was guilty before interviewing either him or Det. Inspector Senior.

The Police Act requires that a complainant should be interviewed on receipt of a complaint. Naylor had complained three times but had never been interviewed and, when the Chief Superintendent finally went to see him, the interview was of a very perfunctory nature and mainly devoted to taking another cast of his teeth. In due course, the D.P.P. advised JUSTICE that he had found no evidence to justify taking criminal proceedings against Det. Insp. Senior.

As a Council of experienced lawyers we are unable either to understand or accept this decision. A Police Officer can hardly commit a more serious criminal offence than that which Det. Insp. Senior had admitted to three judges in the Court of Appeal, namely that he had suppressed a vital witness statement and given false evidence at the trial.

Sydney Draper and Stephen Doran

Draper and Doran are two Englishmen who were found guilty of murder by reason of having taken part in an armed wage snatch at an engineering works in Glasgow, in the course of which a watchman was fatally wounded. They were ordered to serve minimum sentences of 25 and 20 years respectively.

As recounted in full in last year's Annual Report they both agreed that they had been invited to take part in the robbery but claimed they had withdrawn when they learned that guns were to be used. They both had substantial and credit-worthy alibis and, when put on identity parades for over sixty witnesses to various stages of the robbery, neither of them was picked out as having been in Glasgow at the time.

The organiser of the robbery was a Scotsman called Marley who was the first man to be arrested. He admitted his guilt and, in a long statement to the police, named Draper and Doran. There was however good reason to believe that he had done this to protect two close friends who had taken part in the robbery. These two men were subsequently picked out by 10 and 8 witnesses respectively. They were arrested and charged with conspiracy but for some unexplained reason they were later released. Marley did not give evidence at the trial but his statement was heavily relied upon to secure the conviction of Draper and Doran and he was given a minimum sentence of only 18 years.

It was an essential part of the prosecution case that the four men who entered the works yard were all English whereas four witnesses said that one of the men spoke with a strong Glasgow accent. On the morning of the robbery there had been fog at Glasgow Airport, and

exhaustive enquiries showed that, according to the prosecution evidence, Draper could not have got to London by the time he was seen there by independent witnesses. Before Doran approached JUSTICE, two members of the gang had made statements clearing Draper.

After the evidence of alibi witnesses had been checked, and two new witnesses interviewed, a complete dossier was sent to the Scottish Office, and a Procurator Fiscal from Edinburgh and a Chief Superintendent from Glasgow were asked to carry out a complete investigation. On the strength of their report, the Advocate General found no reason to take any action. We asked for a reasoned explanation of the decision and the Secretary and Ainslie Nairn, who represents Scotland on the Council of JUSTICE, were courteously invited to meet the investigating officials and discuss their findings.

It soon became apparent however that they were severely handicapped because, although the Procurator Fiscal, Mr. Annan, was very frank on some aspects of the case, he was unable to disclose the contents or the authors of the statements which had led him and his colleagues to the conclusion that both Draper and Doran were guilty as charged. The other disturbing aspect of the interview, as reported to the Council, was the way in which all the questions raised in our submissions appeared to have been resolved against Draper and Doran.

Thus, it was suggested that even in the heat of the battle one of them could have simulated a Glasgow accent. Draper could have got to London by midday, but how he could have done so had not been established. The picking out of the two other men by a number of witnesses did not necessarily mean they took part in the robbery, although it was agreed that one of them had been identified as a man seen carrying a box of money into an accomplice's flat. Sand found on this man's shoes could have come from the getaway van, or been planted, or picked up at work, and the third explanation had been accepted. The alibi witnesses had been interviewed again and were thought to be unreliable. Finally, no explanation was available as to why the charges against the other two men had been dropped.

Further enquiries have disclosed that a vital and convincing new alibi witness for Doran, who had moved but could easily have been traced, had not been interviewed and further representations are being made.

Anthony Stock

In 1970 Anthony Stock was convicted of robbing a supermarket in Leeds and sentenced to ten years imprisonment.

The evidence against him was provided by a Det. Sgt. Mather who had prosecuted Stock on a previous occasion without success. He brought the store manager to Stock's house for a doorstep identifica-

tion, described his reaction as one of panic, and attributed to him a verbal admission when, unaccompanied by any other officer, he took a cup of tea to Stock in his cell.

Shortly after Stock's appeal was dismissed, Det. Sgt. Mather was charged with two offences of corruption, but was acquitted. He was later charged with six disciplinary offences including ones for dishonesty, but was cleared of them by the Chief Constable of a neighbouring force.

Unsuccessful representations were made to the Home Office by JUSTICE and Stock's solicitors took his case to the European Commission of Human Rights with the same result. Stock served six years of his sentence, gave up the fight, and started a successful business.

In November of last year, at Maidstone Crown Court, a man named Benenfield pleaded guilty to a number of offences and asked for the Leeds supermarket robbery to be taken into consideration. The police must have known about this well before his appearance in court, but Stock was not informed. The matter only came to light because an Evening News reporter passed the information to the Yorkshire Post which recalled our interest in the case. Fortunately we had in our files a letter from Stock's mother and through this he was traced.

On 9th November last, his solicitors wrote to the Home Office asking if Stock could be given a free pardon and compensation for the six years he had spent in prison. The West Yorkshire police were asked to make enquiries and these have still not been completed.

In the light of the above, we feel justified in asking how many other examples there may be of super-grasses admitting to robberies of which other men have claimed they were wrongly convicted and whether anyone has been charged with the duty of bringing them to light and having them re-investigated.

HONG KONG BRANCH

We are glad to be able to report that the Hong Kong Branch of JUSTICE has continued to do useful work in a number of fields.

Its representations to the Attorney General and UMELCO* helped to obtain improvements to the Public Order Ordinance and it has voiced its concern, which is shared by the Magistrates Association, over a Section which lays down compulsory alternatives of six months imprisonment or corporal punishment.

The report of a sub-committee on the question of imprisonment of civil debtors has been submitted to Government and another sub-committee has just completed a report on interrogation procedures and the application of the Judges' Rules in Hong Kong.

In the course of the year the Branch entertained the Chief Justice and Attorney General to dinner and had useful informal discussions with them on these and other matters.

A matter of considerable concern to the Branch has been the way in which the position of persons born in Hong Kong will be affected by any new British Nationality legislation. It arranged for the Secretary of the Joint Council for the Welfare of Immigrants to the U.K. to talk to UMELCO about the proposed legislation and a member of the Branch has recently visited London to discuss the problem with JUSTICE and other interested bodies.

In the autumn of last year Mr. Hin Lee Wong, a Council member, attended a trial in Korea on behalf of the ICJ.

*Unofficial Members of the Executive and Legislative Councils.

INTERNATIONAL COMMISSION OF JURISTS

The ICJ has once again had a most successful year, and its standing and influence have never been higher.

It contributes increasingly to the work of the UN human rights institutions. The seminar which it organised last year in Bogotà on 'Human Rights in the Rural Areas of the Andean Region' made a substantial impact, and may be followed by the creation of a new human rights institution for that region. The Dakar Seminar in the previous year has been followed up by special missions to francophone African Heads of State. Later this year, the ICJ will be sponsoring its fifth regional seminar in this series, this time on 'Human Rights in Islam' at the University of Kuwait.

The report of an observer mission to Guatemala, drawing attention to the 'large area of institutionalised exploitation and injustice' there, attracted a good deal of attention, as did the report of the ICJ observer at the trial of ex-President Macias of Equatorial Guinea.

The 1978 London Seminar on the role of human rights in foreign policy was followed last year by similar important seminars in The Hague and in Bonn.

The Centre for the Independence of Judges and Lawyers has conducted and published a special study on the persecution of lawyers and their clients in South Korea, as well as continuing its study and documentation of similar persecutions in other countries—notably Argentina, Czechoslovakia, Guatemala and now Iran.

In addition, the ICJ has been represented at numerous conferences and seminars, and has continued its many interventions on human rights matters with governments of all complexions.

All this has been achieved by its indefatigable Secretary-General, Niall MacDermott, and his small but devoted staff, under the guidance of its Executive Committee, chaired by William J. Butler of New

York. This meets twice a year in Geneva and JUSTICE is represented on it by Paul Sieghart, who attends as alternate for Lord Gardiner, the Commission member from the UK.

GENERAL INFORMATION AND ACTIVITIES

Membership and Finance

The membership figures are virtually unchanged from this time last year. The enrolment of 100 new members has been offset by a similar loss through deaths, resignations, and removals. The approximate membership figures at 1st June were:

	Individual	Corporate
Judicial	64	
Barristers	510	2
Solicitors	516	47
Teachers of Law	157	
Magistrates	37	
Students (incl. pupillages and articles)	99	
Associate Members	121	12
Legal Societies and Libraries		35
Overseas (incl. Hong Kong Branch)	98	27
Total	1602	123

These figures include about 75 members who have as yet failed to pay subscriptions due last October. We earnestly hope that many of these will want to continue their membership when they receive this Annual Report.

The response to the Hon. Treasurer's appeal to members to effect voluntary increases in their subscriptions has justified the Council's faith in their goodwill. Well over one third of those who could reasonably have been expected to increase their subscriptions have done so, many of them by generous covenants to the JUSTICE Educational and Research Trust. The outcome of the appeal to date is that subscriptions to JUSTICE have increased by about £2000, and to the Trust by about £1000. Because of this and the proceeds of the Hurlingham Ball, the JUSTICE income and expenditure account shows a surplus of £700.

This, however, is not to be taken as a guide for the present year in which we have to face further increases in all costs and expenses, while the proceeds from the proposed violin recital will be considerably less than those from last year's Ball. We hope therefore that, when subscription notices are sent out in October, a further substantial number of members will answer the call.

JUSTICE Educational and Research Trust

The Trust receives covenanted subscriptions from members and friends of JUSTICE and grants for special projects and general research. Its income covers the salary of a Legal Secretary, a proportion of the rent and administrative overheads, and expenses of research committees.

During the past twelve months it has received donations of £1000 from the Max Rayne Foundation and £500 respectively from the William Goodhart Charitable Trust, Mr. and Mrs. Jack Pye's Charitable Trust, and Mr. Cyril Shack. It has further received, through the International Commission of Jurists, a grant of £4000 from a fund set up by the European Economic Community for international research projects covering various aspects of human rights.

Members of JUSTICE are invited to enter into covenants, either as an alternative or in addition to their ordinary subscription, and they can give valuable help by drawing the work of the Society to the attention of those who can influence the allocation of charitable funds. Under the concessions recently announced by the Chancellor of the Exchequer, covenantors can claim relief against higher-rate tax and the minimum period has been reduced to four years. The total obligation under a covenant can also be discharged by a single advance payment. Appropriate forms will be sent to members on request.

The Council

At the Annual Meeting in June, 1979, Lord Foot, Peter Carter-Ruck, Charles Wegg-Prosser, David Widdicombe and Lord Wigoder retired under the three-year rule, and were re-elected. Norman Marsh QC, a former member of the council, was elected to the vacancy created by the death of Michael Bryceson.

In the course of the year, Peter Danks, Stuart Elgrod, Jeffrey Thomas and William Wells resigned. Lord Elwyn-Jones, Sam Silkin QC, MP and Peter Archer QC, MP were invited to rejoin the Council on relinquishing their ministerial appointments. Invitations to be co-opted have been accepted by Ivan Lawrence, MP, Diana Cornforth and Gavin McKenzie.

Officers

At the October meeting of the Council the following officers were appointed:

Chairman of Council	Sir John Foster
Vice-Chairman	Lord Foot
Chairman of Executive Committee	Paul Sieghart
Vice-Chairman	William Goodhart
Hon. Treasurer	Philip English

Executive Committee

The Executive Committee has consisted of the officers, together with Peter Archer, Edward Gardner, Roy Goode, David Graham, Muir Hunter, Philip Kimber, Blanche Lucas, Edward Lyons, Norman Marsh, Michael Sherrard, Laurence Shurman, Charles Wegg-Prosser and David Widdicombe. Alec Samuels, our Director of Research, is an ex-officio member.

Finance and Membership Committee

This committee has consisted of Philip English (Chairman), Paul Sieghart, William Goodhart, David Graham, Blanche Lucas, Andrew Martin and Laurence Shurman.

Annual General Meeting

The Annual General Meeting was held in the Old Hall, Lincoln's Inn on 25th June, 1979. Sir John Foster presided and in presenting the Annual Report paid a warm tribute to the services rendered to the society by the late Michael Bryceson as a founder member of the Council and later as Honorary Treasurer and Chairman of the Finance Committee. On behalf of the members he welcomed the appointment of Philip English to these two offices.

In presenting the Annual Accounts, Philip English drew attention to the deficit of £400 on the income and expenditure account, which would have been much larger if JUSTICE had had to bear the full costs of its accommodation.

The present income from subscriptions had recently become quite inadequate to cover increasing costs and the Council had been faced with the choice of either doubling present subscription rates, which were last fixed in 1974, or of relying on the goodwill of its members, and inviting those who were in a position to do so to effect a voluntary increase in their subscriptions or in their covenants to the JUSTICE Educational and Research Trust on a graduated scale. It had decided on the latter course mainly because it was anxious to attract new members and not to lose the support of those who were unwilling or unable to pay a higher rate. This decision was welcomed by the meeting and the Annual Report and Annual Accounts were approved.

After the elections to the Council (already mentioned) the Chairman announced the intention to set up a committee to look into the problem of compensation for wrongful imprisonment arising from miscarriages of justice and this gave rise to a general and stimulating discussion on the inadequacy of Home Office procedures for remedying wrong convictions when new evidence was presented to it, and of existing provisions for compensation.

Lord Scarman's Address

Lord Scarman gave an address on the role of the judge in public life. He began by explaining that although it was a characteristic of the British judge to work under public scrutiny, he traditionally remained silent on public matters outside his court and professional life. As a result of his traditional character, the judge tended to live in a legal cloister in which he acquired his standards and formed his opinions. Lord Scarman believed that this was no longer acceptable and that the judge today had a valuable contribution to make to public discussion outside the courtroom.

At the present time, the senior judges took part in the legislative process in the House of Lords, and the Lord Chancellor also took part in the executive process as a member of the Cabinet. Thus there was nothing unconstitutional in the suggestion that the judge should contribute to public discussion. There could be no objection to his talking on matters of principle in law reform, for example, although he would not comment on current litigation or specific cases. Lord Scarman himself, while still holding judicial office, had been chairman of the Law Commission at the time when divorce law reform was being debated and no one had objected to his contributing to that debate. Judges were currently used for extra-forensic inquiries—he had himself conducted the inquiry into the Red Lion Square disorders—because they were regarded as independent; their role in public life would be to act as friend and adviser without destroying the detachment and aloofness which made them a valuable judicial investigative resource. Judges could be heard on matters of constitutional importance; Lord Scarman had played a leading part in the discussions on incorporating the European Convention on Human Rights into our domestic law. There was also the whole field of privacy involving many aspects of the common law, upon which judges were particularly well-qualified to give advice.

Lord Scarman argued that judges could go beyond purely legal questions and could discuss social concerns. In court, judges considered social issues in three particular areas: in criminal law and sentencing, in housing law and especially the Rents Acts, and in administrative law. The judge was especially qualified to advise on how the law was helping or hindering the welfare state, on whether or not there was sufficient review of the administrative process. Judges were also the acknowledged experts on sentencing.

There were, of course, limits to what a judge should say. In some areas of the law, for example industrial law or devolution, the judge had to be particularly careful to restrict himself to advising on what the law could do, without going on to say what it ought to do. Judges were competent to comment on legal ways and means, but it was

probably dangerous for them to pronounce on the ultimate values of society. There was one exception to this, however. The judges had a paramount loyalty to the rule of law. If they saw it being undermined, it was not going beyond their judicial oath to say so in public.

In those limited circumstances, the judge should be free to appear in newspapers and on television and radio to give his views, controlled by his innate good sense, natural restraint and discretion. Lord Scarman concluded: 'It is therefore for those reasons that I would suggest to you that there is an important advisory role in our public life, outside their courts, for judges to perform, and that role is to be found in the impact of law on society and of society on law. The judge can say that, in the intermeshing of social values and legal norms, the rule of law will be sustained, and he ought to be able, from his experience and training, to point out ways and means in which it can be done. I think it would be a great enrichment of our public life if, in the sort of way I have described tonight, we saw judges taking a restrained part in the public discussion which is the essence of a free society.'

Annual Members' Conference

The Annual Conference of members and invited representatives of official and professional bodies was held in the Lord Chief Justice's Court on Saturday, 15th March. Sir Sydney Templeman presided and the subject was 'Civil Procedure after Benson'.

The morning session was opened by Paul Sieghart who outlined the criticisms of civil procedure made in the 1974 JUSTICE report 'Going to Law'. This had found four basic faults. First, the dependence on party prosecution without court supervision, which gave solicitors excessive opportunity for delay. Second, the absence of openness, which encouraged surprise witnesses and discouraged early settlement. Third, all the issues had to be resolved at the trial itself. Fourth, formalism prevailed over common sense. The report recommended retaining adversarial procedures at the trial, but inquisitorial ones during the interlocutory stages when the court would play a much more active part to ensure that the trial was kept to the minimum necessary to decide the real issues. Much of the interlocutory work could be conducted by correspondence. The parties could also submit written legal arguments in advance, together with the pleadings and a case dossier, so that the judge was acquainted with the case before the hearing. These and other reforms could well be tried out here, but none had been to date. In 1975, they had been adopted in Sri Lanka but legal hostility and political pressure had brought about their withdrawal.

Anthony Jolowicz, Professor of Comparative Law at Cambridge

University, argued that any review of civil procedure should include the theoretical principles upon which it was based, starting with the basic right to sue. This was a question of admissibility, a right to invoke the jurisdiction where an 'interest' existed. This right required clear criteria as to when it could be invoked. Cases such as Congreve and Meade concerned more than private rights and were, in reality, public interest actions. Without such criteria, complex and artificial notions of private damage would necessarily arise, with the same unsatisfactory results as had occurred in the USA. He feared that some of the reforms proposed by JUSTICE, and by others to Benson, concerning the division of labour between the judge and the parties would fundamentally change civil proceedings and this should not happen by accident. He saw the purpose of civil litigation as consisting essentially in the submission by the parties of *their* dispute to the court for resolution. At present the parties determined the nature of their dispute; was it now desired to have a system in which the court, through active intervention at the interlocutory stage, formulated the issues for them? He supported the Benson recommendation for a Commission to review civil procedure and hoped it would consider these fundamental principles.

Master Elton, a master of the Queen's Bench Division, said that reforms must be formulated in the light of the realities as reflected in the statistics. Year after year some 43% of Queen's Bench actions resulted in judgment in default or summary judgment; of the remaining 57%, only 10% were set down for trial and of these only one in four resulted in a judgment, i.e. less than 2% of the total. The Cantley Committee had found that similar statistics applied in personal injury actions. One could only conclude from the statistics that the initial writ had to be as cheap and simple as possible to dispose of undisputed cases. Of the remainder, almost four-fifths settled. The JUSTICE proposals did not reflect these realities and would create an unnecessary amount of work and cost. They might be suitable for the big cases which tended to fight, but these were already handled by specialist courts, e.g. the Admiralty and Commercial Courts and the Official Referees, which had procedures for control by the court. Many of the proposals put to Benson had been tried out, but to little avail. Greater control by the court would only work if the cases that needed it could be identified, but the extra costs and work involved might not justify the reforms.

Speakers from the floor supported the Benson recommendation for a Commission to review civil procedure, which should have a strong lay representation on it. There was definitely a need for reform: statistics did not reveal the reasons for settlement, which resulted more often from considerations of cost than justice. Previous reforms had

not worked to simplify or speed up procedure. Suggested reforms were: greater use of costs to penalise delay and other procedural defects; abolition of appeals in interlocutory matters; obtaining lay client consent to adjournments; the institution of pre-trial review in the High Court; and a fixed trial date at an early stage.

The afternoon session was opened by Michael Cook, a past President of the London Solicitors Litigation Association, who stated that in an adversarial system the solicitor was the champion of his own clients and ought to use the rules to further their interests. Our system was designed for trial by jury; the jury had gone but the system remained. This produced anomalies, not least in respect of litigants in person who did not have the skill and experience to cope with an adversarial contest governed by complex rules. He doubted whether the reforms considered so far were radical enough to resolve these problems. Imposed on our present system they would import all the disadvantages of an inquisitorial system and none of its benefits. The court should not control matters; the court was the supplier and the litigant and his solicitor the customer. There should be consultation on reform, but it was not for the supplier to call the customer to account for the use of its services. Litigants should be protected from bad solicitors by professional regulation, not by civil procedure. There were a number of practical reforms which could be made in the present system: open consultation; effective enforcement of judgments; proper costs; early judicial supervision and the allocation of cases between courts according to the complexity of the case rather than arbitrary financial limits. The most important factor though was to decide at the outset the purpose of civil litigation and only then devise a procedure for it.

Sir Nicolas Browne-Wilkinson, a judge of the Chancery Division, considered that trial procedure under the present system was the best possible for attempting to discover the truth. The objection to the inquisitorial system was the need for an inquisitor and the consequent loss of judicial impartiality. However, few people today could afford this Rolls-Royce model of justice and some lower standard would have to be accepted if more people were to be able to litigate at a reasonable cost. He suggested four suitable reforms for the trial itself. First, the opening, where inordinate time was wasted reading documents which the judge could well read beforehand with only slight loss of open-mindedness. This would include witness proofs, which could be exchanged beforehand. Second, examination-in-chief could consist of a witness confirming his proof of evidence. Third, written submissions of law, with authorities, made before trial would cut down lengthy legal arguments at the trial itself, many of which were unnecessary. Fourth, procedure should be flexible and adapted

to the subject matter in dispute. A pre-trial review on setting-down would achieve this. It would induce parties to contemplate settling at an early stage and the judge could give tailor-made directions in those cases which fought. He also supported the setting up of a Commission to review civil procedure.

Speakers from the floor feared that the full exchange of proofs might lead to their settling by counsel and provide unscrupulous witnesses with the opportunity for dishonesty, but an exchange of summaries would be an advantage, as well as of the names of witnesses. More use could be made of the notice to admit facts.

Sir Sydney Templeman gave a masterly summing-up of the day's proceedings, in which he made his own pungent criticisms of present procedure. He concluded that it was certainly time for a full review of our civil procedure.

A full transcript of the proceedings is available at £1.50.

The JUSTICE Ball

The JUSTICE Ball, which has become a biennial event, was held at the Hurlingham Club on Friday, 9th November 1979 and attended by some 300 members and guests. The music was provided by Russ Henderson's Jamaican Band, which has served us so well on many past occasions, and by Braves Disco. Despite the need to limit numbers, the proceeds were not far short of £3 000 and for this we are indebted to the firms who gave prizes for the raffle or took advertising space in the Ball programme, to John Mackarness who compiled it, and above all to Mrs. David Edwards and the members of the Ball Committee whom she guided with such enthusiasm.

They were: Mrs. Brian Blackshaw, Miss Margaret Bowron, Mrs. David Burton, Miss Helen Evans, Mrs. William Goodhart, Mrs. Jeremy Sayce, Andrew Hogarth, Mrs. Philip Hugh-Jones, Mrs. Martin Jacomb, Lady Lloyd, Mrs. Michael Miller, Duncan Munroe-Kerr, Julian Roskill, Thomas Seymour, William Shelford, Christopher Sumner, Bernard Weatherill and Miss Diana Cornforth (Secretary).

Contacts with Other European Sections

In October of last year the Secretary attended by invitation a joint meeting of the Israeli, German and Austrian sections in Jerusalem on the theme 'Human Rights in Israel'. In the course of the discussion Israeli spokesman frankly acknowledged that because of the hostilities in the Middle East there were still many shortcomings in the safeguards for human rights.

In June of this year Paul Sieghart, and the Secretary attended the 25th Anniversary celebration of the German Section in Lubeck and conveyed to its members the congratulations and fraternal greetings of the British Section. The German Section was the first national section to be formed and it has been particularly active and helpful in sponsoring inter-section meetings.

As this Annual Report goes to press we are looking forward to our meeting with the French Section in London.

Scottish Branch

Our work in Scotland has this year shown a small decline in the number of individual cases submitted or proposed for examination and comment and a corresponding small increase in the time which could be devoted to more general consideration of matters of law reform. Among the individual cases one, which is still under examination, has been referred by The Law Society of Scotland.

The Council adheres to the view set out in our 1978 Working Party Summary *'The Case of David Anderson'* and continues to believe that a miscarriage of justice may have occurred in this case. The situation was analysed in *The Guardian* newspaper on 13th February 1980 and there is still considerable comment and interest in this matter.

John Hale's powerful play on this conviction had its premiere in Manchester's Library Theatre in February and was widely and favourably reviewed. During the year BBC Television documentaries on the case have unearthed interesting fresh information on the background and there continues to be a great deal of disquiet about the situation.

The Criminal Justice (Scotland) Bill 1980 contains certain reforms to Scottish Summary Cases Appeal procedures which are in line with JUSTICE recommendations and which, with other matters of interest to us, were highlighted by this case.

Bristol Area Branch

The Bristol Area Branch has continued to hold its periodical discussion meetings. The subjects covered during the year have been the European Court at Luxembourg, the right of silence and access to legal advice at police stations, control of police powers, exclusion of evidence, changes in the prosecution system and the Bristol Courts Family Conciliation Service.

Members living in the Bristol area who would like to receive notices of these meetings should advise David Roberts, 14 Orchard Street, Bristol.

Acknowledgements

The Council would once again like to express its thanks to Messrs. Baker, Rooke and Co. for their services as auditors, to Messrs. C. Hoare & Co. for banking services, and to many other individuals and bodies who have gone out of their way to help the Society.

Membership Particulars

Membership of JUSTICE is in five categories. Non-lawyers are welcomed as associate members and enjoy all the privileges of membership except the right to vote at annual meetings and to serve on the Council.

The minimum annual subscription rates are:

Persons with legal qualifications:	£5.00
Law students, articled clerks and barristers still doing pupillage:	£2.00
Corporate members (legal firms and associations):	£10.00
Individual associate members:	£4.00
Corporate associate members:	£10.00

All subscriptions are renewable on 1st October. Members joining in January/March may, if they wish, deduct up to 25 per cent from their first payment, and in April/June up to 50 per cent. Those joining after 1st July will not be asked for a further subscription until 1st October in the following year. The completion of a Banker's Order will be most helpful.

Covenanted subscriptions to the JUSTICE Educational and Research Trust, which effectively increase the value of subscriptions by over 40%, will be welcomed and may be made payable in any month.

Law libraries and law reform agencies, both at home and overseas, who wish to receive JUSTICE reports as they are published may, instead of placing a standing order, pay a special annual subscriptions of £5.00.

All members are entitled to buy JUSTICE reports at reduced prices. Members who wish to receive twice yearly the Review of the International Commission of Jurists are required to pay an additional £1.50 a year.

The following reports and memoranda published by JUSTICE may be obtained from the Secretary at the following prices, which are exclusive of postage.

Published by Stevens & Sons	Non-Members	Members
Privacy and the Law	80p	55p
Litigants in Person (1971)	£1.00	70p
The Unrepresented Defendant in Magistrates' Courts (1971)	£1.00	70p
The Judiciary (1972)	90p	70p
Compensation for Compulsory Acquisition and Remedies for Planning Restrictions (1973)	£1.00	70p
False Witness (1973)	£1.25	85p
No Fault on the Roads (1974)	£1.00	75p
Parental Rights and Duties and Custody Suits (1975)	£1.50	£1.00
Published by Charles Knight & Co.		
Complaints against Lawyers (1970)	50p	35p
Published by Barry Rose Publishers		
Going Abroad (1974)	£1.00	70p
*Boards of Visitors (1975)	£1.50	£1.25
Published by JUSTICE		
The Redistribution of Criminal Business (1974)	25p	20p
Compensation for Accidents at Work (1975)	25p	20p
The Citizen and the Public Agencies (1976)	£2.00	£1.60
Our Fettered Ombudsman (1977)	£1.50	£1.00
Lawyers and the Legal System (1977)	£1.50	£1.00
Plutonium and Liberty (1978)	75p	60p
CLAF, Proposals for a Contingency Legal Aid Fund (1978)	75p	60p
Freedom of Information (1978)	75p	60p
Pre-Trial Criminal Procedure (1979)	£1.50	£1.00
The Truth and the Courts (1980)	£1.50	£1.00
British Nationality (1980)	£2.00	£1.50
Breaking the Rules (1980)	£2.00	£1.50
The Local Ombudsmen (1980)	£2.50	£2.00

The following reports are out of print. It has become impracticable to maintain stocks and quote fixed prices for photostat copies, but quotations will be provided on request.

Contempt of Court (1959)
Legal Penalties and the Need for Revaluation (1959)
Preliminary Investigation of Criminal Offences (1960)
The Citizen and the Administration (1961)
Compensation for Victims of Crimes of Violence (1962)
Matrimonial Cases and Magistrates' Courts (1963)

*Report of Joint Committee with Howard League and N.A.C.R.O.

Criminal Appeals (1964)
The Law and the Press (1965)
Trial of Motor Accident Cases (1966)
Home Office Reviews of Criminal Convictions (1968)
The Citizen and his Council—Ombudsmen for Local Government? (1969)
The Prosecution Process in England and Wales (1970)
Home-made Wills (1971)
Administration under Law (1971)
Living it Down (1972)
Insider Trading (1972)
Evidence of Identity (1974)
Going to Law (1974)
Bankruptcy (1975)

Duplicated Reports and Memoranda

Report of Joint Working Party on Bail	25p
Evidence to the Morris Committee on Jury Service	25p
Evidence to the Widgery Committee on Legal Aid in Criminal Cases	25p
Reports on Planning Enquiries and Appeals	40p
Rights of Minority Shareholders in Small Companies	25p
Complaints against the Police	25p
Eleventh Report of Criminal Law Revision Committee	40p
A Companies Commission	25p
The David Anderson Case	75p
Powers and Duties of Trustees	35p
Report of Data Protection Committee	30p
Select Committee on Parliamentary Commissioner	30p
The Private Security Industry	20p
Illegitimacy	20p
Transcripts of JUSTICE Conference on—	
Eleventh Report of Criminal Law Revision Committee (1973)	£1.00
Children and the Law (1975)	£1.00
Casualties of the Legal System (1977)	£1.50
The Rights of Prisoners (1979)	£1.50
Civil Procedure after Benson (1980)	£1.50

Memoranda by Committee on Evidence

1. Judgements and Convictions as Evidence	15p
2. Crown Privilege	15p
3. Court Witnesscs	15p
4. Character in Criminal Cases	15p
5. Impeaching One's Own Witness	15p
7. Redraft of Evidence Act, 1938	15p

8.	Spouses' Privilege	15p
9.	Availability of Prosecution Evidence to the Defence	20p
10.	Discovery in aid of the Evidence Act	15p
11.	Advance Notice of Special Defences	15p
12.	The Interrogation of Suspects	25p
13.	Confessions to Persons other than Police Officers	15p
14.	The Accused as a Witness	15p
15.	Admission of Accused's Record	15p
16.	Hearsay in Criminal Cases	15p

Published by International Commission of Jurists

Human Rights in United States and United Kingdom Foreign Policy	£1.00
The Trial of Macias in Equatorial Guinea	£1.00
Persecution of Defence Lawyers in South Korea	£1.00
Human Rights in Guatemala	£1.00

Back numbers of the ICJ Review, Quarterly Report and special reports are also available.

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