# JUSTICE

British Section of the International Commission of Jurists

# 17th annual report

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*British Section of the International Commission of Jurists*




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## CONTENTS



## CHAIRMAN'S INTRODUCTION

In my introduction to last year's Annual Report I said that in general the climate for reform, except where commendable to the Government, was not as favourable as it might be.

The year under review has been a sad year both for law reform and for civil rights. This is partly because of the general election, when over 70 Bills were lost by the dissolution, and we now face the possibility of another general election which will prevent more than a limited number of Bills passing into law this parliament.

In the result, while we have been saved the implementation of the report of the Criminal Law Revision Committee, although some of their recommendations were sound, and the Cinematograph and Indecent Displays Bill, which was not objectionable in principle but was badly drafted, we have not seen any steps to implement the report of the Committee on Section 2 of the Official Secrets Act 1911; the report of JUSTICE on the Prosecution Process, although the outcome of the Dougherty case showed its need; the report of the Byers Committee on Privacy; the report of the Law Commission on Forgery and Counterfeit Currency; the report of JUSTICE on a Suitors' Fund; the report of the Ormrod Committee on Legal Education; the 21st, 22nd and 23rd reports of the Committee on Legal Aid and Advice; the report of the Law Reform Committee on Conversion and Detinue; the report of the Law Commission on the Interpretation of Statutes; the report of the Law Reform Committee on the Interpretation of Wills; the report of the Law Commission on the Assessment of Damages in Personal Injury Litigation; the report of the JUSTICE Committee on Litigants in Person; the report of the Law Commission on Administrative Law; the report of the committees on Death Certification and Coroners; the report of committees on the Adoption of Children; the report of the Committee on Sunday Observance; the report of the Committee on Abortion Law; the report of the Committee on Bankruptcy Law; the report of the Law Commission on Taxation of Income and Gains Derived from Land; or of the JUSTICE report on Representation in the Magistrates' Courts.

This summary leaves out of account the future of the Magistrates' Courts; the reform of our law of Contempt of Court; the reform of Company Law and particularly of Insider Trading; the future of the Land Registry and of the Public Trustee; the extension of the Powers of the Race Relations Board; the reform of the Burial

Laws; representation before Tribunals; and the position of husbands and wives under our Immigration Law.

In the field of civil law, we have published two further important reports. The first, *No Fault on the Roads*, recommends adopting the principle of no-fault insurance for compensating the victims of road traffic accidents. Our scheme is designed to remove the anxiety and uncertainty which most victims encounter, with an even chance of not getting any compensation at all; if it was introduced, it would be necessary only to establish the injury. We would like to see this principle established for all injuries and are working on this and hope to persuade the Royal Commission to accept our view.

The second, *Going to Law*, examines in depth all the defects in our civil procedure and recommends some radical changes designed to minimise the elements of battle in civil trials and to bring all the essential facts to the knowledge of the court. We are grateful to Lord Devlin for the help and advice he has given to this inquiry.

Our Criminal Justice Committee has prepared and submitted evidence to the James Committee on the redistribution of criminal business and, following the Dougherty case, is making a further study of the problem of identification evidence. We have also made recommendations to the Home Office Working Party on the Criminal Injuries Compensation Scheme.

Our Administrative Law Committee has had a very busy and active year. It has published no reports but has prepared and submitted memoranda to government committees on a number of subjects including Development Control Review, Legal Aid in Tribunals, Local Government Rules of Conduct and the Commission for Local Administration. We believe that this committee has established a high reputation for the quality of its work.

We have in the pipeline reports on bankruptcy, passports and parental rights and custody suits, and liability for costs in civil proceedings, and hope to publish all these before the end of the year.

In addition, the report of the Committee appointed by JUSTICE, the Howard League for Penal Reform and N.A.C.R.O. has resulted in the Rehabilitation of Offenders Bill which in one Session passed through all its stages in the House of Lords, in the next Session obtained a Second Reading in the House of Commons (only to be lost by the General Election) and has again obtained a Second Reading in the present Session.

If I had to select one reform for which there is most need, I think I would choose Legal Aid for Bail. Under considerable pressure the then Government incorporated in the last Criminal Justice Act an amendment which provided that no convicted criminal, however grave the offence of which he had been convicted, should be sent to



prison for the first time without being offered Legal Aid. It is quite illogical to do this while thousands continue to be sent to prison every year untried and unconvicted because they are refused bail when unrepresented and without Legal Aid. Indeed, as Mrs. Dell's research on women on remand in Holloway prison showed, a number of them had not applied for bail because they did not know what bail was, and others who knew enough to ask for bail had no knowledge of the criteria for the grant or refusal of bail, and so did not know what to say. It is greatly to be hoped that the recent proposals of the Home Office Working Party on Bail in this field will be promptly carried out.

Finally, I feel bound to point out that some recent cases which have troubled lawyers and laymen alike would have been unlikely to have arisen if earlier JUSTICE recommendations had been implemented. I refer in particular to our repeated recommendations about identification and to our report "The Prosecution Process in England and Wales" published in 1970.

In some ways our police are the least controlled and the most powerful in Europe. They are the least controlled in the sense that while elsewhere they are national police forces under the orders of a Minister who, in democracies, is responsible to Parliament, here, except in the case of the Metropolitan Police whom the Home Secretary can influence through the Commissioner, they are responsible only to their own Chief Constable. They should obey the Judges' Rules, but these are not law and little attempt is made to enforce them.

Our police are the most powerful in Europe in the sense that, except in the comparatively rare cases undertaken by the Director of Public Prosecutions or a Government Department or a private citizen, the police investigate cases reported to them, interrogate suspects, decide whether or not to prosecute, and if so whom and on what charges, interview witnesses, select the evidence and are responsible for the prosecution. So far as JUSTICE could discover, this happens nowhere else in Europe. In most countries there is an independent prosecuting authority. In Scotland all prosecutions have always been under the control of the Lord Advocate through the Procurators-Fiscal. On the recommendation of the Hunt Committee Northern Ireland has now, except in trivial cases, gone over to the Scottish system. As the JUSTICE report said, (our) "system offends against the principle that the prosecution should be—and should be plainly seen to be—independent, impartial and fair".

All this clearly demonstrates the vital and continuing need for the work we try to do, which can be carried out effectively only by an independent and all-party society like JUSTICE.

For some time the limitations on our income have necessitated a reduction in permanent staff. It is evident that without an increase in funds it will be impossible to continue our work. An increase in the rates of subscription was foreshadowed at our last two Annual General Meetings, and is now inevitable. I again appeal to members to do what they can to bring in additional funds and to help in increasing our membership.

The Society has reason to be most grateful to those who, despite many other claims on their time, have served on its committees. To our permanent staff, over-worked and short-handed as they are, and to our part-time and voluntary helpers in the office, we are deeply indebted.

GARDINER



# *Report of the Council*

## HUMAN RIGHTS

We are naturally gratified that the last Government eventually decided to renew its acceptance of the jurisdiction of the European Court of Human Rights, and of the right of individual petition, for a further period of two years. We would have liked a longer period, but we are thankful that the United Kingdom has been spared the opprobrium which failure to renew would have brought upon us.

Before the announcement, we had made private representations to the Foreign Secretary and our Chairman, on behalf of our Council, was a co-signatory of a letter written to *The Times* by the six leading organisations concerned with Human Rights. The Government's decision was announced three days after this letter appeared.

It may well be a burden on government departments to have to prepare detailed observations on the individual cases which are admitted and investigated by the Commission, and government as a whole may be embarrassed by indictments brought against it on such serious matters as the treatment of immigrants and of detainees in Northern Ireland. But the sensible and better way to escape from embarrassment is to improve our own machinery for the investigation and remedying of grievances in all areas of government.

Partly because we have no system of administrative law we have lagged behind many other European countries in such matters, trusting perhaps too much in our traditions of fair play and integrity in administration, in the ability of Members of Parliament to get any serious wrong put right and in our belief that the English system of justice, with its rights under the Common Law, is the best in the world. The Parliamentary Commissioner has provided limited remedies in limited areas, but in other areas men and women can suffer great injustice through carelessness, indifference or malpractice for which they seek a remedy in vain. Among the areas we have in mind are: prison administration, the police, grievances of civil servants and members of the Armed Forces, nationalised industries and the administration of justice.

Our governments have never accepted as a universal principle that an authority complained against should not be the final judge in its own cause. We have been overcommitted to the doctrine of secrecy and have never effectively admitted that any citizen who needs to challenge an oppressive or unjust decision, be it in the

courts or by some instrument of government, should be able to do so from an equal basis of knowledge and expert help. Letters, telephone calls and personal visits to the office of JUSTICE, which have reached flood proportions since the Dougherty case, have provided renewed evidence of the present inadequacy of remedies in every field. We can do little about them. We can only urge whatever government is in power, and the legal profession, to press on boldly with at least some of the reforms and remedies which we have put forward over the past 15 years.

As a society, we have never campaigned for human rights indiscriminately. All rights and freedoms must carry with them corresponding duties and responsibilities. If not, they are claimed and enjoyed purely for selfish ends and can only cause harm and distress to others. But there are many basic and legitimate rights which have to be upheld—mainly on behalf of those who are the victims of ignorance and mischance, of unprovoked attack on their interests, or of the sometimes soulless machinery of the modern state. Last year we welcomed the foundation of the British Institute of Human Rights. This year we note with pleasure the formation of a Solicitors' Human Rights Group under the auspices of the Law Society, whose members are plainly determined to pursue these ideals.

More effective institutions and safeguards will help, but we must also urge all those who exercise authority at any level to be more anxious to listen to a grievance and remedy it than to turn away and smother it.

## CRIMINAL JUSTICE

In last year's Annual Report we devoted considerable space to a critical appraisal of the Eleventh Report of the Criminal Law Revision Committee and to a restatement of a number of recommendations made by JUSTICE which in our view would have produced a fairer balance in our system of criminal trial.

It appears that, for the time being, the Committee's proposals have been killed by the opposition they aroused, and that much of its eight years labour has been in vain. This is in some ways to be regretted, because it spotlighted many of the anomalies and absurdities in our present laws of evidence and made a number of useful proposals. In our view, its fundamental error was to assume that the scales are unfairly loaded against the prosecution, and that almost all the wrong verdicts reached by juries consist of acquittals of the guilty.

Sir Robert Mark has repeatedly expressed the same view as the Criminal Law Revision Committee. But we think that he, like the



Committee, seriously underestimates the hazards which face an innocent person accused of a crime if the prosecution is not scrupulously fair in its investigation and presentation of the evidence or if the accused is inadequately defended.

We do not propose to go over the same ground in detail, as we think that the case of Luke Dougherty illustrates and drives home most of the points we then tried to make.

### The Case of Luke Dougherty

Luke Dougherty was convicted of stealing two pairs of curtains from a Sunderland store at a time when he was on a coach trip to Whitley Bay with twenty other adults and twenty children. His application for leave to appeal was dismissed and he served nearly ten months of an eighteen months sentence before he was released on bail. His conviction was quashed some four months later. This came about because the Home Secretary, on representations made by JUSTICE, referred the case back to the Court of Appeal.

*Identification*

Dougherty was charged and convicted solely on the uncorroborated identification evidence of two store assistants, and the manner in which it was achieved was contrary to all the rules and normal safeguards. Both witnesses were shown photographs of likely suspects; no identification parade was arranged. Unbeknown to Dougherty, they both saw him in the dock at the magistrates' court. At the trial they watched through a glass door while he was taken from the dock and seated among waiting jurors. When, after they had come in and pointed him out, this fact was made known to the Court, the judge took the view that it was still safe for the case to go to the jury.

*The safeguards* JUSTICE *has recommended for evidence of identity would have ruled out any possibility of such a happening.*

*Witnesses' statements*

When the two witnesses were interviewed by the Northumberland police prior to the final appeal, they said that the theft had been carried out by three people acting together—a man of about 55, an elderly woman with a limp, and a youth. One of them said he was sure he had told the Sunderland police this at the time, but the statements produced at the magistrates' court only mentioned a man, with a description very different from that of Dougherty.

JUSTICE *has asked for full disclosure by the prosecution of all relevant police evidence which might be helpful to the defence.*

*Notice of Alibi*

Dougherty's solicitor duly gave the prosecution the names and addresses of five witnesses who could testify that at the time of the theft he was on his way to Whitley Bay. They were interviewed by the police and confirmed Dougherty's claim. One of them was the woman who had organised the trip and had the names and addresses of the other passengers and details of the booking with the coach company. For reasons which are not quite clear, this witness did not come to court, and the court was not told the result of the enquiries made by the police.

*The declared objects of a notice of alibi, which was originally advocated by* JUSTICE, *are:*

(a) to give the police a chance to check if the witnesses have criminal records;

(b) to give them a chance to investigate it so that a charge can be withdrawn if it is confirmed, or rebutted if it is plainly false.

*It was however part of our recommendation that the alibi witnesses should not be interviewed by the police except in the presence of, or by leave of, the defence solicitor.* This condition was not included in the Criminal Justice 1967 Act, but an assurance was given during the Committee stage of the Bill* that the police would be instructed to observe it. It is clear from this case, and a number of others which have come to our notice, that this condition is not being observed, to the disadvantage of the defendant.

*The Decision to Prosecute*

The decision to press the charge against Dougherty must have been taken with full knowledge of many of the facts set out above. It can be explained only on the view that the police decided too hastily that he was their man, and thereafter could not turn back. The root of the trouble lies in a system which leaves decision to prosecute in the hands of the police.

*In its report* The Prosecution Process in England and Wales (1970) JUSTICE *has recommended that all prosecutions should be decided upon and undertaken by an independent prosecuting authority.*

*Legal Aid*

Dougherty's solicitor took the view that five witnesses would be enough to establish his innocence and that it was not fair to the legal aid fund to ask for more. Dougherty gave five names and was told to get them to court. They were not interviewed and in the end only two acceptable witnesses appeared. The brief to counsel mentioned the coachload, but was quite inadequate.

* House of Commons, Standing Committee A, Official Report, 1 February 1967, C. 219.



The majority of defences conducted on legal aid are well prepared and no reasonable expense is spared, but representations from prisoners and from conscientious solicitors show that some firms take on more cases than they can handle and do their work badly.

*In our Memorandum of Evidence to the Widgery Committee on Legal Aid in Criminal Cases, 1964, we urged the setting up of an Advisory Committee to supervise and be responsible for the efficiency of the system and those who take part in it.* We returned to the theme in our report *Complaints Against Lawyers* (1970) and in further representations to the Home Secretary. At present, it is a waste of time and effort for a prisoner to complain about the way his defence has been handled, even if he has been clearly prejudiced by it.

*Appeal Difficulties*

Dougherty's hopes of a successful appeal rested on two grounds —the way in which his identification had been achieved and the witnesses he had been denied. He lodged a notice with a request for further witnesses to be called and his counsel later provided him with grounds of appeal covering the issues of identification.

Dougherty also approached JUSTICE about his witnesses and we asked the Criminal Appeal Office to appoint a solicitor to take statements from them. When this was refused, we sent out questionnaires to them and received written confirmation from ten of them that Dougherty was on the coach. In the meantime the Single Judge had granted legal aid for counsel to argue the application on the identification grounds, but had confirmed the refusal of a solicitor on the grounds that the witnesses had all been available at the time of the trial.

Finally, Dougherty was given the choice of either accepting what he had been offered or of being unrepresented and facing the prospect of a long delay before the Court could consider and decide if he would be allowed to call his witnesses. Anxious to be released, he chose the former. The Full Court dismissed the application saying that the trial judge had properly used his discretion in allowing the case to go to the jury and that counsel had been right not to press the matter of the other witnesses.

JUSTICE *has continually expressed concern at the lack of provision for effective legal aid in appeals, and in particular at the severance of help from the solicitor after the grounds have been lodged.*

We find that statements often need to be taken in order to strengthen an application, and this is also true of many sentence appeals. There are also serious objections to the practice of giving leave, with counsel only, on a limited point of law. This effectively

prevents the appellant from pressing the merits of his appeal on fact and opening up the whole case.

*Fresh Evidence*

After Dougherty had been refused leave, JUSTICE asked a solicitor member in South Shields to take statements from as many passengers and other witnesses as he could trace. He obtained and sent us 16 statements which were forwarded to the Home Secretary with a covering letter and memorandum. The Home Secretary's reaction was swift and decisive. Within 14 days the case had been referred back to the Court of Appeal and Dougherty had been released on bail. This time there was no doubt or argument about the new witnesses because the Home Secretary had specifically mentioned them in his Letter of Reference and asked the Court to look at the whole case in the light of their evidence. In the course of their enquiries, the Northumberland police were able to trace six further witnesses who all confirmed Dougherty's story. Evidence was taken on Commission by the Circuit Judge in Newcastle and, after 14 witnesses had given evidence, the prosecution finally conceded that it could not resist the appeal. The final hearing therefore was largely a formality, but may well be of historic importance.

Bryan Anns of counsel, who appeared for Dougherty, argued that the Court of Appeal had consistently misinterpreted the law governing the admission of fresh evidence. Section 23(2) of the Criminal Appeal Act, 1968, *requires* the Court to receive new evidence if certain conditions are observed. Section 23(1) gives the Court a general power to hear any evidence which was admissible at the trial whether or not it was adduced at the trial. The Court however had ignored the complete freedom it had been given under Section 23(1) and adopted 23(2) as a self-imposed restriction.

In accepting the new evidence and quashing the conviction, the Lord Chief Justice agreed that the Court might have taken too narrow a view of its powers.

JUSTICE *has maintained this view in successive Annual Reports, both before and since the 1968 Act was passed. In particular we have urged that it is unfair that an appellant should have to accept responsibility for the negligence or bad judgment of his lawyers.*

*Final Comments*

First, all this happened because no one in authority, from the two police officers up to the Court of Appeal, was sufficiently concerned to ensure that a man who had a record for similar offences was not wrongly convicted and imprisoned.



Secondly, Dougherty's clearance and release should not have had to depend on the work of a voluntary society.

Thirdly, although this was an exceptional case in which *all* the theoretical safeguards failed, it is by no means an isolated case. Everyone who stands trial faces the same series of hazards in varying degrees and any one of them can bring about a wrong conviction. The files of JUSTICE show that there is no reason for complacency.

**The Luton Murder Case**

This was the case in which three men, Patrick Murphy, David Cooper, and Michael McMahon, were convicted of the murder of a Luton Sub-Postmaster in September 1969. A fourth man, Matthews, was arrested first and charged with the murder, but he later turned Queen's Evidence and became the chief prosecution witness. He identified all three men, saying that he had been asked to accompany them to Luton for an innocent purpose, and named Murphy as the driver of the getaway car. The prosecution did not disclose to the defence statements taken from two eye-witnesses which clearly pointed to Matthews being the driver. All three men had substantial alibis but were nevertheless convicted.

In December 1972, largely as a result of a BBC documentary film on which the Secretary of JUSTICE gave the commentary, the Home Secretary referred the case of Murphy back to the Court of Appeal under Section 17(1)(a) of the Criminal Appeal Act 1968. This calls for a reference of the whole case but the Letter of Reference was restricted to the calling of one new alibi witness. This encouraged the Court to take its usual restricted view of its power to hear fresh evidence, and prevented other witnesses being called and matters canvassed which might have helped the other two men. JUSTICE made strenuous representations to the Home Secretary to widen the terms of the Letter of Reference but to no avail. Fortunately for Murphy, the new alibi witness was believed by the Court and his conviction was quashed. We are glad to report that, following further representations, the Home Secretary has now agreed to refer back the cases of Cooper and McMahon.

**Redistribution of Criminal Business**

We published in March of this year a Memorandum of Evidence submitted to Lord Justice James' Committee, which was set up to consider:

> "within the framework of the court structure what should be the distribution of criminal business between the Crown Court and Magistrates Courts; and what changes in law and practice are desirable to that end?"

Although it was not mentioned in the terms of reference, it was clear from statements made by the Lord Chancellor that the primary purpose was to consider ways and means of reducing the congestion of business in the Crown Court and the consequent delays in bringing cases to trial.

Our Criminal Justice Committee which prepared the memorandum took the view that the problem of congestion was already becoming less serious and could not in any event justify a curtailment of existing rights of trial by jury in cases which involved dishonesty and loss of reputation or livelihood.

It further rejected suggestions, which had been freely canvassed, that in certain intermediate cases magistrates should be given the power to decide in which court they were to be tried. Among the reasons for rejecting the suggestions were that it would put magistrates in an invidious position and lead to unnecessary delays and expense. The view was further taken that the seriousness or triviality of an offence and the consequences of a conviction cannot be assessed by magistrates but only by the accused himself.

Our Committee nevertheless recognised that a number of cases which could be satisfactorily tried in magistrates' courts were sent for trial at great expense of time and money, and took the view that this could be remedied without any important curtailment of existing rights. Its main proposals were:

(1) The prosecution should exercise greater discrimination in the framing of charges, so that minor cases need not be sent for trial. In particular, the adding of a conspiracy charge to specific offences was deplored.

(2) With a view to removing the most powerful incentive for solicitors to advise their clients to elect for trial, the prosecution should be under a legal obligation to supply the defence in advance with copies of witnesses' statements. No solicitor willingly conducts an impromptu or blind defence.

(3) The range of offences that are triable summarily should be widened, including burglary, forgery and certain sexual offences.

(4) With certain exceptions, all moving traffic offences should be tried only in magistrates' courts.

(5) The working of the system of criminal legal aid should be properly supervised.

The Committee additionally stressed the beneficial results which Duty Solicitors could achieve in sorting out cases, advising defendants and assisting the court in the early stages of the case.

Copies of the Memorandum of Evidence are obtainable from the office of JUSTICE (price 25p, members 20p).



**Identification**

We greatly welcome the decision of the Home Secretary, following the cases of Luke Dougherty and Lazlo Virag, to set up a Committee, under the chairmanship of Lord Devlin, to inquire into identification procedures and safeguards. It would be a great mistake to assume, because of the publicity given to them, that these are isolated cases. We have scores of cases in our files of men who have been convicted on identification evidence of an unsatisfactory nature. Our Criminal Justice Committee is preparing a memorandum for submission to Lord Devlin.

**Criminal Justice Committee**

The members of our committee are: Lewis Hawser, Q.C. (Chairman), Basil Wigoder, Q.C., Bryan Anns, Q.C., C. R. Beddington, L. M. Crossley, Peter Danks, Stuart Elgrod, Mrs. Daphne Gask, J.P., Jeffrey Gordon, Glyn Hardwicke, Alec Samuels, Michael Sherrard, Q.C., Brian Sinclair, F. Morris Williams and Allan Levy (Secretary).

**Bail and Remands in Custody**

The Report of the Home Office Working Party on bail procedures in Magistrates' Courts is in our view a thoughtful and progressive document. We submitted to it a report of a joint working party* of representatives of eight organisations—including magistrates and the police—which JUSTICE had assembled under the chairmanship of Edward Gardner, Q.C., in 1966. We had hoped that its recommendations would be included in the Criminal Justice Act, 1967, but time was short and the only important one accepted was the giving of power to magistrates to impose conditions for bail.

We are now gratified that a substantial number of the Joint Working Party's proposals, together with one or two later suggestions made to the Home Office Working Party, have been accepted.

We particularly welcome the recommendations that:

(*a*) a presumption should be created in favour of the granting of bail;

(*b*) there should be more effective machinery for obtaining information about an applicant for bail, including the use of a bail information form;

(*c*) when considering the acceptance of sureties, magistrates should place more emphasis on character and relationship than on financial resources, and should make the decisions themselves;

* Report of a Joint Working Party on "Bail and Remand in Custody".

(*d*) arrangements should be made for prisoners who are granted bail to be brought quickly back to Court if they have difficulty in obtaining sureties;

(*e*) personal recognizances should be abolished and a new offence of jumping bail created.

If, however, these recommendations are to be effective, they must be given statutory authority. Where this cannot be done, precise directives should be issued to all magistrates and clerks. Experience shows that when matters like this are left to discretion old prejudices and habits, such as the unlawful use of a remand in custody as a punishment, die slowly.

Clear directives are also needed on the power to impose conditions of bail. It was a very long time before full use was made of it, and it is still used unthinkingly. For example, reporting to the police daily can be very oppressive. If a man intends to jump bail, he can do it as easily in a day as he can in a week.

We regret that the report does not recommend any provision for legal aid for an application to a judge in chambers.

**Complaints Against the Police**

The report of the Home Office Working Group set up by Mr. Robert Carr in February of last year after Mr. Philip Whitehead had agreed to withdraw his Private Members' Bill is a disappointing document. It was asked to recommend a viable scheme for the introduction of an independent element into the handling of complaints, preferably of an ombudsman character, but failed to do so. The Commissioner for the Metropolitan Police, the Association of Chief Police Officers, the Superintendents Association and the Police Federation all put forward schemes which could not be reconciled.

All the Working Group achieved was an endorsement of the five basic principles laid down by Mr. Robert Carr in the House of Commons, namely:

(i) the investigation of complaints in the first instance must remain in the hands of the police;

(ii) there should be no interference with the role of the Director of Public Prosecutions in deciding whether police officers should be prosecuted;

(iii) the chief officer's responsibility for the discipline of his force should not be undermined;

(iv) no officer should be placed in jeopardy twice in respect of the same complaint;

(v) the role of the police authority in supervising the handling of complaints should not be diminished.



JUSTICE had re-submitted the Memorandum* it had presented to the abortive Joint Working Party set up by Mr. Reginald Maudling, together with a covering letter from Lord Gardiner stressing the vital importance of the way in which the investigation is carried out and urging a separate determination of the question whether a police officer should be punished and the question whether the complainant should be given any redress.

In our view the JUSTICE proposals, if correctly interpreted, satisfied all the five basic requirements, but the Working Group rejected them out of hand. It appeared especially to dislike our recommendation that there should be independent inquiries into allegations that wrong convictions had been brought about by police malpractice.

Of the police schemes, the Commissioner's proposal for a Complaints Review Authority was the most radical and came nearest to the spirit and purpose of the JUSTICE proposals, but was unacceptable because it contained an element of double jeopardy. This doctrine seems to be the major stumbling block. If it is rigidly maintained, and the police are to make the first investigation, then no worthwhile scheme can be devised unless police discipline and redress for the complainant are dealt with separately.

The final decision now rests with the Home Secretary, to whom we are making further representations.

**The Duty Solicitor**

Considerable progress has been made in our campaign for the appointment of duty solicitors in magistrates' courts. The Law Society has given the idea its blessing and experimental schemes are in operation in ten provincial cities and two London courts.

An appropriate method of payment has still to be devised. Duty solicitors can be paid to advise under the £25 scheme, but not to appear in court. They can act in court if they are appointed ad hoc under the Criminal Legal Aid scheme. This is neither sensible nor economical. They need to be officially recognised and paid a flexible attendance fee as in Scotland.

**Criminal Injuries Compensation Scheme**

In 1962 JUSTICE published a report 'Compensation for Victims of Crimes of Violence' recommending a statutory scheme for the compensation of victims of crime. This led directly to the introduction two years later of a scheme which, however, was non-statutory. Last year the Home Office appointed a Working Party to review the working of the scheme, and JUSTICE was invited to submit recommendations.

* *Complaints against the Police*, 1970 (20p).

In its memorandum of evidence JUSTICE expressed the view that the time was ripe to put the scheme on a statutory footing but was concerned that the flexibility of the existing arrangements should be preserved by leaving the details to be filled in by regulations.

We have recommended that the scheme should cover all crimes of intention, malice or recklessness, and that the legal principles of causation should determine eligibility for compensation. The existence of the scheme should be more widely and effectively publicised and the right of appeal should be enlarged. Compensation for loss of earnings should take the form of periodical payments rather than lump sum awards. A successful claimant should assign his rights against the offender to the Board which should have power to enforce them.

The JUSTICE memorandum was prepared by a committee consisting of: Paul Sieghart (Chairman), Tom Harper, Donald Harris, David Phillips, Alec Samuels, John Samuels, Tom Sargant, Donald Williams and Ronald Briggs (Secretary).

**The Rehabilitation of Offenders**

In our 16th Annual Report, we were able to report that the Rehabilitation of Offenders Bill (based on the report *Living it Down*) had been introduced in the House of Lords by Lord Gardiner, had passed through all its stages there without a single division, and was waiting for time in the Commons. Our fear that it might not be reached before the end of the Parliamentary session proved justified, and it lapsed. However, it was re-introduced in the next session by Mr. Kenneth Marks, M.P., and achieved an unopposed second reading in January 1974. By then, it had gained support from a number of Ministers in the previous administration, and there was a good prospect that it might pass into law.

Unfortunately, the General Election supervened, and it lapsed once more. It has now been introduced again in the Commons by Mr. Piers Dixon, M.P., and has again had an unopposed second reading. It has the sympathy of the present administration also, and if Parliament is not prematurely dissolved once more it stands a fair chance of becoming law. We should like to express our gratitude to all the M.P.s on both sides of the House and to the many peers who have given so much support to this measure, which is designed to remove a fear that hangs over a million families in England and Wales alone.

**Boards of Visitors**

A Joint Committee has been appointed by JUSTICE, the Howard League for Penal Reform and the National Association for the



Care and Resettlement of Offenders to examine the functions at present carried out by Boards of Visitors of penal institutions and to make recommendations.

Its members are Lord Jellicoe (Chairman), Arthur Davidson, M.P., Michael Day, Tom Hayes, Prof. John Martin, Mrs. H. E. Pearce Higgins, J.P., the Hon. Mrs. Lindy Price, J.P., George Shindler, Q.C., Graham Zellick and Rupert Jackson (Secretary).

## CIVIL LAW

**No Fault Insurance**

In April of this year we published a report entitled *No Fault on the Roads*. This was based on a Memorandum of Evidence which had been submitted last year to Lord Pearson's Royal Commission on Civil Liability and Compensation for Personal Injury.

Our Committee had started work on the subject, and had made considerable headway, before the Royal Commission was set up. It had decided to produce an Interim Report on Road Accidents because it felt that these presented an urgent problem which was capable of a reasonably simple and quick solution, and that partial reform was better than no reform at all. We invited the Royal Commission to take the same view, but somewhat to our regret it declined to do so on the grounds that this would delay, rather than speed up, the completion of its work.

In its report the JUSTICE Committee recommended the substitution for the existing common law claim for damages of a no-fault system of compensation for accidents involving the use of vehicles on the road. Under such a system, the existing heads of loss would still be compensated, i.e. loss of earnings and other monetary benefits as a result of incapacity, expenditure incurred by reason of the injury, shock, pain, suffering, inconvenience and discomfort, loss of function and amenity and abbreviation of life. But compensation would be immediate, and instead of the lump sum damages now awarded, it would largely take the form of earnings-related periodical payments and could be adjusted to changes in the victim's condition and to the value of money. Only if the victim was himself gravely at fault would his compensation be denied or reduced.

The loss to the victim of a road accident is the same whether anyone was at fault or not. In our present system many road accident victims fail to get any compensation because they cannot prove the fault of someone else, even if they were not at fault themselves. Those who do succeed have to wait months, and sometimes years, for their money. A considerable part of the income from motor insurance premiums is spent in investigating fault, rather than in compensating victims.

"No-Fault" systems have none of these defects. They have been adopted in a number of other countries, notably New Zealand, Canada and the United States. The idea continues to gain acceptance: a scheme is now being prepared in Australia.

The prompt introduction of a no-fault system in road accident cases would relieve a great deal of hardship at little additional cost to the community.

Our Committee is now preparing evidence for the Royal Commission on compensation for victims of other types of accident. Members of the Committee are: Paul Sieghart (Chairman), Anthony Cripps, Q.C., John Crocker, Philip English, Sir John Foster, Q.C., M.P., Ralph Gibson, Q.C., D. S. Greer, Tom Harper, D. R. Harris, Bruce Holroyd-Pearce, Q.C., John Hayman, Alec Samuels, John Samuels, R. J. L. Thomas, H. Travers-Smith and R. C. H. Briggs (Secretary). Philip Jeffrey, Q.C., of the Australian Bar was a corresponding member.

*No Fault on the Roads* is available from the office of JUSTICE (price £1, members 75p).

**Civil Procedure**

After a series of unfortunate delays, the report of our Committee on Civil Procedure was published early this month under the title *Going to Law*. Our inquiry, which was carried out under the guidance of Lord Devlin, was begun when Lord Shawcross was Chairman of JUSTICE and was made possible by generous grants he obtained from foundations and City institutions. Its object was to examine all aspects of our civil procedure with a view to evolving a simpler and cheaper system of dealing with civil claims, and it was to be free of any preconceptions as to what the best solution to the problem might be.

The Advisory Committee started by considering the problem of small claims but its conclusions were overtaken by a report of the Consumer Council which advocated the setting up of informal Small Claims Courts. With some reservations these proposals were supported by JUSTICE in a memorandum to the Lord Chancellor which is included in its present report. The Lord Chancellor opposed the setting up of any courts outside the framework of the existing system and preferred to simplify and cheapen County Court procedure on the lines outlined by Sir Geoffrey Howe at last year's Annual Meeting.

The Committee then proceeded to examine various alternative procedures applicable to cases of all sizes. It proved a difficult task because of the conflict between what was ideally desirable and what might be found acceptable. The main requirement was to make



litigation cheaper, quicker and more certain without compromising the high standards of justice that we now enjoy. Its proposals are designed to ensure that

(*a*) the court takes over the prosecution of the proceedings at the earliest possible moment;

(*b*) parties disclose the strength of their case to each other as soon and as openly as possible;

(*c*) the great expense of the trial itself is confined to determining the real issues between the parties; and

(*d*) so far as possible the element of a tactical battle is removed.

It is not possible to summarise the proposals in the space available here and the report needs to be read as a whole. It contains valuable comparative studies of procedures in other jurisdictions. Lord Devlin has written the foreword.

The research was directed by Jonathan Rickford with the assistance of Victoria Paterson. The members of the Advisory Committee were: Sir John Foster (Chairman), Geoffrey Garrett, Cyril Glasser, Prof. Anthony Honoré, Muir Hunter, Philip Lewis, Arthur Marriott, Susan Marsden-Smedley and Paul Sieghart, who prepared the final draft. Lord Shawcross and the late Lord Tangley played an active part in the earlier stages of the inquiry.

Not all the members of the Advisory Committee, or of the Council of JUSTICE, necessarily support all the recommendations in the report and it is put forward in the belief that it will provoke fruitful discussion and further examination of a problem that plainly needs to be solved. The report is published by Stevens and Sons. Copies are obtainable from JUSTICE at £1, members 75p.

**Parental Rights and Duties**

A committee under the chairmanship of Gerald Godfrey, Q.C. has continued its examination of the subject of parental rights and obligations and the problems to which the care of children give rise. It has had the benefit of discussions with Prof. Aidan Gough about the law relating to children in California and with Judge Jean Graham Hall. The Committee gave some assistance to Dr. David Owen, M.P. with his Children Bill which was well received and we hope will be re-introduced before long. Its report is now in an advanced state of preparation.

**Bankruptcy**

The report of our Committee on Bankruptcy has taken longer to complete than we anticipated because the Chairman, Alan Heyman, Q.C. has been one of the Inspectors in the Lonrho

enquiry and two of its other members have been professionally involved in the Poulson case. It is hoped, however, that the report will be published in the autumn.

### Complaints Against Solicitors

We are naturally gratified that the Solicitors' Amendment Bill now going through Parliament with the blessing of the Law Society reflects the spirit of the recommendations made in our report *Complaints Against Lawyers*. It provides for the introduction of a lay element into the first investigation of complaints and the appointment of a lay member to the Disciplinary Committee.

We started to press this matter on the attention of the Law Society in 1968 and our report was published in 1970. We warmly welcome its acceptance of a reform that is plainly desirable and express the hope that the Bar will follow its example.

### Company Law

In last year's Annual Report we welcomed the support given by the Panel on Takeovers and Mergers and the Stock Exchange Council to our recommendation that insider trading should be made a criminal offence, and we were further gratified when the government included provisions to this effect in its new Companies Bill. Unfortunately the Bill was lost through the General Election but we hope that any new Bill will introduce effective sanctions against what is plainly a most undesirable and fraudulent practice.

The White Paper, "Company Law Reform", which the Government published before the Bill, also covered matters not included in the Bill. Our committee submitted preliminary observations on those which appeared most urgent and was preparing a detailed critique of the Companies Bill when the General Election supervened. While awaiting indications of the new Government's intentions our committee is studying the advisability of introducing in Great Britain the equivalent of the U.S. Securities and Exchange Commission.

The members of the Company Law Sub-Committee are: William Goodhart (Chairman), Michael Bryceson, Philip English, Geoffrey Garrett, S. J. Hood, G. M. Lewis, R. S. Nock, B. A. Rider, Paul Sieghart, and Laurence Shurman.

### Liability for Costs

A committee, of which Laurence Shurman is Chairman, has been studying the problems of liability for costs in civil proceedings and a final draft of its report has been prepared.



## ADMINISTRATIVE LAW

Our Committee on Administrative Law has been active throughout the past twelve months, meeting regularly under the chairmanship of David Widdicombe. It has published no reports but has prepared and submitted to government departments and committees a series of memoranda and observations on a variety of topics.

### Development Control Review

Mr. George Dobry, Q.C., the founder of the JUSTICE Committee on Administrative Law, was appointed by the Secretary of State for the Environment last October to conduct a review of development control. The Committee was invited to submit evidence and has, to date, prepared and submitted three memoranda. It has also been invited to give oral evidence.

The Committee's evidence covered the definition of development, policy guidance, planning applications, decisions of the local planning authority, appeals against refusal of planning permission, planning inquiries, the training of planning personnel, delegation of powers, and costs in the light of the present crisis of delay in planning appeals.

### Legal Aid in Tribunals

A memorandum on Legal Aid in Tribunals which incorporated the views of our Sub-Committee on Costs was submitted to the Lord Chancellor's Advisory Committee on Legal Aid. It recommended that in principle Legal Aid should be made available before all tribunals subject to the supervision of the Council on Tribunals. The existing Legal Advice Scheme under the 1972 Act should be expanded both as to eligibility and as to ceiling; £50 would suffice now but the ceiling should be reviewed periodically. The Secretary of each local Legal Aid Committee should have power to grant, but not to refuse, a legal aid certificate. In some cases non-legal representation was needed (e.g. in Valuation Courts) and this type of aid should be available.

Legal aid is as necessary in proceedings before tribunals as it is in court proceedings. Their decisions can often have just as serious effect on a person's vital interest and well-being. The objective should be to develop a system that will make legal aid available for matters which justify it, while discouraging representation in cases where (*a*) no matter of principle and (*b*) no substantial sum of money is involved.

## Local Government Rules of Conduct

The Committee was invited to submit written evidence to the Prime Minister's Committee on Local Government Rules of Conduct, of which David Widdicombe was a member, and did so in December. It recommended that there should be no weakening in the present law and practice. The necessity for disclosing interest at every stage of the decision-making process, including caucus meetings of a majority party, should be emphasised by incorporating it into the code of conduct. The law on the disclosure of pecuniary interest should be simplified and the penalties for infringement increased.

There should be no weakening of the present law on disqualification of direct employees of local authorities, but the need for disqualification in the case of indirect employees should be re-examined.

The traditional austerity of local government with its code of "friendly aloofness" was more necessary than ever in the climate of high-powered management now developing in local government.

Some changes in the general law dealing with corruption were needed. A well established code of conduct and, in the case of officers, the contract of service, would also do much to minimise corruption. We are glad to see that the Redcliffe-Maud Committee has produced a draft national code of conduct.

## The Commission for Local Administration

The Committee submitted comments on the proposed Commission for Local Administration in England and Wales in June 1972. It therefore welcomed the provisions of Part III of the Local Government Bill which are close in most important respects to those proposed by JUSTICE. However, the Committee considered that it would be most unfortunate if the representative bodies were to criticise adversely the expenditure of Commissioners or to put pressure on them to limit their activities, and suggested a few minor alterations to that end. It also urged that the Secretary of State should reserve to himself default powers to meet a situation where a local authority failed to take the action recommended in a second report by the local Commissioner. The Secretary of State felt himself unable to accept either of these recommendations.

## Statutory Agencies

The Committee has begun to examine the impact on the citizen of the multifarious *ad hoc* agencies that are distinct from both central and local government, with particular reference to the



possible standardisation of their constitutional codes, rules of conduct for their members, complaints against them, and tribunals for dealing with matters arising from their activities.

## Taxation of Costs

The Committee is examining the practice in regard to the taxation of costs where applicants in person are awarded costs in compulsory purchase proceedings and do not reach agreement on the amount of costs with the acquiring authority.

## Visit of the Danish Ombudsman

Mr. Lars Nordskov Neilsen, the Danish Ombudsman, visited us on 16th November. He was formerly Director of the Danish Prison Administration and has had a career in the Danish Civil Service. He kindly explained a number of points in connection with his office.

The Danish Ombudsman in one of his two principal tasks—the investigation of complaints— has very much wider powers than our Parliamentary Commission. This takes up 90 per cent of his time. His other principle function is the inspection of the administration and in this he has a very wide jurisdiction covering all branches of State administration (including such matters as decisions by the police to prosecute, the central aspects of local government, and complaints by civil servants about their conditions of service, etc.).

He has power to visit and inspect all custodial and other governmental institutions and uses it. He can also act of his motion. It was clear from our conversations with him that his powers allow him to range much more widely and effectively than our Parliamentary Commissioner.

## Committee on Administrative Law

The members of the Committee are David Widdicombe, Q.C., (Chairman), Albert Chapman, Philip English, Percy Everett, Arthur Gadd, Prof. J. F. Garner, Keith Goodfellow, Q.C., Victor Moore, Kenneth Oates, Graham Rodmell, Harry Sales, and Alec Samuels. Ronald Briggs is its Secretary.

## Passports

The report of this Committee, of which Cedric Thornberry is Chairman, was completed and approved by the Council earlier this year and will be published as soon as possible.

## OVERSEAS AFFAIRS

### Hong Kong

Our main concern during the year has been with Hong Kong, where we have our last remaining overseas branch.

In June of last year its members actively co-operated with the Bar Council in a protest against four Bills which the Hong Kong Government was pressing through the Legislative Council with undue speed. The two most important ones sought to increase the summary jurisdiction of District Judges to seven years, and of Principal Magistrates to four (five for two offences). The Branch enlisted our support and Lord Gardiner wrote to the Foreign Secretary asking him to use his power to veto the proposed legislation. He replied that he had cabled the Governor asking him to hold up the legislation for two weeks so that our representations could be considered. Shortly after this, we learned that the Magistrates' Courts Bill had been dropped but the District Courts Bill had been pushed through its second and third reading. Furthermore the Legal Aid Committee had refused to extend legal aid in District Courts to beyond its present requirement for offences carrying a maximum of 14 years imprisonment. We then tried without success to persuade the Foreign Secretary to advise the Queen to disallow the legislation.

In the meantime our branch had drawn our attention to other aspects of the administration of justice in Hong Kong which in their view needed to be remedied. Among these were:

(*a*) An accused person has no right to elect for trial; the Attorney General alone decides in which court cases are to be tried.

(*b*) Legal aid facilities are very meagre; it is granted as of right only in the High Court, and in District Courts for offences carrying up to 14 years imprisonment. Only 50 per cent of defendants in these courts are represented.

(*c*) District Court judges sit without juries.

(*d*) There is a great shortage of court shorthand writers and judges have to take down all the evidence verbatim in longhand.

(*e*) In some courts there are frequently long delays before verdicts are delivered.

In addition our Branch expressed great concern over the system of appointment and the conditions of service of judges, which conform to those of the old Colonial Legal Service. Judges are in effect civil servants and removable at will. They have to retire at 55, and after retirement they cannot practise in the colony. Full pensions can only be earned after 33 years' service, which means that only comparatively inexperienced young men are capable of earning it. This



means that a senior member of the bar can become a judge only at great financial sacrifice.

All these further matters were conveyed to the Foreign Secretary and in August of last year Lord Gardiner led a deputation to the Foreign Office for discussions with the senior officials in charge of Hong Kong affairs. Two of our members from Hong Kong gave evidence in support of our representations and we were assured that they would be passed to the Hong Kong Government and considered. In a subsequent letter, Lord Gardiner suggested on behalf of the Council that, by reason of the high degree of sophistication of Hong Kong and its importance as an international commercial and banking centre, the traditional legal colonial structure was neither appropriate nor efficient, and that the time had come for an objective review of all aspects of administration of justice in the colony.

In making our representations we have not been unmindful of the serious crime and social problems with which the Government has to deal, or the difficulty of creating and maintaining a legal profession able and willing to protect the rights of its poorer citizens. We do think, however, that the problems require a more vigorous and positive approach.

Two members of our Council, David Widdicombe and Michael Sherrard, and the Secretary have visited Hong Kong, and we have reason to hope that their discussions with our branch members and with ministers and officials will bear fruit. Michael Sherrard gave a well attended lecture on Trades Description Legislation. Perhaps the most encouraging feature of the administrative scene in Hong Kong is the work being done by the Secretary to the Unofficial Members of the Executive and Legislative Councils, who has taken on the duties of an ombudsman and in the course of the last year investigated 1,700 complaints against central and local administration. The appointment of a Commissioner for Corruption investigation is greatly welcomed. He has been given wide powers and full freedom to recruit his own investigating staff.

As a result of all these activities, the Branch has been reconstituted, Henry Litton, Q.C. is its new Chairman, and Lord Gardiner has accepted an invitation to be its President.

### Australia and New Zealand

At the end of January our Secretary was given three weeks' leave of absence to attend the Commonwealth Games. This gave him the opportunity to meet the Australian and New Zealand Sections and to visit Hong Kong as already mentioned. Our relations with the New Zealand Section and with the New Zealand Government have always been cordial and fruitful. In the past we

have been indebted to New Zealand for taking the lead in the introduction of an Ombudsman and a criminal injuries compensation scheme, and on the occasion of his visit the Secretary was highly gratified to find the duty solicitor scheme already in operation, and was assured that it was welcomed both by magistrates and the police. The Government has also set up an administrative division of the High Court with a wide ranging "application for judical review" and discretion to grant any form of relief to which the applicant might be entitled. We advocated this in our report *Administration Under Law* published in 1971. The Secretary was also greatly impressed by his conversations with the New Zealand Ombudsman who plainly takes a very wide and vigorous view of his duties, and by the influence which the small but powerful New Zealand Section of the Commission exerts on legislation.

In Sydney he had discussions with the Australian Section and with the Attorney General and Solicitor General of New South Wales, and also with Mr. Justice Woodhouse who, having completed his work for the New Zealand Government, is now preparing a scheme of no-fault insurance for the Australian Government. One of the chief preoccupations of the Australian Section was the Bill of Rights which had just been published and had aroused considerable criticism.

## INTERNATIONAL COMMISSION OF JURISTS

Despite its severely limited resources the International Commission of Jurists has been as active in defence of human rights as at any other period in its history, and the justification for its existence has never been greater.

In the twelve months to March of this year it has sent observers to eleven different countries to attend trials or to investigate alleged violations of human rights. They include South Africa, Cyprus, Spain, Greece, Tanzania, Mozambique and Morocco. In addition it has made direct representations to over 40 governments, supporting them with press statements that are given world wide publicity.

Among the more successful missions was that undertaken by Geoffrey Garrett to Cyprus in August of last year. His purpose was to enquire into the situation regarding the Rule of Law, with particular reference to the abduction of the Minister of Justice and allegations of ill-treatment by the para-military auxiliary police force. At a press conference shortly after his arrival he made an appeal on television for the release of the Minister of Justice and for the abandonment of violence on all sides. The Minister was released two days later. Mr. Garrett was given full freedom to visit and take statements from persons in custody. He was received by the President



and Turkish Vice-President and other prominent personalities. In his report he concluded that brutal violence and intimidation had been used by the para-military police force and recommended its disbandonment or its integration in the regular police force. He also recommended stricter application of the legal safeguards under the Constitution and the law, and additional powers to investigate allegations of ill-treatment.

In November of last year Prof. Antony Allott attended the opening stages of the trial of the Rev. Beyers Naudé and ten other churchmen who had been charged with refusing to testify before the Schlebosch Commission.

Niall MacDermot, the Secretary General of the Commission, attended the closing stages of this trial. He also attended the conference of the Institute of Race Relations in Cape Town and visited Namibia. He then paid visits to Zambia, Tanzania and Kenya where he had fruitful discussions with the Presidents and law officers. He has addressed a Sub-Committee of the House of Representatives Foreign Affairs Committee in Washington, the International Law Section of the American Bar Association, the U.N. Committee of Twenty-Four on Decolonisation, and a conference organised by the World Council of Churches Ecumenical Institute on "International Action for the Implementation of Human Rights". He has very recently been on a mission to Chile with two other international lawyers.

Many of these matters have been referred to in the I.C.J. Review, which included in Issue No. 10 an important study of the Rule of Law in Turkey in relation to the European Convention on Human Rights. The investigation revealed that there was no justification for the claim of the Turkish Government that there was an emergency threatening the life of the nation and that martial law was being used as a cloak for several serious breaches of the convention, e.g. suppression of all student organisations.

The Commission has continued to play an active part in the affairs of the U.N., UNESCO, and the Council of Europe. In particular it has been working with other non-governmental organisations on the up-dating of the humanitarian codes in the Geneva and Hague Conventions, which deal inadequately with the indiscriminate use of weapons, and on improving machinery for safeguarding humanitarian law in arms agreements. It has also given its full support to the campaign of Amnesty International for the abolition of torture, and its proposed code of procedure for the investigation of complaints of torture. A central problem in the protection of human rights is the reluctance of sovereign states to implement the provisions of conventions and declarations where these conflict with

their own interests. The extent of this may be judged by the slowness of states to ratify the International Covenant of Civil and Political Rights. Sixteen ratifications are still needed. France has only just ratified the 24-year old European Declaration of Human Rights and then only with three reservations. Ten ratifications are needed to bring into force the Inter-American Convention on Human Rights, but so far there has only been one. A similar situation exists with the U.N. Commission of Rights and its new power to investigate complaints against governments. The machinery provided is used to its utmost to delay any investigation or adjudication. For this reason the International Commission insists that an enlarged role for the non-governmental organisations in furnishing regular and reliable reports on human rights situations is increasingly important.

The Commission seeks to mobilise the force of educated public opinion throughout the world on behalf of the rule of law. It has over 50 national sections and its governing body comprises 40 distinguished lawyers from all continents. It tries to serve as a research and information centre on legal and factual situations regarding human rights. The Commission endeavours by patient and continuous activity to increase the scope of international control over human rights and to render it more effective.

## GENERAL INFORMATION AND ACTIVITIES

### Membership and Finance

We have enrolled only 70 new members during the past twelve months. In relation to the publicity, which our reports and other activities have received, this is a very disappointing figure. Such a low rate of recruitment does not make good the inevitable losses through resignations, deaths, lapses and untraced removals. A fair estimate of our present membership figure is:

| | Individual | Corporate |
|---|---|---|
| Judicial | 53 | — |
| Barristers | 427 | 5 |
| Solicitors | 544 | 51 |
| Teachers of Law | 168 | — |
| Law Students and Articled Clerks | 112 | — |
| Lay Magistrates | 37 | — |
| Associate Members | 150 | 16 |
| Legal Societies and Libraries | — | 27 |
| Overseas | 71 | 19 |
| | 1562 | 118 |



Subscriptions were a little higher than last year at £3,150 but the proceeds of the Ball were lower.

By a reduction in our permanent staff and using the services of students and volunteers, we have managed to contain a substantial increase in other costs and we have also been helped by a larger income accruing to the JUSTICE Educational and Research Trust. But our position is indeed precarious and with our present resources we cannot give efficient service to our members, to our committees and to all the various public and individual matters which are pressed on our attention. In addition we still do not know what we shall do for office accommodation after May 1975 or how much we shall have to pay for it.

### JUSTICE Educational and Research Trust

The Trust receives convenanted subscriptions from members and supporters of JUSTICE, and occasional grants. The income is used to meet the salary of a Legal Secretary and makes a contribution towards rent and overheads and the expenses of research committees. During the past 12 months, it has received further generous donations of £1,500 from Mr. and Mrs. Jack Pye's Charitable Settlement, and £500 each from the Max Rayne Foundation and the International Publishing Company.

Over the years the Trust has steadily built up a fairly substantial reserve fund. The interest on it helps to provide the income mentioned above but the capital may well be needed to help solve the problem of office accommodation. We therefore need to increase the fund and the Secretary will be grateful for any suggestions regarding foundations, companies and individuals who might be approached.

During the year Lord Shawcross and Lord Justice Cairns asked to be relieved of their duties as Trustees. Sir John Foster, an original Trustee, will continue to serve, together with Geoffrey Garrett.

### The Council

At the Annual General Meeting Tom Kellock, Q.C., a previously co-opted member, was elected to the vacancy caused by the death of Sylvester Gates. Bryan Anns, Peter Carter-Ruck, Lord Foot, Sam Silkin, Peter Webster and Basil Wigoder retired under the three year rule and were re-elected.

At the meeting in the following October Sir Desmond Heap, Laurence Shurman, Michael Sherrard, Q.C., David Widdicombe, Q.C., and J. E. Hall Williams were co-opted.

Following the General Election, Lord Elwyn Jones, Sam Silkin and Peter Archer retired from the Council and Blanche Lucas,

Edward Lyons, Q.C., M.P., and Jeffrey Thomas, Q.C., M.P., were co-opted.

Michael Bryceson was appointed Hon. Treasurer.

**Officers**

The following officers were appointed by the Council in October:

Chairman of Council: Lord Gardiner.
Vice-Chairman: Sir John Foster.
Chairman of Executive Committee: Geoffrey Garrett.
Vice-Chairman: Lewis Hawser.
Honorary Treasurer: Rt. Hon. Sir Elwyn Jones.

**Executive Committee**

The Executive Committee consists of the officers together with Bryan Anns, Michael Bryceson, Philip English, Lord Foot, Edward Gardner, William Goodhart, Glyn Hardwicke, Muir Hunter, Tom Kellock, Philip Kimber, Paul Sieghart, Charles Wegg-Prosser, William Wells and Alec Samuels (*ex-officio*).

**Finance and Membership Committee**

The Finance and Membership Committee consists of Michael Bryceson (Chairman), Bryan Anns, Michael Ellman, Philip English, John Gauntlett, William Goodhart, Glyn Hardwicke, Master I. H. Jacob, Jonathan Stone and William Wells.

**Annual General Meeting**

The Annual General Meeting was held on Tuesday, 26th July, 1973, in the Law Society's Common Room.

Lord Gardiner presided and in his opening remarks expressed deep regret at the death of Lord Tangley who had been a member of the Council since 1958 and always a source of strength and wise counsel.

After the Annual Report had been accepted, the meeting agreed to resolutions proposed by the Council that its powers of co-option should be increased from five to ten, and that the Chairman and Vice-Chairman of the Executive Committee should be given the status of Officers of the Society.

Miss Eva Haynes then moved a resolution designed to give associate members the same status and voting rights as legally qualified members. It was pointed out on behalf of the Council that such a change in the Constitution would fundamentally alter the nature and influence of JUSTICE as an all-party association of lawyers and the British Section of the International Commission of Jurists; and that associate members with the requisite knowledge and experience were regularly invited to serve on committees.



The resolution received no support from those entitled to vote and on an informal vote only five associate members supported it. The Chairman said, however, that the Council would consider ways and means of further enlisting the participation of associate members.

Michael Bryceson, in presenting the annual accounts, once again stressed the urgent need to increase the membership and income of the Society, and said that he feared there would be a substantial deficit in the ensuing year.

Among the matters raised in the general discussion was the dual role of visiting magistrates which required them both to administer punishment and to remedy prisoners' grievances. In replying, the Secretary foreshadowed the setting up of the Joint Committee described elsewhere in this report.

At the close of the meeting an address was given by the Rt. Hon. Geoffrey Howe, Q.C., M.P., who was then Minister for Trade and Consumer Affairs.

**Sir Geoffrey Howe's Address**

The theme of Sir Geoffrey's address was "Consumer Protection and the Law". He began by describing how consumers had gradually emerged as a "separate breed" of citizen whose status and rights were now in process of being defined. Very few people now believed in the slogans freedom of contract and *caveat emptor*. In the Fair Trading Bill, the Parliamentary draftsmen had used a hundred words to define a consumer. A more compact definition would be "a housewife shopping in a Clapham supermarket". In some ways we were all consumers and our distinguishing marks were lack of information, lack of expertise, lack of experience, lack of economic resources and lack of guile.

Sir Geoffrey then pointed out that the idea of consumer protection was found in different systems of law from earliest times; laws relating to usury, the principle of good faith in contract, the doctrine of unjust enrichment, the notion of the equity of redemption evolved by the old Court of Chancery, and in Magna Carta. The task of the lawmaker was to see that the system of law, substantive and procedural, held a fair balance between the parties, and not to give complete immunity to the consumer. And this was a much more complex business than it used to be.

In Sir Geoffrey's view there were three factors which brought about an imbalance:

(*a*) the weakness of the consumer bargaining position,
(*b*) the total disparity of knowledge between the supplier and consumer, and

(*c*) the disparity in resources for contesting legal liability.

The Sale of Goods Act, 1893 had governed the civil rights of parties to consumer contracts in goods for the past 80 years. It confirmed the principles of fair dealing with implied rights and warranties, but it had shown itself less and less valuable to the consumer because the implied rights were subject to Section 50 of the Act which allowed any right, duty or liability to be negatived or varied by express agreement, by the course of dealing between the parties or by usage.

Sir Geoffrey said it was clear that commercial interests had not been slow to take advantage of this. Contracting out had been increased by standard form contracts and the provision of consumer credit on an ever-growing scale. The Moloney Committee had concluded in 1962 that the use of exclusion clauses was widespread and that the consumer was often ignorant and without bargaining power. The Law Commission had endorsed these conclusions. The judges had tried to redress the balance but it was the duty of Parliament to put the law on the right course and this was why the Government had given effect to the substance of the Law Commission's proposals in the Supply of Goods (Implied Terms) Act. Under this Act, exclusion clauses would be totally voided in respect of genuine consumer purchases of goods by private individuals for private use.

Retailers had been protected by giving them the right to challenge exclusion clauses in cases where they appeared unreasonable so that the liability could be passed back along the chain to the point where it belonged. The Act did not cover services, which were being separately studied by the Law Commission. The further area of civil liability and compensation for personal injury was being considered by Lord Pearson's Commission.

The second area of imbalance was the consumer's lack of understanding of the nature of the commitment into which he was entering, in respect not only of his legal rights, but also of the technical merits of the article he was buying and any further costs he might incur. This problem was covered by the Weights and Measures Act and the Trade Descriptions Act, which would now be reinforced by the Fair Trading Bill. This would confer on government the power to prescribe how goods should be sold and the information about them to be made available.

The consumer's lack of information would, Sir Geoffrey hoped, also be remedied by consumer groups and associations and advice centres of various kinds. The Government's objective was to encourage a comprehensive network of such bodies, with the local authorities playing a leading part.

Sir Geoffrey went on to describe how he was porposing to tackle



the third cause of imbalance. Important changes had been made in the County Court rules which made it easier and cheaper for consumer claims to be heard. There was provision for pre-trial review and for the Registrar to strike out claims and defences without merit. Costs were not recoverable for claims of less than £20. Small claims could now be brought and established by default action. Forms had been simplified and steps had also been taken to establish an arbitration service within the framework of the existing County Court system.

All these changes would make it possible for consumer cases to be dealt with informally within the system, and he thought that this was better than setting up a separate system of small claims courts.

Sir Geoffrey also referred to the new provisions of the Criminal Justice Act, 1972 which allowed magistrates to award civil compensation for certain kinds of damage, and to the powers given to the Director of Fair Trading to apply for injunctions against dishonest traders, and to obtain and enforce undertakings. In closing he said: "The unifying thread of the Government's approach to legislation in the field of consumer protection is the need to correct the disparity of power and bargaining strength between the consumer and market place."

**Annual Members' Conference**

The Annual Members' Conference was held in the Lord Chief Justice's Court on Saturday, 2nd March. The Rt. Hon. Lord Kilbrandon presided and the subject was "The Future of Trial by Jury". Observers were present from Lord Justice James' Committee, the Max Planck Institute, Law Commission, Metropolitan Magistrates, Magistrates' Association, Law Society, Association of Chief Police Officers, Superintendents' Association, Police Federation, Justices' Clerks' Society, London Criminal Courts Solicitors' Association and Institute of Judicial Administration.

Lord Kilbrandon described the differences in Scottish procedure compared with English procedure. The prosecution is conducted by the independent public prosecutor. There is no opening speech. Evidence must be corroborated. A simple majority verdict is always possible.

Mrs. Sarah McCabe, Prof. W. R. Cornish and Michael Zander gave accounts of their research findings. There was general agreement that some 30 per cent of the Crown Court acquittals are due to inadequate prosecution evidence, a situation to some extent attributable to the paper committal procedure. The jury is likely to be aware of the criminal record of the defendant, or the possibility of one, and to be influenced by it only in respect of similar as opposed

to dissimilar offences. The young juror is marginally more lenient than the not so young juror. The jury may react against the judge who appears to be strongly summing up for a conviction.

Possible avenues for future research might include an inquiry into the reactions of the judge to the verdict, an inquiry into criminal careers of offenders, and an inquiry into the amount of information on an offender in the possession of the police which for one reason or another is not given in evidence.

Basil Wigoder, Q.C., supported the jury system because it enables the public impartially to involve themselves in the administration of justice, and the perverse verdict is an important safeguard, e.g. against an oppressive prosecution or police misbehaviour.

A number of possible changes were canvassed in a wide-ranging discussion. A pre-trial summons for directions might be tried in the long, difficult and complicated case, e.g. to narrow the issues in conspiracy, to call for background information such as occupation of jurors where this might be important, e.g. in a trade union picketing case, or to enable the judge to order an old style committal. The defendant should be entitled to ask for trial by judge alone if he so desired.

Jurors should be seated more comfortably and encouraged to take notes. They should be encouraged to ask questions, so as to become interested and involved, although care would have to be taken to ensure that such questions were orderly and relevant. The giving of evidence in a narrative form should be permitted. A person convicted on a majority verdict, especially at a retrial, should have an automatic right of appeal.

Verbatim transcripts of the proceedings, prepared by Mrs. Helen Tennyson and Miss Christine Anstee, who are both members of JUSTICE, are available, price £1.

### The JUSTICE Ball

The fifteenth Annual Ball was held at the Savoy Hotel on Friday, 8th June. It was attended by 320 members and guests which was substantially fewer than in 1972. Proceeds were correspondingly lower but it was a happy occasion as always. Clement Freud provided pungent after-dinner entertainment. Our warm thanks are due to Mrs. Bryan Anns, who was chairman of the small but enthusiastic Ball Committee, and to all the firms who took advertising space in the programme or gave donations and raffle prizes.

### Meeting with French Section

In July of last year representatives of JUSTICE visited Paris for our annual re-union with the French Section, whose members



received us with their usual generous hospitality. The subjects discussed were the enforcement of custody orders in foreign jurisdictions and privacy. Our two spokesmen were Gerald Godfrey, Q.C., and Herbert Lloyd. We look forward to the visit of our French friends to London at the weekend of 6th/7th July.

### Contacts with other Sections

In August of last year, the Secretary and Peter Rusk attended a conference of European Sections in Lund. It was organised by the Scandinavian, German and Austrian Sections on the subject "Human Rights and the Welfare State".

In May of this year, Paul Sieghart, Ian McLean, Peter Rusk and the Secretary attended a three-day conference organised by the Austrian Section in Badgastein on the general theme of the re-opening of judicial proceedings. The Secretary contributed a paper on the re-opening of criminal proceedings in the English system.

### Scottish Branch

During the year our Scottish Branch has continued to serve as a valuable source of information and comparison for our committees. It was also consulted from time to time by the Scottish Law Commission. The Secretary, Ainslie Nairn, is a regular attender of our Council meetings and has been most helpful in investigating and reporting to us on individual Scottish cases. His address is: 7 Abercromby Place, Edinburgh EH3 6LA, and he will welcome enquiries about membership of the Scottish Branch.

### Provincial Branches

The only corporate activity this year has been in Bristol, where our Branch helped to pioneer the first duty solicitor experiment. Well attended discussion meetings have been held on Sir Robert Mark's Dimbleby Lecture and on variations in rates of imprisonment in magistrates' courts. The Branch's Annual General Meeting was devoted to a discussion on the right to trial by jury.

We have received valuable help from members in many other parts of the country. They have served on our committees or contributed by correspondence and have taken part in local broadcast discussions on JUSTICE reports and concerns. They have also made it possible for us to respond to urgent pleas for help in individual cases which could not be dealt with by correspondence.

We would like to see more provincial activity and to have more provincial members, and would welcome suggestions and offers of help in recruitment.

## The New Law Journal

We regret that there has been a hiatus in the special JUSTICE issues of the New Law Journal and hope that, if the financial situation permits, they will be provided more regularly in future.

## Acknowledgements

The Council would once again like to express its thanks to Messrs. Baker, Rooke and Co. for their services as auditors both to JUSTICE and to the Trust, 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

Full membership of JUSTICE is open to lawyers and law students. Corporate membership is open to legal societies, firms and agencies, and to law faculties and libraries, both at home and overseas.

Non-lawyers are welcomed as associate members and enjoy all the privileges of membership except the right to vote.

The Council has just decided to increase subscriptions. Members will be advised of the new rates and intending members will find them on the back of the membership form.



## JUSTICE PUBLICATIONS

The following reports and memoranda published by JUSTICE can be obtained from the Secretary:

| *Published by Stevens & Sons* | Non-Members | Members |
|---|---|---|
| The Law and the Press (1965) | 75p | 60p |
| The Citizen and his Council—Ombudsmen for Local Government? (1969) | 50p | 35p |
| Privacy and the Law (1970) | 80p | 57p |
| Administration under Law (1971) | 75p | 50p |
| Litigants in Person (1971) | £1 | 70p |
| The Unrepresented Defendant in Magistrates' Courts (1971) | £1 | 70p |
| Living it Down (1972) | 65p | 50p |
| The Judiciary (1972) | 90p | 70p |
| Compensation for Compulsory Acquisition and Remedies for Planning Restrictions (1973) | £1 | 70p |
| False Witness (1973) | £1.25 | 85p |
| No Fault on the Roads (1974) | £1 | 75p |
| Going to Law (1974) | £1 | 75p |
| *Published by Charles Knight & Co.* | | |
| Complaints against Lawyers (1970) | 50p | 35p |
| *Published by JUSTICE* | | |
| The Prosecution Process in England and Wales (1970) | 40p | 30p |
| Insider Trading (1972) | 25p | 20p |
| The Redistribution of Criminal Business (1974) | 25p | 20p |

The following reports in the Stevens series are out of print, but photostat copies may be obtained from the Secretary on application:

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|---|---|
| Contempt of Court (1959) | 50p |
| Legal Penalties and the Need for Revaluation (1959) | 20p |
| Preliminary Investigations of Criminal Offences (1960) | 40p |
| The Citizen and the Administration (1961) | £1.25 |
| Compensation for Victims of Crimes of Violence (1962) | 40p |
| Matrimonial Cases and Magistrates' Courts (1963) | 30p |
| Criminal Appeals (1964) | £1.25 |
| Trial of Motor Accident Cases (1966) | 75p |
| Home Office Reviews of Criminal Convictions (1968) | 40p |
| Home Made Wills (1971) | 20p |

*Duplicated Reports and Memoranda*

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| Report of Joint Working Party on Bail | 15p |
| Evidence to the Morris Committee on Jury Service | 15p |
| Evidence to the Widgery Committee on Legal Aid in Criminal Cases | 15p |
| Report on Planning Enquiries and Appeals | 20p |
| Rights of Minority Shareholders in Small Companies | 15p |
| Civil Appeals: Proposals for a Suitors' Fund | 15p |
| Complaints against the Police | 15p |
| Eleventh Report of Criminal Law Revision Committee | 20p |
| Transcript of JUSTICE Conferences on— | |
| "Perjury" (1971) | £1 |
| "The Law and the Press" (1972) | £1 |
| Eleventh Report of Criminal Law Revision Committee (1973) | £1 |
| "The future of trial by jury" (1974) | £1 |

*Memoranda by Committee on Evidence*

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| 1. | Judgements and Convictions as Evidence | 10p |
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| 16. | Hearsay in Criminal Cases | 10p |

*Published by International Commission of Jurists*

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|---|---|
| The Rule of Law and Human Rights (Principles and Definitions) | 60p |

Back numbers of the Journal, Bulletin and Review and special reports of the International Commission of Jurists are also available.



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