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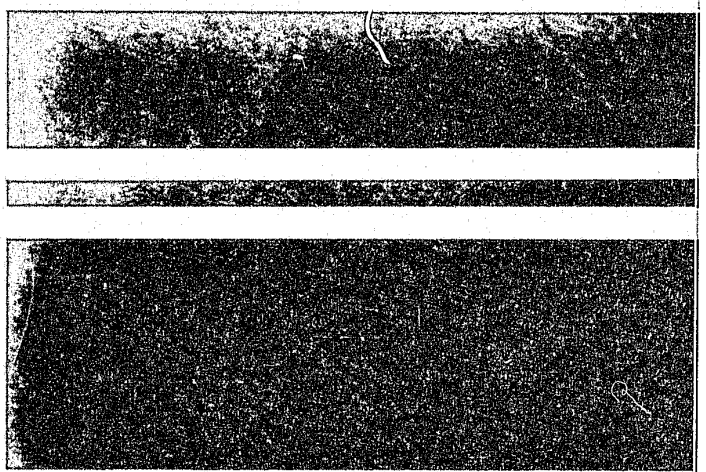
JUSTICE

19th

annual report



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JUSTICE

British Section of the International Commission of Jurists

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AUG 4 1976
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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 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

It was an honour and a privilege for me to be invited to succeed Lord Gardiner as Chairman of the Council of JUSTICE. We were both founder members and, except for the period when he went to the House of Lords and became Lord Chancellor, we have served and worked closely together.

The extent of his work for law reform, including the creation of the Law Commission, is too well known for me to recount. Less known are the work and overseas missions he undertook for the International Commission of Jurists and, at the other end of the scale, the time he devoted both in and out of office to answering personal letters and trying to remedy injustice brought to his attention. He has remained a member of the Council and as a member of the House of Lords has been tireless in pressing the Government to implement JUSTICE reports.

We have suffered a most grievous loss through the untimely death of Bryan Anns, whom many of us regarded as a future chairman of JUSTICE. He joined in 1958, asking what he could do to help. Two years later, I led him in a memorable and successful appeal to the Court of Appeal in London against a refusal of the Divisional Court to grant a writ of *habeus corpus* in respect of a group of detainees in Northern Rhodesia. He had discovered a possible precedent for a writ to run to a protectorate and technical grounds on which to base an application. He went to Africa twice to arrange the documentation, and master-minded the whole exercise.

He joined Lord Gardiner's chambers and became actively involved in the work of JUSTICE committees, particularly those concerned with criminal appeals, libel and contempt of court. His courage and enthusiasm were tempered by gentleness and sound judgment, and he never spared himself when fighting to remedy an injustice.

The year under review has not been an easy one. The enforced removal to more expensive offices has added to our financial difficulties and severely limited the amount we can spend on staff at a time when more and more matters require attention.

We have issued no major reports since May of last year although two have been completed and will, we hope, be published in the near future. These are a critical study of the work of the Parliamentary Commissioner and a report in depth of the machinery for dealing with complaints against nationalized industries. Other committees are at work on special subjects but for two reasons the pattern of our work has inevitably undergone a change.

First, a glance at the list of our publications at the end of this Annual Report will show that over the years we have made recommendations for reform in almost every area of law where existing procedures or lack of safeguards can lead to injustice. A gratifying number of them have been implemented in whole or in part, but far too many have been lost sight of or obstructed by those to whom they would have been unwelcome. It therefore seems sensible to devote more of our energies to pressing for the

implementation of recommendations for which the need remains as great as ever than to new ventures which may never come to fruition.

Secondly, our committees have become increasingly occupied in preparing memoranda of evidence to government committees and comments on working papers, White Papers, reports and parliamentary bills. During the year these have included the James Report on the Distribution of Criminal Business, the Heilbron Advisory Committee on Rape, the Police Bill, the Bail Bill, the Law Commission Working Paper on offences relating to the administration of justice, the Community Land Act and the Faulks Report on Defamation.

We have good reason to be satisfied with the report of the Devlin Committee, which was appointed shortly after the Luke Dougherty case. If its recommendations are accepted and strictly enforced, the danger of mistaken identification should be considerably reduced, though by no means eliminated. We were the only body to maintain that evidence of identity should be supported by evidence of another kind, and the report accepts this in principle. Additionally it bears out all we have been saying over the years about the hazards of our pre-trial procedure and the inadequacy of the remedies for wrong convictions.

We are also grateful that, less than a year after the publication of our report on bankruptcy, the Government has introduced the Insolvency Bill to implement some of its recommendations and proposals and has accepted amendments designed to make them more effective.

I wish to pay tribute to our Secretary, Tom Sargant, who, alongside his valuable general work for JUSTICE, which he infuses with his energy and imagination, finds time to take up individual cases where it is suspected innocent men have been convicted. Ronald Briggs amazingly keeps track of the specialist committees and of the research and contributes greatly to the success of the JUSTICE excercises in law reform. Mrs. Brown and Mrs. Christie continue to give willing and efficient service, whatever the pressure of work.

For myself, I would like to see in the next year recommendations from JUSTICE to deal with the problem of the Appellate Courts turning down an appeal where the evidence was available but not brought before the Court of first instance. This rule makes the law too much of a game—the accused or party in a civil action makes a mistake in the Court below; therefore, irrespective of what the truth is, he has lost. I appreciate the principle that appeals to Courts of Appeal must not constitute a new trial, but where justice and truth demand it some relaxation of the principle must be found.

Another area in which I would like to see research and recommendations is where tribunals, and some administrative bodies, make decisions without a right of appeal and in some cases on evidence which they keep secret and do not divulge to the person involved. I would also like to see research being done and recommendations made in the area covered by the U.S. Freedom of Information Act.

JOHN FOSTER

Report of the Council

HUMAN RIGHTS

It would be difficult to suggest that during the past year the protection of Human Rights in the world at large has shown any significant—or even measurable—improvement. There are still millions of refugees, tens of thousands of prisoners who have never been tried, thousands of sufferers from torture and ill-treatment, and untold numbers who lack justice in other ways. Perhaps we have reason for thankfulness that there seems to be a steady growth in the number and strength of people and organizations dedicated to the support of Human Rights in one way or another. As investigations and publicity increase in scope and depth, so we see more clearly how bad the situation still is. Much of the world still pays only lip service to the international code of Human Rights, and the struggle to give it reality must continue.

There is no lack of demand for "rights", but the people who demand them often seem to pay scant attention to their responsibility for ensuring the rights of others, and for limiting their own demands to what others can afford to grant.

Our parent body, the International Commission of Jurists, continues, under the untiring direction of Niall MacDermot, to have an impact far greater than its meagre funds might be expected to produce. Its activities in research, investigation, observation, reporting and intervention with Heads of State, Governments and Ministers are universally respected. It deserves far more support than it receives. The best evidence of its independence and its unshakeable opposition to injustice is the fact that such criticism of it as there is comes equally from all extremes of the political pallette.

In the United Kingdom there is no shortage of subjects for our attention. Injustices exist even where the traditions of law and order are strong. Changing patterns in society bring new insights into wrongs which might formerly have passed unnoticed. Man's economic and social rights may not be the primary concern of JUSTICE, but whatever may be the political motivation of a law, we *are* concerned to identify and remedy errors and gaps which could put Human Rights at risk, whether for the many or for the few.

We are encouraged by the appearance of new specialized groups concentrating on particular aspects of Human Rights, and the notable increase in the number of members of all branches of the legal profession willing to give their time and skills to this work. There are very welcome moves to ensure a greater degree of co-operation and interchange of views between groups, a process which promotes both strength and efficiency. It also increases the overall publicity which in turn can be seen to be having its effect on the willingness of foundations and others to help the cause of Human Rights.

Perhaps the most interesting current development in relation to Human Rights in the United Kingdom is the growing public interest in the possibility of a new domestic Bill of Rights. If the idea is expressed in the

phrase "Guarantees for Human Rights in the United Kingdom" there can be few members of JUSTICE who would not agree that there is need for improvement. Of course there is plenty of room for disagreement about the form and content of such a Bill, and for discussion on the questions of entrenchment and enforcement. Such problems are not currently within the range of the activities of JUSTICE, but they are being studied in many quarters and particularly by the British Institute of Human Rights, which is promoting much research and discussion on the whole question. If and when a firm proposal for a Bill of Rights is made public, no doubt JUSTICE will give careful attention to its terms and express its views as it does in relation to any other domestic legislation. Until then we should all be glad to see a better relationship between the European Convention of Human Rights and our domestic law, and the development of better safeguards for those human rights which are not as yet easily comprehended within English common law.

We are naturally gratified that in May the United Kingdom ratified (with some reservations concerning dependent territories) the U.N. International Covenants on Civil and Political Rights and on Social and Economic Rights. We urged that this should be done in our last Annual Report. It now remains for the United Kingdom to sign the Protocol which allows individual representations.

CRIMINAL JUSTICE

We have to observe with regret that during the past twelve months no substantial progress has been made in the reform of criminal trial procedure. The recommendations of the 11th Report of the Criminal Law Revision Committee received such a hostile reception from the legal profession and others that it has been virtually buried. No attempt has been made to rescue any of the valuable recommendations in the report, or to work out any compromise proposals.

The main objection to the report was that it made a number of recommendations designed to strengthen the powers of the prosecution without giving the defence any corresponding safeguards. We have considerable sympathy with Sir Robert Mark's contention that our system of criminal trial is not an efficient instrument for getting at the truth, and we can understand the frustration of the police when a criminal of whose guilt they are convinced is undeservedly acquitted. But in our view Sir Robert tends to dwell on those aspects of the system which favour the accused and to shut his eyes to those which favour the prosecution.

The truth of the matter, which is not sufficiently acknowledged, is that, if the police stick to the rules and the prosecution and judges play fair, guilty persons may sometimes be acquitted, whereas, if they do not, then innocent persons can be too easily convicted.

Over ten years ago, we had an all-day meeting with a group of high-ranking police officers. At the end of our discussions we asked them to specify what additional powers and procedural changes they needed to bring the guilty to justice and offered in return to work out the safeguards we thought would be needed to prevent the conviction of the innocent. We were told that they could make such proposals only to the Home

Office. Since then, two important changes have been made at the request of the police. One was majority verdicts, the other was advance notice of alibi (which we had proposed)—but without a statutory safeguard that the police would not interview alibi witnesses without giving the accused's solicitors the opportunity to be present. The resistance of the legal profession to any further changes designed to strengthen the hands of the prosecution is therefore understandable even if it is not always justified.

The weakness of Sir Robert's position is that he does not sufficiently acknowledge the extent to which trials can already be weighted in favour of the prosecution if the police are not wholly objective in the gathering and presentation of evidence or if the prosecution does not disclose evidence favourable to the defence. In addition to this, the prosecution usually has far greater resources at its disposal, particularly in relation to scientific evidence. Many an accused person comes to trial when his defence has not been properly prepared and his counsel has had no chance to advise on evidence or to consider the value of available witnesses.

No serious attempt has yet been made to solve the problem of alleged verbal admissions which undermine the integrity of so many criminal trials. As early as 1960 we called attention to this problem in our report *Preliminary Investigation of Criminal Offences* and returned to it with our proposals for compulsory interrogation of suspects in the presence of magistrates. We therefore find it ironic that Lord Justice Lawton, who was chairman of our 1960 committee, was moved to say in his judgment on the Smalls appeals, when fabricated verbals had been repeatedly alleged, "In our judgment something should be done, and as quickly as possible, to make evidence about oral statements difficult either to challenge or to concoct". In other words, in 16 years we have learned nothing and done nothing.

Another regrettable aspect of the present situation is the unfruitful confrontation which has developed between Sir Robert Mark and the legal profession. Charges and counter-charges do not help. Criminal trials should not be a game. The defence of person and property is at stake on the one hand and the liberty of the accused on the other. Criminal law and procedure have to strike the correct balance. To achieve this, a constructive dialogue is needed in which both sides abandon their entrenched positions and try to understand the other's doubts and difficulties.

It appears that the Home Office lacks the will to resolve the deadlock, but at least it could promote the dialogue. The need for action is urgent. If our case files have any meaning and our reading of them has any validity, many things are happening in our courts which ought not to happen.

Devlin Committee Report

The report of the Devlin Committee is, from the viewpoint of JUSTICE, a masterly and satisfying document which could well mark a turning point in judicial attitudes to evidence of identification.

One of its great merits is that the Committee did not confine its attention to the narrower problem of identity parades and trial procedures, but used the cases of Luke Dogherty and Lazlo Virag to make an exhaus-

tive analysis of the whole criminal process from the moment of suspicion right through to consideration of petitions by the Home Office, and to show the many hazards which may be encountered and need to be overcome. Apart from the recommendations in the report, the detailed accounts of these two cases should be required reading for everyone concerned with criminal trials.

The report pays generous tribute to the part played by JUSTICE in the Luke Dougherty case, and accepts many of our recommendations. It is of particular interest that we were the only body to call for a requirement of corroboration of evidence of identification by evidence of another kind. This has been accepted in principle by the Devlin Committee, with an escape formula for exceptional cases, such as recognition of persons well known to the witness or long periods of observation, which, if the judge's discretion is used rightly, should have the same effect as the formula proposed by JUSTICE.

It also appears that we were the only body to recommend that the new rules governing identity parades should be given statutory force and that any serious breach of them should render the evidence inadmissible. We would however have liked to see stronger recommendations about the right of the accused to have his solicitor present.

Among other recommendations, we welcome those relating to confrontations and dock identifications, the taking and supplying of witnesses' descriptions to the defence, and the need to attach importance to failures to identify and other negative evidence in favour of defence. We particularly welcome all that the report has to say about the undesirability of police officers taking statements from alibi witnesses without notifying the accused solicitors. This is something to which we have called attention for many years and stressed in our evidence to the committee.

On the photographing of parades, the Committee does not immediately call for more than some experiments. We hope that these will be carried out promptly and fairly and will prove their usefulness. They will eliminate the many disputes as to whether the suspect did or did not stand out like a sore thumb.

At various points in the report there are strong hints that our pretrial procedures need tightening up, perhaps by the introduction of an independent prosecuting authority. At the other end of the process we welcome the recommendation that the Home Office should apply a less rigorous test before it will take action on a petition, and that it should study the feasibility of setting up an independent review tribunal by which cases unsuitable for reference to the Court of Appeal could be handled. We recommend this in our report *Home Office Reviews of Criminal Convictions* (1968) and have recently set up a committee to go further into the problem.

The Home Secretary's observations in the House when announcing (11th May) the remission of Mr. George Davis' prison sentence deserves particular attention because they emphasise that the reference back procedure is not appropriate for every case that calls for review. Some material that is relevant to a review decision may be inadmissible in court. The exercise of the Royal Prerogative in cases where a shift in the balance of the evidence presented to the Home Secretary renders it

indefensible to persist with a sentence of imprisonment, is an ancient procedure. Though it has been used less since the establishment of the Court of Appeal in 1907, there have, as Lord Harris pointed out in the Lords, been seven cases since 1971. A thorough review of the machinery for appealing against conviction is overdue. Until it is instituted, the Home Secretary should be prepared to recommend exercise of the Prerogative more frequently.

There is no doubt that the Devlin Committee has highlighted a disturbing and unsatisfactory state of affairs to which we have been drawing attention for many years. We therefore welcome the Home Secretary's assurance in the House (11th May): "On those parts of the Devlin report we can act upon without consultation we shall act upon as soon as possible. We shall proceed in that way in future". We also welcome the announcement that, pending the implementation of the Devlin report, a special hearing by five judges of the Court of Appeal will be held to examine a number of cases involving identification evidence and to give guidance to courts on the subject.

Remedies for Wrong Convictions

The untimely death of Bryan Anns made it necessary to reconstitute the committee which had been set up on his suggestion, and under his chairmanship, to make a new and more radical appraisal of the whole problem of criminal appeals and the lack of adequate post-appeal remedies.

William Denny, Q.C., was invited to become its chairman and the other members are Geoffrey Garrett, Julian Gibson-Watt, Peter Hughman, Ben Hytner, Q.C., Dr. Michael Knight, Ivan Lawrence, M.P., Dr. Leonard Leigh, Wendy Mantle, Alec Samuels and David Bean (Secretary).

Criminal Appeals and Legal Aid

It was our hope that, when the duty to advise on appeals had been fully accepted by both branches of the legal profession, the flow of letters from prisoners would decrease.

This has not been the case. If anything the flow has increased but there has been a change of emphasis. Whereas formerly the majority of letters came from prisoners who had been given no advice, they now come mainly from those who have been given advice but are unwilling to accept it, or from those whose grounds of appeal drafted by counsel have been rejected by the Single Judge.

Much could be said about this problem and we can mention only some of the factors which contribute to it:

(*a*) the competence of counsel varies greatly, as does the enthusiasm of solicitors and counsel for doing all in their power to remedy a miscarriage of justice if they believe that one has occurred;

(*b*) solicitors can be genuinely frustrated by the limitations and uncertainties of the legal aid provisions and the difficulty of drafting adequate grounds without having seen a short transcript of the summing-up and of the evidence of vital witnesses.

(*c*) there is a very wide gap between what an accused regards as a fair summing-up and what the Court of Appeal regards as acceptable. A would-be appellant cannot understand when he is told by counsel that the summing-up was heavily biased against him but is not appealable. We have one case under review in which the complainant, aged 28, was picked out by two witnesses on a parade of young boys aged 17 to 20. Nevertheless the trial judge commended the identification in his summing up, and two counsel have advised that this does not provide a ground of appeal.

(*d*) a prisoner's grounds of appeal may consist wholly of complaints that his defence was badly conducted, his counsel had seen his brief only on the morning of the trial, and his witnesses were not called. We have tried to rescue a few cases of this kind, but the difficulties are insuperable. The Court invariably refuses to hear witnesses who were not called through the negligence of an appellant's solicitors. This is something which we have always regarded as unfair.

In general, our view has always been that if the Court of Appeal were to take on a more active supervisory and corrective role, so that the rules could not be so freely broken with impunity, its case load might well be halved.

Luton Murder Case

This case, which has been mentioned in our last two annual reports, has now been referred back to the Court of Appeal by the Home Secretary for the third time.

Three men, Patrick Murphy, David Cooper and Michael McMahon, were convicted of the murder of a Luton sub-postmaster in 1969. The main prosecution witness was a man called Matthews who was first charged with the murder but turned Queen's evidence. He claimed that he had accompanied the other three men to Luton for an innocent purpose and a feature of the trial was that the prosecution did not disclose statements from two eye witnesses indicating that Matthews had been the driver of the get-away van.

In December 1972, following representations by JUSTICE and a B.B.C. documentary film, Mr. Robert Carr referred back the case of Murphy, who had been named by Matthews as the driver. The Court believed a new alibi witness and quashed Murphy's conviction.

After further pressure Mr. Roy Jenkins referred back the cases of Cooper and McMahon, asking the Court to consider the rightness of their conviction in the light of the quashing of Murphy's conviction. Since the credibility of Matthews was the main issue, counsel asked leave to call him for cross-examination but the Court refused and dismissed the appeal.

A new alibi witness has now come forward in support of Cooper, and in this third reference the Court has been specifically invited to test the credibility of Matthews.

In the meantime the police officer in charge of the case, ex-Commander

Drury, has been charged with corruption, and it is of some interest that his association with John Humphreys, the Soho porn-king, was brought to light by a journalist investigating the Luton murder case.

Other References

Two other cases have recently been referred back to the Court of Appeal after representations by JUSTICE.

Tom Naughton was found guilty of robbery in July 1973 and sentenced to ten years imprisonment. The woman victim of the robbery, who was treated very brutally, was an accomplished artist, and while recovering from the attack made sketches and paintings of her three assailants. It was maintained at the trial that one of them resembled Naughton, but the description she gave of him was nothing like him. Naughton was arrested some time after the other two men and was picked out by the victim at an identity parade. He had a good alibi but a vital independent witness had changed his job and disappeared before the trial.

This man was eventually traced and made a statement to the Secretary of JUSTICE. A full dossier was then forwarded to the Home Secretary together with letters from the two other men convicted of the robbery, who both said that Naughton had nothing to do with it.

Donald Benjamin was convicted of rape in July 1974 and sentenced to twelve years imprisonment. He had previously served four years for attempted rape. His defence was that the girl was willing, but had denounced him when he was unable there and then to give her the sum of money on which they had agreed, and became frightened that her boy friend would find out about the episode.

The girl had freely admitted this to a close friend and the friend's young sister. At the trial the friend gave strong and convincing evidence for Benjamin. Her sister had made a similar statement to Benjamin's solicitors, but received a threat from the complainant's boy friend (now serving a sentence for manslaughter). Being unable to obtain assurances of police protection, she went into the witness box and denied that the conversation recounted by her sister had taken place. No enquiries were made as to why she had done this, and Benjamin was found guilty. His application for leave to appeal was refused and he sent his papers to Strasbourg.

The girl's conscience later troubled her. On Benjamin's suggestion she wrote to JUSTICE. The Secretary invited her to come and see him, and subsequently took statements from her and from her mother. These were passed with a full memorandum and dossier to the Home Secretary. The Court of Appeal has ordered a new trial.

A common feature of both these cases is that the new statements were believed by the police officers appointed to investigate the case. In other cases which have not succeeded there have been indications that the investigating officer has approached new witnesses with an active disbelief. This is one of the reasons why we think that some kind of independent investigation is necessary if justice is to be done in all cases.

The James Report

Apart from one important reservation, we were able to give a warm

welcome to the report of the James Committee on the Distribution of Criminal Business. The Committee interpreted its terms of reference widely and has produced a report which is fully and carefully argued and contains many sensible and acceptable recommendations.

We particularly welcome the Committee's proposals designed to ensure that the accused is more fully informed and advised before having to make his election, and the recommendation that there should be a greater measure of advance disclosure of prosecution witnesses' statements. As we stressed in our evidence to the Committee, it is neither fair nor sensible to expect a defendant to make a blind choice or a solicitor to conduct a blind defence.

Our serious disagreement with the report, which we have conveyed to the Committee, is over its recommendation that the right to elect for trial by jury should be abolished in certain cases of theft and related offences of dishonesty where the value of the property involved does not exceed £20.

In arriving at this decision, the James Committee took the view that, if the superior courts were becoming overloaded, then it was necessary to choose between the right of anyone charged with theft to elect for trial and the right of those facing serious charges to be tried as soon as possible. It also took into account the heavy cost in money, man-hours, and court-time of trials on indictment and the finite nature of the resources available. It then assumed that the primary criterion should be the seriousness of the offence in the eyes of society rather than of the consequences to the individual.

We think that this is a false approach because it confuses the essential nature of an offence with its gravity. The Committee's proposal seems to invite society to declare that a theft of less than £20 is not a serious offence. We regard this as wrong and unwise. Moral turpitude does not start at £20 and the interests of society and the individual can both be best served by treating all cases of theft alike.

We further take the view that any arbitrary limit will give rise to absurdities and endless disputes about the basis on which stolen property is to be valued.

Our view is that if the load on the Crown Courts needs to be reduced, then means must be found of making trials in magistrates' courts more acceptable.

The Bail Bill

The Bail Bill now on its way through Parliament implements most of the recommendations of the Home Office Working Party. The background to the problem is that in 1974, out of 64,981 persons remanded in custody, 29,015 were given non-custodial sentences and 2,101 were subsequently found not guilty.

We can give the Bill a warm welcome because it reflects the views of the JUSTICE Joint Working Party which reported just in time to secure the adoption in the Criminal Justice Act 1967 of its recommendation that magistrates should be given power to impose conditions of bail. We particularly approve of the creation of a statutory presumption in favour of bail and of a new and separate offence of jumping bail, the

downgrading of the monetary aspect of sureties and the insistence that the police must not have the last word in their approval.

We also welcome the new instructions to courts that all the available information about an accused should be put before the court before a decision on bail is made. Once again we must comment on the length of time it takes for a new idea to be taken up. At a JUSTICE conference on bail in 1964, we invited the Director of the Vera Foundation in New York to explain the scheme being operated under its auspices. Two years later, with the blessing of Lord Justice Scarman, then Chairman of the Law Commission, we urged the Home Office to try out a pilot scheme in a London court. Such a pilot scheme has recently been adopted in Camberwell. We welcome it, but ask why it took ten years.

The Bill does, however, leave gaps which JUSTICE and others are trying to fill during its passage through both Houses. The Working Party endorsed a suggestion by JUSTICE that, if a prisoner found he was unable to comply with surety requirements imposed by a court, he should be able to ask to be brought back to apply for a variation of the order, but this is not in the Bill. We also want to see a provision that no person should be remanded in custody who has not been given the chance to consult a duty solicitor or a solicitor appointed from the precincts of the court. A first appearance may be more important than the second. We also think that legal aid should be available for an application to a judge in chambers.

We hope that the combined effect of the Bill's provisions will substantially reduce the number of unnecessary remands in custody, but this will depend on the extent to which they are observed by magistrates and the police.

Complaints Against the Police

The Police Bill introduced by the Government in January of this year will in our view do little or nothing to improve the present unsatisfactory situation in respect of serious complaints, by which we mean allegations of malpractice designed to pervert the course of justice.

The reports of investigations carried out by police officers will still go to the Director of Public Prosecutions, and the complainant will still have no chance of obtaining a remedy unless the D.P.P. launches a successful prosecution against the officer or officers concerned.

We stressed this aspect of the problem in our memorandum to a Joint Working Party in 1970 and again in our representations to the Home Office Working Group in 1973. We proposed that, in cases where allegations of malpractice arose during a trial and could not be satisfactorily resolved, defence solicitors could ask for the complaint to be investigated before the hearing of an appeal and that a factual summary of the facts disclosed should be made available to the Court of Appeal, the prosecution and the defence.

In September of last year, a deputation led by our then chairman, Lord Gardiner, urged the Home Secretary to include such a provision in his forthcoming Bill. When the Bill was published without it, the Chairman of our Executive Committee drew attention to its major

weakness in a letter to *The Times*. We subsequently drafted appropriate amendments which were pressed by Mr. Philip Whitehead and other members during the Committee and Report stages of the Bill. These proposed that the Complaints Board should be responsible for overseeing such investigations and for the editing of the resulting reports.

The Government, however, refused to accept the amendments and they were voted down.

The Accusatorial System

In October of last year the Council decided in principle to initiate an inquiry in depth into the merits and demerits of the accusatorial system.

The decision was prompted by the extent to which our Criminal Justice Committee and an earlier Committee on Evidence had been frustrated in their efforts to propose meaningful reforms within the framework of the accusatorial system. They found that far too much important and relevant evidence can be withheld from the Court, or admitted only at the discretion of the judge, with the result that in some cases the facts which come to the knowledge of the jury are only the tip of an iceberg in relation to the facts which are not disclosed.

It is also of significance that recent JUSTICE committees enquiring into civil procedure and remedies in administrative law have all made proposals designed to secure that the Court plays a more active role in the eliciting of facts and in eliminating the more undesirable consequences of tactical manoeuvring and trial by battle.

The kind of inquiry the Council has in mind will need the co-operation of one or more universities and the obtaining of a substantial grant. These are in process of negotiation. In preparation for it, Sir Norman Anderson very kindly arranged for an interdisciplinary seminar at the Institute of Advanced Legal Studies to be devoted to the theme. Dr. Leonard Leigh contributed the opening paper and considerable support for the project was expressed in the discussion which followed.

It should perhaps be made clear that the purpose of the inquiry will not be directed towards the replacement of our system but to see to what extent its defects can be remedied by grafting on to it some aspects of the continental systems.

Any expression of views on the subject or accounts of practical experience of our members in the working of other systems would be welcomed.

Heilbron Committee on Rape

In the summer of last year our Criminal Justice Committee was invited to submit recommendations to the Advisory Group on the Law of Rape, which had been asked to consider three main questions and to report before the end of the year. The questions were:

(i) Whether the decision in R. *v.* Morgan, which allowed the accused to rely on an honest belief that the complainant was willing, and had aroused strong public feeling, was correct;

(ii) Should the complainant be given anonymity at the trial?
(iii) Should it be permissible to cross-examine the complainant about her sexual history and habits?

Our committee was unanimously of the opinion that the R. *v.* Morgan decision was correct, but it found that the other two questions raised problems of far-reaching importance and required careful consideration of evidence which was not available to it. It therefore took the view that it could best assist the Advisory Group by setting out, from the practical experience of its members, the issues which appeared to be involved and the questions which needed to be answered before any changes in the present law were made.

On the question of anonymity, our committee drew attention to the various motives which could lead a woman to make a false accusation and to the danger that unconditional and unilateral anonymity could in some cases prejudice the accused.

On the question of the cross-examination of complainants about their sexual history and habits, our committee was on the whole in favour of maintaining the present rule that such cross-examination should be permitted without letting in the accused's bad character, but drew attention to the present uncertainty of the law as to whether the accused was bound to accept the complainant's denial or whether he could call evidence to refute it.

The Report of the Advisory Group, which was published in December last, is in our view an admirably balanced and well-argued document. It supported the decision in *R.* v. *Morgan* and recommended anonymity for the complainant unless, in the view of the judge, the disclosure of the identity of the complainant was essential for the discovery of potential witnesses.

On the question of cross-examination and admission of the accused's character, the Advisory Group made somewhat complicated recommendations which should do justice to the majority of situations if the judge's discretion is used wisely.

Duty Solicitors

The Duty Solicitor Scheme, which we advocated in *The Unrepresented Defendant in Magistrates Courts (1971)* is spreading in an encouraging way. It is now operating in sixty courts in various parts of the country.

We are still of the opinion that if it were put on a statutory basis with an attendance fee (as in Scotland and New Zealand), the overall cost would be less than is now being paid out on separate legal aid orders and very many more courts would adopt it.

Offences Relating to the Administration of Justice

We were invited by the Law Commission to submit comments on its Working Paper No. 62 on the above subject.

In general we agreed with its proposals but insisted that any final recommendations should make it expressly plain that the law should be applied vigorously to anyone in any position who was guilty of conduct

interfering with the administration of justice. In particular we urged that it should be an offence for the prosecution deliberately to withhold evidence or to give misleading evidence with the object of deceiving the court.

We further suggested that there should be a statutory charge to juries and that it should be an offence for a juryman not to disclose any prior knowledge of a case or of any of the parties involved in it.

The Commission proposes to create a new offence of perjury, but to restrict it to judicial proceedings. In our report *False Witness* we took the view that the decisions of many tribunals could have just as serious consequences for the losing party as court proceedings, and that evidence should be given on oath.

Our committee was not persuaded by the argument that this would destroy informality or by a compromise suggestion that the tribunal should have discretion, and we reaffirmed our recommendation.

The Commission further proposed to retain the test of materiality. In *False Witness* we argued strongly for its abolition on the grounds that a witness cannot know in advance whether or not his evidence is going to be material and our committee saw no reason to change this view.

To our regret, the Commission has also ignored our recommendations that the definition of *mens rea* should be extended to include recklessness in both civil and criminal cases, and that it should be an offence to procure the swearing of a false affidavit.

Criminal Justice Committee

The members of our Standing Committee are: Lewis Hawser, Q.C. (Chairman), C. R. Beddington, Laurance Crossley, Peter Danks, Stuart Elgrod, Mrs. Daphne Gask, J.P., Glyn Hardwicke, Tom Harper, Alec Samuels, Tom Sargant, Michael Sherrard, Q.C., Charles Wegg-Prosser, F. Morris Williams and Allan Levy (Secretary).

Decriminalisation

This committee, set up last year under the chairmanship of Paul Sieghart, is concerned to find means of confining the area of the criminal law and criminal prosecution to conduct which the ordinary citizen properly regards as "crime". The increasing complexity of life has led Parliament to regulate so many every-day activities that it is difficult, if not impossible, for the ordinary citizen to go through the year without infringing some regulation or other, and so committing a "criminal" offence. This brings the law into disrepute and imposes an unnecessary burden of work on the criminal courts.

The committee has collected and examined a considerable amount of material. It was surprised to find that no-one seems to know how many criminal offences exist in the statute law of England and Wales. Estimates vary from 2,000 to 15,000. The committee has therefore commissioned research to discover the answer to this question, and to find means of classifying all these offences into different categories. At the same time, the committee is seeking information on how this problem is dealt with in other European countries.

Boards of Visitors

The Home Secretary has as yet given no indication of his attitude to the recommendation of the joint committee set up by JUSTICE, the Howard League and NACRO, under the chairmanship of Lord Jellicoe, that the responsibility of the Boards for receiving and remedying complaints was incompatible with their exercise of disciplinary functions and that the Boards should therefore cease to exercise disciplinary functions. The committee made 35 other recommendations, all of which in its view would improve the administration of prisons.

Interviews with Prisoners

In a letter to the Home Secretary the Chairman has expressed concern at the restrictions placed on prisoners being interviewed by solicitors. Under the new rules they can have private interviews with solicitors only when legal proceedings have been commenced with the permission of the Home Secretary. Occasions arise when a solicitor needs to interview a client or another prisoner for the purpose of presenting a petition to the Home Secretary. This may require the passing of confidential information about the involvement of other persons in the crime. The preparation of a petition against a wrong conviction is not regarded as a legal proceeding. This means that a prison officer has to be present at the interview. In such circumstances the prisoner is naturally unwilling to impart what could be vital information and a miscarriage of justice may thereby be perpetuated.

CIVIL JUSTICE

Privacy

As the pressures on the individual from organs of the State, great corporations in the public and private sector and trade unions grow apace, so the decreasing area which he can call his own becomes ever more important. For that reason, the concept of "privacy" is becoming regarded in many countries as the modern successor of more traditional notions of freedom.

In this field, our country is now falling dangerously behind its fellows in the international community. It is more than seven years since JUSTICE first drew attention to the problem in *Privacy and the Law*, and since our Right of Privacy Bill was debated in the House of Commons. It is nearly five years since the Younger Committee reported.

Still the Government has done next to nothing. The Consumer Credit Act 1968 improved the citizen's rights in relation to credit bureaux. The long-awaited White Paper on Computers and Privacy was at last published in December 1975, and contains a welcome and unqualified promise of legislation which will cover data banks in both the public and the private sector.

Paul Sieghart gave much of his time and expertise to the Department in the preparation of the White Paper. But the Data Protection Committee which it promised would be set up "at once" has still not been appointed five months later.

For the rest, no progress of any kind has been made. The Law Commission's Working Paper on Breach of Confidence, published at the end of 1974, has not been followed by any report. From time to time, the Press (and the Press Council) warn that privacy legislation could interfere with press freedom. No doubt it could, if it were badly drafted. But there is no reason why it should be, and infringements of privacy by the Press—spectacular though they sometimes may be—are only a tiny proportion of the threats to privacy from other sources.

Besides, the understandable dislike of the Press for this subject can be no warrant for any government, of whatever political complexion, to do nothing about a matter of such importance—the more so when the manifesto on which the present government was elected gave a clear promise to protect the citizen from unwarranted and mischievous intrusions into his private affairs.

Compensation for Disablement

The JUSTICE committee concerned with this subject first met on 17th December 1972. On the following day, the then Prime Minister (Mr. Edward Heath) announced the setting up of the Royal Commission on Civil Liability and Compensation for Personal Injuries. By the end of the following July, our committee had completed its first report, *No Fault on the Roads*, and submitted it to the Royal Commission.

A year later, we submitted a second report *Compensation for Accidents at Work*. Three and a half years after its appointment, there are still no indications when the Royal Commission will report, or what it will recommend when it does. If past experience is any guide, the time-lag between those recommendations and the presentation of legislation to Parliament is more likely to be measured in years than in months. It is unfortunate that the Commission felt itself unable to accept our suggestion that it should issue an interim report on road accidents, for the toll of death and injuries on our roads continues unabated and many thousands of the victims remain uncompensated through no fault of their own. Hundreds of tragic cases of this kind have been brought to light in the last year alone as the result of television programmes, particularly those screened by BBC *Nationwide* and *Man Alive*. New ones must come into existence literally every day.

More and more states in Europe, North America and the Antipodes have now recognized this problem and have begun to reform their laws so as to resolve it. It is surely becoming increasingly urgent that we should follow suit.

Defamation

Following publication of the report of the Faulks Committee, JUSTICE submitted its detailed comments. While we welcomed the Report in general, we expressed complete disagreement with the Committee's majority proposals for the removal of the right to trial by jury, and the proposal that credit bureaux should be granted qualified privilege for defamatory statements which they circulate.

We also recommended that a defendant who justifies should be required to prove in addition that the publication was for the public benefit, and that damages should carry interest from the date of publication or the commencement of proceedings. We made a number of other detailed comments. Duplicated copies are available at 50p.

Bankruptcy

JUSTICE proposals for reform of the law of bankruptcy were summarized in the last annual report. The Insolvency Bill introduced by the Government in the Lords last November seemed to accept the concerns underlying most of these proposals, notably the undesirability of long term disability and the need to reduce the huge accumulation of undischarged bankrupts (c. 100,000), but seemed also to have grave defects of method and to be likely to impose a heavy burden of unnecessary work on both officials and courts. Strong representations on behalf of JUSTICE were therefore made in the Commons and to the Department of Trade in concert with, but independently of, representations made on behalf of a Working Party of the Bar and the Law Society. We are happy to report that in consequence substantial amendments to the Bill have now been introduced by the Government.

Chief of these is the adoption of the principle of automatic discharge, already operating satisfactorily in a number of Commonwealth jurisdictions and proposed by the Blagden Committee in 1957. The Government's amendments provide that at the time of public examination the court should decide whether after five years there should be either automatic discharge from bankruptcy or a review.

Creditors would be able to make representations against automatic discharge. If the court ordered automatic discharge, it would be open to the Official Receiver to produce new evidence that might have led the court to take a different view had it been available at the time, and the court may then substitute for automatic discharge an order for review after five years. The Act would automatically discharge all cases ten or more years old; cases between five and ten years old would be discharged automatically on the tenth anniversary of the adjudication. Cases less than five years old when the Bill becomes law would, on the fifth anniversary of the adjudication, be reviewed for discharge on the basis of a report by the Official Receiver.

On other matters, we wanted to dispense with the public examination where the unsecured liability did not exceed £10,000, with a discretion to the court to order one, but despite our pressure the Department has preferred to retain the public examination as the normal rule but with a discretion to the court to dispense with it.

It is to be regretted that the opportunity has not been taken of defining the duty of the Trustee in Bankruptcy as one of the utmost good faith, or of making any breach of that duty actionable by the bankrupt. The Act is, however, said by the Department to be an interim measure pending more comprehensive legislation. All things considered the reforms are a large step in the right direction and it is a matter for satisfaction that they have been introduced within a year of the publication of our report. This is now out of print but photostat copies are available at £1 ·25.

Criminal Injuries Compensation Board

In March this year a delegation led by our Chairman gave oral evidence to the Home Secretary's Interdepartmental Working Party in support of the written representations we made last year. Since we initiated and carried through the campaign for the institution of the scheme, we can rightly claim a special interest in the way it is working.

Among the matters of concern to us is the refusal of compensation to claimants on the grounds of their "previous character or way of life", even if these have in no way contributed to their injuries. Another problem arises over injuries received by prisoners. We had one particularly bad case of a man serving a life sentence who had been attacked and seriously scarred by a fellow prisoner against whom he had asked for protection. Crime was not his way of life. He was of previous good character but, in desperation, had taken part in the killing of a married man who was ill-treating and grossly humiliating his wife. There were indications that, at his trial, he had been shielding the wife.

Pending the outcome of an appeal against the conviction there was a hearing of his claim for compensation before three members of the Board which was adjourned on terms that, should the conviction of murder stand, a nil reward would be made, but should it be quashed or should the applicant receive a pardon, there would be a further hearing when the issue would be the amount of compensation. His appeal was subsequently dismissed and he received no compensation. Counsel wanted to take the refusal of compensation to the Divisional Court, but no legal aid was available.

An important aspect of injuries to prisoners, which occur quite frequently, is that the Home Office has a statutory duty of care to all prison inmates.

The other matters which we pressed on the Working Party were:

(i) the need to make the scheme a statutory one with properly defined rights of appeal and provision for paying legal costs;
(ii) the desirability of relaxing the present rule against making awards when the attacker is a member of the victim's family;
(iii) the desirability of making interim awards and periodical payments;
(iv) the urgent need for more efficient arrangements to bring the scheme to the notice of all potential claimants;
(v) the need to warn magistrates of the injustices which can arise if they deal with assault cases by pleas of guilty or bindings-over of both parties without establishing the full facts and degrees of responsibility.

Litigants in Person

We are glad to be able to report that the Lord Chancellor's Department has now taken steps to reduce the difficulties encountered by litigants in person to which we drew attention in our report *Litigants in Person* five years ago.

In the High Court a special inquiry and routing point has now been set up and it is planned to enlist the co-operation of the C.A.Bx. and to have

a duty solicitor available for consultation. In the Divorce Registry there are two clerks dealing entirely with litigants in person and a Registrar whom they can consult in difficult cases. In the County Court staff are now being encouraged to adopt a more positive and helpful attitude towards litigants in person and liason officers are to be appointed to provide a link with local C.A.Bx. and other advice centres.

Royal Commission on Legal Services

We welcome the appointment of a Royal Commission to consider the whole problem of legal services but hope that it will not have the result of shelving desirable reforms which have already been fully discussed and on which decisions are overdue. We have seen this kind of thing happen far too often before: for example with criminal law revision, privacy and compensation for injury on the roads.

We shall, of course, submit recommendations and the Secretary would welcome suggestions from members or offers of assistance in dealing with specific aspects of the Commission's terms of reference.

Complaints against Solicitors

The Lay Observer does not find that the Law Society is complacent about the complaints it receives and the number of cases in which he has recommended further inquiries was comparatively small. But his first Annual Report does bring out very clearly the areas of grievance and difficulty to which we called attention, in particular the artificial division between professional misconduct and negligence, failures in communication, uncertainty about costs, and the frustrations and injustices caused by delays and incompetence, which are not easily measurable. He concludes that in many cases the public finds the working of the law to be too slow, too expensive and too difficult to understand and calls for urgent study of the causes of delays. Many of these problems were discussed in our reports, *The Trial of Motor Accident Cases* and *Going to Law*.

ADMINISTRATIVE LAW

In the course of the year the Committee on Administrative Law has again dealt with a wide variety of matters and has been in communication with Parliamentary committees, government departments and other bodies.

Administrative Division of the High Court

The committee has continued its efforts to promote the establishment of an Administrative Division of the High Court.

During the year the committee was able to draw on the experience of Prof. K. G. Keith, Professor of Law at Victoria University, and a member of the New Zealand Public and Administrative Law Reform Committee, who was on study leave in this country.

A meeting with the Chairman and other members of the Law Commission was arranged in October, when Prof. Keith was able to give a full account of the working of the Administrative Division of the Supreme Court of New Zealand.

The Law Commission had been working for five years on its report *Remedies in Administrative Law* which was published in March. In a letter to *The Times* of 29th March welcoming the report, the Chairman of JUSTICE called for an urgent and full-scale inquiry into the continuing growth in the power of public authorities and their impingement on the rights of private citizens, and into the serious limits to the powers of supervision of the courts. Such an inquiry should consider especially the case for an Administrative Division of the High Court and for the laying down in a statutory framework of principles of good administration. It could complement the work of the Royal Commission on the provision of legal services and also the current public discussion about the desirability of specific statutory provisions to safeguard fundamental human rights.

Efforts are being made to interest persons of influence among the judiciary, in Parliament, the Civil Service, the Press and the universities in the need for an Administrative Division of the High Court in this country. The Hon. Mr. Justice White of the New Zealand Supreme Court has agreed to start a discussion of the case at a meeting kindly arranged by Sir Norman Anderson, Q.C., at the Institute of Advanced Legal Studies.

Members of the committee spoke at the conference of academic public lawyers at Leicester University in April.

Community Land Bill

As mentioned in last year's Annual Report, a memorandum on the Community Land Bill was prepared and sent to all members of the Commons Standing Committee and to the Press. An irritating accompaniment to this proposed legislation was the rapidity with which amendments to it were introduced by its sponsors and the difficulty of obtaining them. To take account of the alterations in the Bill, a second memorandum was prepared by the committee and this was distributed in the Lords through the Party Whips' Offices.

Representatives of the committee met officers of the sponsoring department at the end of July to discuss points, but without finding much common ground.

Victor Moore, a member of our committee, produced in record time an annotated edition of the Community Land Act, published by Sweet and Maxwell.

Small Land Compensation Courts

Following the discussion with the Department of the Environment (see last year's Annual Report) about the introduction of Small Land Compensation Courts, formal letters containing a reasoned statement on such courts and calling for their establishment were sent to the Secretary of State and to the Lord Chancellor.

The Parliamentary Commissioner for Administration

As a result of interest generated at the meeting with the French Section in July, the Executive Committee invited the Committee on Administrative Law to look into the working of the Parliamentary Commissioner. Prof. Frank Stacey, author of *The British Ombudsman*, was co-opted to the committee for this purpose.

The principle points for concern that have emerged are the apparent under-utilization of the Parliamentary Commissioner, the extent of his jurisdiction, the manner of his appointment (Mr. Leon Brittan, M.P., a former member of our committee, raised this important matter in a letter to *The Times* for 25th February), the composition and remuneration of his staff (the better to demonstrate his independence from the Government), the procedure for complaints and the scope of the Parliamentary Commissioner's review of cases. A report is now in course of preparation.

Rules for Motorway and other Inquiries

The power to make rules for the large number of statutory inquiries has not always been exercised. The committee has been investigating this matter and, in particular, the reasons for the omission to make rules in some cases. Three reasons have been offered by the Department: lack of legislative time, little need, and the unsuitability of a single set of rules for a wide variety of enquiries. A number of draft rules, notably for Highway Inquiries, are under consideration.

The committee's conclusion is that, if rules cannot be fitted into the legislative programme, much could be achieved by a set of model rules of persuasive effect to be published by departmental circular.

Statutory Agencies Project

Throughout the year work on this has continued steadily. An interim report, dealing, broadly speaking, with the complaints machinery of nationalized industries, has been prepared and efforts are now being made to find a publisher.

The project is being supported by a generous grant from the Leverhulme Trust Fund and the research is being carried out by Dr. Philip Giddings of Reading University and Dr. Wyn Grant of Warwick University.

David Peirson, sometime Secretary of the Atomic Energy Authority, died suddenly in March. An obituary appeared in *The Times* for 25th March. He was a member of the Steering Committee for the project and had given much wise advice. He will be missed.

Development Control Review

The statement by the Secretary of State on Mr. George Dobry Q.C.'s Review of the Development Control System, issued in November, had about it a slight air of "the department knows best". This is not the place to consider the detail of the Government's views, but the decision to retain the long-established right of appellants and local Planning Authorities to insist on a local inquiry deserves particular mention.

A draft statement of principles for the protection of all persons under any form of detention or imprisonment was submitted to the United Nations Commission on Human Rights early in 1976.

In September, 1975 the I.C.J. published a study on the Application in Latin-America of International Declarations and Conventions Relating to Asylum, setting out the international law relating to asylum, extradition and non-return of political refugees, and drawing attention to a number of cases in which refugees had not received the protection of the declarations and conventions.

An invitation to the Secretary-General to address the order of Advocates in Lisbon last July gave him an opportunity of reviewing the whole area of the Rule of Law and the Protection of Human Rights—an important restatement of the principles and the essential requirements.

The Secretary-General visited Southern Rhodesia in October to inquire into the state of human rights with particular reference to the treatment of Africans in operational areas. Before leaving he held a press conference in Salisbury in which he expressed his conviction that systematic torture was being used in the interrogation of suspect Africans and that government efforts to stop this had been ineffective. This provided the background for a report "Racial Discrimination and Repression in Southern Rhodesia" which was published in May of this year and received very wide publicity both in England and overseas.

In April of this year the I.C.J. joined with the International Institute of Human Rights and the Association of Democratic Lawyers in organising, under the auspices of the U.N. Commission of Human Rights, a conference in Dakar on the future of Namibia and Human Rights in Africa.

Two important reports on human rights and the legal system in Iran by Mr. William J. Butler, Chairman of the Executive Commitee of the I.C.J., and Prof. Georges Levasseur of the University of Paris II describe, in the one case, the stages by which parliamentary democracy in Iran has yielded to an authoritarian one-party regime, with descriptions of a series of political trials in the years between 1963 and 1975, and, in the other, give a detailed and informative account of the organisation of the judicial system covering both the ordinary courts and the military tribunals and certain special courts, as well as a general outline of Iranian criminal law and procedure, and a description of the prison system.

Copies may be obtained from JUSTICE, price £1 (plus 20p postage).

GENERAL INFORMATION AND ACTIVITIES

Membership and Finance

We now have a more accurate picture than we had last year of the effect on our membership of the increased subscription rates. It appears that in the last two years we have lost about 300 old members and enrolled 170 new ones. The greatest loss has been among solicitors and teachers of law. On the other hand we have increased our membership of Crown Court judges, and there has been an encouraging increase in the number of law libraries and law reform agencies, both at home and overseas, who subscribe for our publications.

The present estimated figures are:

	Individual	*Corporate*
Judicial	65	
Barristers	408	5
Solicitors	482	49
Teachers of Law	143	
Law Students and Articled Clerks	98	
Lay Magistrates	38	
Associate Members	123	17
Legal Societies and Libraries		30
Overseas	101	24
	1,458	125

These figures, however, include some 50 members who have not yet paid subscriptions due last October, and a similar number who have not increased their Standing Orders.

The total of subscriptions received shows an increase at £5,300, but all running expenses have increased substantially so that, despite the receipt of £1,500 removal compensation from Slater Walker & Co., there is a deficit of around £1,000 for the year ending 31st March 1976.

The deficit in the current year is likely to be even greater. We hope to reduce it through a piano recital and reception to be held in the Great Hall, Lincoln's Inn, in the presence of the Lord Chancellor, on Tuesday 6th July. We urge all our members to support this occasion and to bring friends.

JUSTICE Educational and Research Trust

The Trust receives covenanted subscriptions from members and friends of JUSTICE, and occasional grants. Its income covers the salary of a legal secretary, a proportion of rent and other overheads, and the expenses of research committees.

During the past twelve months it has recived generous donations of £1,000 from Mr. & Mrs. Jack Pye's Charitable Settlement, £1,000 from the Max Rayne Foundation, £750 from the William Goodhart Charitable Trust, £500 from the Drapers' Company, £500 from the International Publishing Corporation and £250 from Hill Samuel & Co.

One way in which members can help is by drawing the work of JUSTICE to the attention of those who have influence over the allocation of charitable funds.

The Council

At the Annual General Meeting in June 1975, Sir John Foster, Prof. Sir Norman Anderson and Philip Kimber retired under the three year rule and were re-elected.

The Council subsequently lost two of its most valued members. Peter Webster, a founder member, retired on his election as Vice-Chair-

man of the Senate, and Bryan Anns, who joined the Council in 1968, was drowned in the course of a professional visit to Singapore.

At the October meeting of the Council, Anthony Cripps, Q.C., Gerald Godfrey, Q.C., and Prof. Roy Goode were co-opted.

Officers

The following officers were appointed by the Council:

Chairman of Council:	Sir John Foster
Vice-Chairman:	Lord Foot
Chairman of Executive Committee:	Geoffrey Garrett
Joint Vice-Chairmen:	Lewis Hawser and Paul Sieghart
Honorary Treasurer:	Michael Bryceson

Executive Committee

The Executive Committee consists of the officers, together with Philip English, Edward Gardner, William Goodhart, Glyn Hardwicke, Muir Hunter, Tom Kellock, Philip Kimber, Blanche Lucas, Edward Lyons, Michael Sherrard, Laurence Shurman, Charles Wegg-Prosser, William Wells and David Widdicombe. Alec Samuels is a member ex-officio.

Finance and Membership Committee

The Finance and Membership Committee consists of Michael Bryceson (Chairman), Philip English, John Gauntlett, William Goodhart, Glyn Hardwicke, Blanche Lucas, Paul Sieghart and William Wells.

Memorial Service for Bryan Anns, Q.C.

A Memorial Service arranged by JUSTICE was held in Lincoln's Inn Chapel on 22nd July 1975, and was attended by many distinguished members of the legal profession. The Rt. Hon. Sir Peter Rawlinson, Q.C., M.P., gave the address and the Secretary of JUSTICE read the lesson.

Annual General Meeting

The 18th Annual General Meeting was held in the Old Hall, Lincoln's Inn, on 30th June 1975.

Lord Gardiner presided. In presenting the Annual Report congratulated JUSTICE committees on the outstanding reports they had produced during the year and expressed regret at the slowness of governments in implementing so many sensible recommendations we have made in past years.

He then told the meeting that, having reached the age of 75, he had reluctantly decided to retire from the chairmanship in October.

The Council had decided to invite Sir John Foster, who like him had been a founder member of the Council, to be the next chairman, and Lord Foot vice-chairman. Speaking on behalf of every member of JUSTICE, Geoffrey Garrett expressed warm admiration and thanks for all the work

that Lord Gardiner had done for JUSTICE over the years. His wisdom and dedication had been a tower of strength.

Various matters were raised during the discussion on the Annual Report. Michael Zander said they had to thank Tom Sargant for recent improvements in the legal aid arrangements for criminal appeals. Muir Hunter and Ludovic Kennedy welcomed the successful action taken over individual cases which had helped to show the weaknesses in our legal system.

Sir John Foster and Laurance Shurman wanted to see more Small Claims Courts in operation.

Peter Rusk thought that the executive and judicial functions of the Lord Chancellor ought not to be combined in one person.

Presenting the annual accounts, Michael Bryceson said that, thanks to a substantial profit on the 1974 annual ball, JUSTICE had just managed to balance its budget. The response of members to the increase in subscription had not been too discouraging, but some 200 members had been lost, including a number of long-standing supporters. In the current year because of the cost of our new premises there would be an even larger gap to fill, and new sources of income would have to be found. Pointing to the Hogarth painting hanging behind him, he quoted appropriately from the Bible "Felix hoped also that money might be given to him".

Mr. Elliot Richardson's Address

Lord Gardiner introduced the Hon. Elliot Richardson, the United States Ambassador and former Attorney-General, who in his younger days had been clerk to Justices Learned Hand and Felix Frankfurter.

Declaring himself one of the "chronic hopers" of the world, Mr. Richardson said that although we could not expect to change people's basic attitudes, a renewed sense of trust and confidence in government could be brought about by the adoption of certain policies. It was a subject appropriate to a group concerned with justice.

In recent decades, a new thrust towards greater equality and individual rights had brought about striking changes in his country. These changes were more dramatic than anything since the amendments to the Constitution following the American Civil War which established broader individual rights.

When Earl Warren was Chief Justice of the Supreme Court he had led a movement towards even more stringent standards of fairness. Chief Justice Frankfurter used to say that the history of liberty was largely the history of the observance of procedural safeguards. It was no longer enough that the law should behave with passive neutrality, for that might permit the poor citizen to be overmatched by the power of the State; he had now to be supplied with a lawyer to warn him of his rights. Mr. Richardson's own view was that a scrupulous regard for human rights was not incompatible with good and effective law enforcement.

In the United States, the Supreme Court stood for the administration of justice in a stricter sense than was true in the individual States; federal due process was an established staple of judicial business. A new kind of case, however, was coming before the courts today, based on a new and

broader conception of the rights of every individual—the right to equal educational opportunity, the right of the poor to fair treatment under the welfare system, the right of the mentally ill to treatment, and the "one man—one vote" principle.

In general, there had been a movement within both legislative and executive branches of government towards what had been termed "affirmative action" against discrimination. This began with the object of ending discrimination in avenues of access to established rights, but had gone on to embrace the proposition that a person's chance to start again in life might be inhibited by discrimination based on his previous failures, due to membership of a group which had long been the victim of discrimination.

It might sometimes seem that pressures for equality constituted a danger to individual liberties. He believed it was Goethe who once said, "Any politician who promises both liberty and equality is either a charlaton or a fool."

While it was clear that in our increasingly complex societies we needed a greater degree of authority to resolve government problems constructively and without endless delays, he did not believe that liberty need be sacrificed for the sake of greater equality. On the contrary, liberty and equality could complement and re-inforce each other; an optimal degree of liberty for most citizens in any society was achievable only under conditions of optimum equality for the greatest number. Liberty and equality were not competitive, but complementary in a delicate balance where neither would counteract the other.

There was no escape from the necessity for moderation. He drew again on the widsom and eloquence of Judge Learned Hand, who once asked: "What is the spirit of moderation? It does not press partisan advantage to the bitter end, but shows understanding and respect for the other side in a spirit of unity between all citizens based on faith in the sacredness of the individual."

So long as we preserved that faith and spirit we would be able to pursue our quest for liberty and equality in a just society.

Annual Members' Conference

The annual conference of members and invited representatives of government departments and professional bodies was held in the Lord Chief Justice's Court on Saturday, 20th March. The theme was "The James Report" and Mr. Justice Waller presided.

David Napley (The Law Society) opened the morning session and commended the report in general for its excellence and many worthwhile suggestions. His main criticism, which was echoed by other speakers, was directed at the proposal to abolish the right of trial in small cases of theft. He felt that this decision had been made without a proper appraisal of the merits of the two systems of trial. If jury trial was considered superior there was no justification for depriving any citizen of the access to it which he now enjoys. He also felt that there were certain cases in which magistrates might feel it was their legal duty to convict without being able to mitigate the consequences, whereas a jury could take a more robust and human view

and refuse to convict. He maintained strongly that the answer lay in making summary trial fairer and more attractive by disclosure of witnesses' statements and that the burden on the Crown Courts could be considerably reduced if cases were more carefully examined and prepared and more frequently challenged at the committal stage.

Patrick Halnan (Justices' Clerks' Society) argued strongly for the view that the choice of forum in intermediate cases should rest with the magistrates and not with the defendant. His Society had taken the view that the consequences of a conviction ought to be taken into account however trivial the theft. They could be disastrous for the Bishop of Bognor but of little account to an old lag. The James Committee had rejected this and, feeling they had to do something, had had to resort to a monetary limit, which no one appeared to like. He could foresee endless disputes over the value of the property alleged to have been stolen.

Alec Samuels forcefully catalogued the considerations which led defendants to opt for trial by jury and called for an independent prosecuting authority and a fundamental reform of our institutions.

Replying to the discussion in the morning session, Lord Justice James expressed full agreement with speakers who had complained about the time wasted in the Crown Courts through inefficient preparation and presentation of cases for trial. Replying to the criticism that the proposal relating to small theft was based on expediency, he said that if securing the proper disposal of cases in the Crown Court in a reasonable time, and reducing lengths of remands in custody, could be called expediency, then so be it. He hoped that the proposal would not be regarded as a non-starter and unacceptable to Parliament because the report was, as it were, a package deal and all the other valuable recommendations would be lost.

At the afternoon session Judge David West-Russell spoke of the continuing disturbing situation in the London courts. Since 1971, the number of courts available to the London area had increased from 41 to 86 All the extra courts had to be manned by newly appointed judges or recorders and there was an acute shortage of capable officials, ushers and shorthand writers. He had noticed a decline in standards reaching right down to jurors. 25 per cent of the cases tried in Inner London were trivia. Jurors were bored by them and did not concentrate. He was also concerned at the effect of overcrowding on appeals—it was difficult to get them heard by experienced justices. He could see no future for the Crown Courts if the James Report was not implemented.

Ian McLean, a stipendiary magistrate, affirmed his express opposition to the proposals relating to small theft. In his view, the essential function of magistrates' courts was to deal with cases involving order on the streets. For this reason he would keep simple assaults on the police, which were usually tied up with minor offences. in the magistrates' courts; also offensive weapons and driving while disqualified. The general criterion should be which method of trial was the more appropriate. He strongly supported all that had been said about committal proceedings and said he always read the papers. It was the job of magistrates to certify—not solicitors and counsel. He also agreed it was necessary to strengthen the system of appeals.

Ivan Lawrence made a strong plea for the elimination of uncontrolled

verbals maintaining that this would seriously cut down the time spent in trying cases and increase the number of guilty pleas.

Replying to the discussion, David Thomas, a member of the James Committee, said he was sorry that more attention had not been paid to the proposals for the reclassification of offences and rights of election. The main purpose of the Committee had been to decide which principle should govern the distribution of business and to devise a system to reflect them. They had found many arbitrary anomalies and one of their most important recommendations was to abolish cases in which the prosecution alone had the right to elect. The proposal on small theft was a compromise between the ideal world and the constraints of the real world. Most of their witnesses had been concerned to preserve middle-class privilege, and with consequence to individuals. The Committee had taken the view that the law must be the same for all men.

A verbatim transcript of the proceedings has been prepared and is available at £1.25 plus 25p postage.

Visit of French Section

Our annual joint meeting with the French Section was held in London at the week-end of 15th July. The subjects chosen for discussion were "The Ombudsman principle" and "The onus of proof in criminal cases".

On the first subject, M. Christian Huglo gave an interesting account of the French Office of Le Mediateur who supplements the role of the Conseil d'Etat and can deal with grievances which do not necessarily invoke maladministration. Prof. J. F. Garner made a critical analysis of the work of the Parliamentary Commissioner, in particular the restrictions on his powers and the lack of publicity for his office.

The two papers on the onus of proof were given by M. Christian Coppey and Glyn Hardwicke, and it emerged very clearly that, whatever defects there may be in the inquisitorial system, it has as its object, and is more efficient in, the ascertainment of the truth.

A small committee convened by Muir Hunter was responsible for the excellent social arrangements.

The value of these meetings is shown by the fact that at its next meeting the Council asked our Administrative Law Committee to consider the working of the Parliamentary Commissioner and decided in principle to launch an inquiry into the merits and demerits of the accusatorial system.

We look forward to taking part in the 20th Anniversary of the French Section in Paris in July and to its return visit next year when we celebrate the 20th Anniversary of JUSTICE.

Meeting with German Section

At the week-end of 27th/28th September, some 25 members of JUSTICE attended a joint meeting with the German Section in Amsterdam. Representatives of a number of other European Sections took part.

Our party was led by Sir John Foster and included Lord Fraser and three Crown Court judges. The theme of the conference was "The legiti-

mate use of force in the control of public disorder" and papers on behalf of JUSTICE were given by Dr. Geoffrey Marshall and William Birtles.

We owe our warm thanks to the German and Dutch Sections who jointly organized this enjoyable and useful conference. The German Section has published the text of the main papers.

Meeting with Austrian Section

On 23rd and 24th April, Paul Sieghart and the Secretary attended a meeting of the Austrian Section at which the subject discussed was "The Rights of Property". Representatives of a number of other European Sections took part, and the occasion was used to discuss future co-operation between them and the ways in which they could best help the needs of the International Commission.

Scottish Branch

We have continued to benefit from the presence of Ainslie Nairn on the Council and, thanks to his efforts, JUSTICE reports have received notable attention by Scottish legal journals.

We have also been glad to have his advice on a number of Scottish criminal cases on which representations had been made to us and in April of this year the Council decided publicly to support representations made to the Scottish Secretary of State on behalf of Patrick Meehan, convicted of murder, and David Anderson, a former law officer convicted of conduct conducive to a breach of the peace in relation to two girls.

Shortly after we had decided to support the plea of Patrick Meehan, a hitherto concealed confession made by another man came to light and the Secretary of State, after resisting repeated requests for an inquiry, has granted him a pardon.

David Anderson was convicted on wholly unsatisfactory evidence of identification and in the view of the Council the appellate procedure was defective in that Scottish law allows the Sheriff to decide what facts are to be put before the High Court, and does not permit the appropriate court to consider the facts which the defence alleges have been omitted by the Sheriff in his statement of the facts (in this case amounting to 17 pages).

Bristol Branch

The Bristol Branch has maintained its membership and activities but on a somewhat more limited scale. It has held meetings on the legitimate use of force in public disorder, the care and resettlement of offenders and the Bristol scheme for assisting victims of crimes of violence.

Acknowledgements

The Council would once again like to express it 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

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 current annual subscription rates are:

Persons with legal qualifications:	£5.00
Law students, articled clerks and barristers still doing pupillage:	£2.50
Corporate members (legal firms and associations)	£10.00
Individual associate members:	£4.00
Corporate associate members:	£10.00

Employed persons reading for the Bar are entitled to full membership but are asked to pay a subscription of £4.00.

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 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 subscription of £5.00.

All members are entitled to buy JUSTICE reports at reduced prices and, unless they indicate otherwise, will be sent occasional JUSTICE issues of the New Law Journal. 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.

JUSTICE PUBLICATIONS

The following reports and memoranda published by JUSTICE may 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)	£1·00	70p
The Unrepresented Defendant in Magistrates' Courts (1971)	£1·00	70p
Home made Wills (1971)	30p	20p
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The Prosecution Process in England and Wales (1970)	40p	30p
Insider Trading (1972)	25p	20p
The Redistribution of Criminal Business (1974)	25p	20p
Evidence of Identity (1974)	50p	35p
Compensation for Accidents at Work (1975)	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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*Report of Joint Committee with Howard League and N.A.C.R.O.

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