JUSTICE

20th

annual report

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JUSTICE

British Section of the International Commission of Jurists

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Extracts from the Constitution

PREAMBLE

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

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

OBJECTS

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

to uphold and strengthen the principles of the Rule of Law in the territories for which the British Parliament is directly or ultimately responsible; in particular to assist in the maintenance of the highest standards of 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 is appropriate that, in presenting this 20th Annual Report of JUSTICE, I should record some paragraphs from our first Annual Report which recount the origins of our Society.

> "This first Annual Report of JUSTICE covers a period of nearly eighteen months, for it was in December, 1956, that, on the initiative of Mr. Peter Benenson, lawyers from the three main political parties formed an *ad hoc* alliance to endeavour to secure fair trials for those accused of treason in Hungary and South Africa, and took JUSTICE as their title.
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> "The International Commission of Jurists in the Hague was found to be working on the same tasks, and cooperation was soon established between the two bodies. The Commission, which is an independent association of lawyers dedicated to upholding the Rule of Law, was anxious to form a British Section. There was also a desire among the sponsors of JUSTICE that there should be a permanent all-party organisation concerned with the proper administration of justice in British territories.
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> "On 16th January, 1957, Mr. Norman Marsh, the Secretary-General of the Commission, met representatives of the Inns of Court Conservative and Unionist Society, the Society of Labour Lawyers, and the Association of Liberal Lawyers. These societies each agreed to suggest three of their members for inclusion in the Council of a permanent organisation, which was completed, after further consultations, by the Commission issuing invitations to a number of solicitors and professors of law. The Rt. Hon. Sir Hartley Shawcross, Q.C., the British Member of the Commission, was invited to be Chairman.
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> "The Council was formally completed and the Constitution approved on 4th June, 1957, and it was decided to retain the original name of JUSTICE. Mr. Tom Sargant, who had given voluntary help to the Society in its early stages, was appointed part-time Secretary. As the Council had no funds, the Commission offered it an initial loan and generously undertook to print and circulate a membership appeal to British lawyers with its own literature."

Lord Shawcross, as he later became, was our Chairman for fifteen years and Lord Gardiner for three years. They both played vital parts in the launching of JUSTICE and the enhancement of its authority. Of the original members of the Council, Lord Gardiner, Prof. C. J. Hamson, Michael Bryceson and I are still in harness. Many of those who have served in the intervening years have been appointed to high judicial and ministerial office.

The body of the report shows that in its early years JUSTICE was actively involved in supporting the work of the International Commission of Jurists and in dealing with problems of human rights in the then colonial territories. Mention is made of intervention in Cyprus, the

Seychelles, Singapore and Northern Rhodesia, where we persuaded the local Law Society to provide legal aid for Africans accused of political and industrial offences. We had set up committees to consider the appointment and status of colonial judges and the staffing of native courts.

In the years that followed we established branches or working groups in Northern and Southern Rhodesia, Uganda, Tanzania, Trinidad and Jamaica but, with the coming to independence of these territories, the direct links with JUSTICE were broken and political conditions have not been favourable to the development of effective national sections.

We also campaigned vigorously for a Commonwealth Convention of Human Rights and the transformation of the Judicial Committee of the Privy Council into a real Commonwealth Court with peripatetic jurisdiction, but the opportunity was lost through governmental indifference.

The report further records the setting-up of JUSTICE committees on contempt of court, the need for a revaluation of legal penalties, and the Scandinavian office of Ombudsman (which was to lead nine years later to the appointment of a Parliamentary Commissioner). We also at the urgent request of Miss Margery Fry fired the first shot, through a letter to *The Times*, in our ultimately successful campaign for a scheme to compensate victims of crimes of violence.

The paragraphs on finance and membership show that in June 1958 we had 375 members and set our budget requirements at £1,500.

We can therefore regard our subsequent achievements with some sense of pride and satisfaction. They are reflected in a long series of authoritative and practical reports, and submissions to government committees, which have directly or indirectly led to important reforms in many aspects of our procedural law. I think it is enough to call attention to the list of our publications at the end of this report. Their reputation and influence is not confined to the United Kingdom. They are sent under standing orders to some 40 Law Libraries and law reform agencies in the Commonwealth and the United States and a leading American law book company has recently reprinted and published in one volume our first eighteen Annual Reports.

It is further true to say that the status of law reform has radically changed in the lifetime of JUSTICE. Twenty years ago many anachronistic features of our procedural law were virtually unquestioned. The movement for law reform had no real impetus and lacked a focal point. Today the law and its machinery are viewed in quite a different light—not sacrosanct or immutable but requiring adaptation to the needs of society and of all those who look to the courts for protection or redress. For this change of climate, JUSTICE may rightly claim a large share of the credit.

If we have any regrets, it is that too many of our recommendations have failed to find their way to the statute books through the indifference of ministers or an excess of caution on the part of their advisers, or pressure from those whose interests might be affected. Thus we cannot have any meaningful reform of the criminal law because this would involve curtailing the very wide discretion enjoyed by judges and the police. We cannot have an Administrative Division of the High Court because

ministries, local councils and other public authorities do not want to have to justify their decisions in open court.

Since last June we have published two important reports on the investigation and remedying of individual grievances. The first dealt with complaints against nationalised industries and statutory agencies. It recommended the strengthening of Consultative Councils and the appointment of a Nationalised Industries and Agencies Commissioner to reinforce their work. It was widely acclaimed and has had a wide sale. The second, aptly entitled *Our Fettered Ombudsman*, reviewed the work of the Parliamentary Commissioner and made a number of proposals designed to make him more accessible to the ordinary citizen and to widen the area of his jurisdiction. I particularly welcome the proposal for direct access without the need to channel a complaint through an M.P. I opposed this restriction during the Committee stage of the Bill and any need for it which was thought to exist at the time has long since disappeared.

A great deal of time has been devoted by the Council and specially appointed working parties to the preparation of evidence for submission to the Royal Commission on Legal Services. This has already been submitted and will be printed and published in the near future. The theme which runs through all our recommendations is that the legal system should be designed and run for the benefit of those who use it and not for those who administer it.

One of the great mainstays of JUSTICE has been Geoffrey Garrett, who has given up the chairmanship of the Executive Committee on his retirement to the country. He joined the Council in 1959, became Vice-Chairman of the Executive Committee in 1965, and was Chairman from 1972 to 1976. He applied himself assiduously and with critical acumen to the more difficult problems of JUSTICE. Many of the important documents produced in his period of office were drafted or revised by him. He undertook many overseas visits for the International Commission of Jurists. One of his most distinguished tasks was his report on events in Cyprus where he dealt tactfully but realistically with the complex characters involved, including the Archbishop. An outstanding accomplishment in the cause he serves was the single-handed compilation and editing, in September last, of a special issue of the *Guardian Gazette* devoted to every aspect of the problem of safeguarding human rights. We all thank him and wish him well.

Over all these years our successes are really due to the skill and devotion of our Secretary, Tom Sargant. It is difficult to recall that he is not a lawyer by profession—he started his career in a gold refinery, but he now combines an expert knowledge of procedural law with a helpful cynicism about the working of legal institutions and the accomplishments of lawyers. His services to law reform are now being recognised by the grant by Queen's University, Belfast of an Honorary Master of Laws Degree.

I would like to add sincere thanks to our Legal Secretary, Ronald Briggs, who combines a wide legal knowledge with an attractive and formidable argumentativeness on the committees which he serves and assists. Our Director of Research, Alec Samuels, enthusiastically guides

JUSTICE in its many projects and supplies a wide spectrum of information, coupled with ably rendered and helpful points of view.

Glenys Brown and Merle Christie have again responded to whatever demands the work of the office has imposed on them with cheerfulness and efficiency. We must be very grateful to our staff for the accomplishments of JUSTICE over the years.

None of us can forecast what the future holds for our Society. There is still an immense amount of work to be done by way of pressing for unfulfilled reforms and monitoring the practical effects of those which have been introduced. The number of individual cases pressed on the attention of our small office increases every year, and many of them are pleas for help which cannot be rejected out of hand. For the first time we have a substantial deficit on the JUSTICE and Trust accounts, taken as a whole, and our capacity for doing further fruitful work depends on many more members of the legal profession, and friends outside the profession, recognising its value in a practical and generous way.

JOHN FOSTER

Report of the Council

HUMAN RIGHTS

During the year, "human rights" has suddenly become a pair of household words—thanks largely to the accession of President Carter and his overt campaign for better protection for individual rights both within and outside the USA.

It is of course gratifying that more and more people, both in the free world and in those many countries whose practice makes a mockery of the ringing declarations in their constitutions, should subscribe to "human rights" as an ideal, should demand them for others, and should protest when they are denied. But that is by no means the position of all those who have suddenly discovered that human rights can be prayed in aid to support their own self-interest. Many of them do not yet understand that the concept of "rights" only comes into play because there is not enough of some good to go round, and different people make conflicting claims to what there is. It is precisely because the unfettered exercise by one man of the freedoms comprised in the human rights catalogue can, and only too often will, restrict the exercise of those (or some other) freedoms by other men that we have had to devise a code of Human Rights Law which seeks to adjust conflicting claims, define appropriate limits to freedoms, and impose correlative duties to reflect the rights which it supports.

But what is important in our time—and still far too little understood in the free countries of the world, though those who are oppressed and persecuted in other places are becoming aware of it more quickly—is that there *is* now in existence an international code of Human Rights Law which regulates many of the contested issues, at least in outline. Of the international instruments which comprise that code, the Universal Declaration of Human Rights of 1948 was the first. Expert opinion among international lawyers differs on whether it constitutes binding international law. But there is no such dispute about the European Convention on Fundamental Rights and Freedoms of 1950, which the United Kingdom ratified in the following year. That is now binding on 19 of the European nations, and is unique in having effective organs of enforcement: the Human Rights Commission and the Human Rights Court in Strasbourg.

In March 1976, there occurred an event whose full significance has been surprisingly slow to sink in: the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights came into force through the deposit of the 35th instrument of ratification by, ironically, Czechoslovakia. Since then, several more countries have ratified, and among those who are now bound by these instruments figure some whose recent record in the protection of human rights in their territories has been distinctly less than creditable—as for example Argentina, Bulgaria, Chile, Hungary, Iran, Iraq, Libya, Rumania, Uruguay and the USSR.

Until March 1976, countries such as these were apt to brush aside foreign protests about infringements of human rights with the time-dishonoured phrase "illegitimate interference in the internal affairs of a

sovereign state". That phrase is of course still trotted out by force of habit, but for the ratifying countries it no longer furnishes an escape route: if they infringe their obligations under the Covenants, that is now the *legitimate* concern of all the rest of the world. No doubt legal advice to that effect has been one of the factors encouraging President Carter in his campaign, and perhaps such legal advice has also had its influence in Czechoslovakia in connection with "Charter 77"—both on those who wrote and signed it, and on those who are looking for ways of suppressing it.

But many who are not lawyers, and who view the law with suspicion if not mistrust, will wonder whether it really matters that human rights now have a legal, and not merely a moral, foundation. After all, in much of the world the code of International Human Rights Law is persistently flouted every day. Most of South and Central America now groans under military dictatorships. No one could regard the Communist countries as free in any sense that matters to their citizens. And parliamentary democracy on the Westminster or Capitol Hill model has not proved a startling success in most of the liberated colonies of Africa and Asia.

In fact the key to the protection of human rights lies ultimately as much in the Rule of Law as in parliamentary democracy. If conflicting claims to rights are to be resolved in ways that are just, and are seen and felt to be just, then there must be just laws, and just courts in which they can be asserted, defended, and enforced. An independent judiciary, and a fearless, honest and independent legal profession are essential prerequisites for the Rule of Law—all the more so now that there is an appeal to International Human Rights Law to determine whether domestic laws are just laws. Parliamentary democracy has often—though by no means always—proved to be a means whereby those ends can be achieved. But it is not itself the end: the end is the rule of just law, justly interpreted, applied and enforced, and each nation must find the most appropriate means for achieving that end within its territory.

Within the United Kingdom, there is still great ignorance about Human Rights Law, even among lawyers. We profess surprise and hurt that our country, the cradle of modern democracy and of the Rule of Law, should be more frequently arraigned at Strasbourg than any of our partners within the Council of Europe. The reason—as Lord Gardiner pointed out in a recent letter to *The Times*—is that the Convention is still not part of our domestic law, though it is more than a quarter of a century since we became bound by it. Our own courts—unlike those of many other European countries—cannot therefore yet apply it, and our citizens cannot go to them to seek redress for its infringement, and must go to Strasbourg instead. That alone is a powerful argument for now enacting it as part of our domestic law, and there are many others. What is important to remember—as the British Institute of Human Rights has again pointed out quite recently—is that this has nothing to do with a written constitution, the sovereignty of Parliament, or administrative law. We could have a Bill of Rights (as, for example, in the form of the European Convention) without a written constitution. We could have a written constitution without having a Bill of Rights. We could have either, or both, without fettering the sovereignty of Parliament. And we could have a coherent

system of administrative law, and of administrative courts, with or without any of these. But if we expect to be believed, at home or abroad, when we assert that human rights are fully protected under the law of our country, we would do well to enact the European Convention as part of that law, so that our courts can enforce it directly at the suit of our citizens.

"Human rights", after all, is a concept that transcends party politics. No modern political philosophy rejects it in terms, though there are differences in emphasis and in interpretation. The Communist countries, for example, assert the primacy of the economic and social rights, and justify the low priority they give to civil and political rights on that ground. Others seek to use concepts such as national security or *ordre public* to legitimate their acts of oppression. Such arguments are familiar enough: they have been put forward by governments of all complexions for many centuries. But today, for the first time in human history, they are no longer arguments of expediency, or morality, or even of ideology. They are arguments of law, and the established and dispassionate processes of legal analysis can now be used to uphold them if they are well-founded, and to reject them if they are not.

That new situation may not yet have provided much comfort to the millions who languish in prison, or in exile, or suffer other injustices. But, provided that lawyers the world over grasp the opportunity, there is now at least a glimmer of light at the end of a long and dark tunnel. This may be the only progress in the field of human rights that can be recorded in the last year, and it is so far no more than a glimmer. But it may one day prove to have been a step of the first importance.

NUCLEAR POWER AND CIVIL LIBERTIES

Towards the end of last year, our attention was drawn to a pamphlet called *Nuclear Prospects*, written by Robin Grove-White and Michael Flood. That pamphlet drew attention to certain serious threats to civil liberties from a large-scale nuclear power programme—quite apart from the risks to the environment, the safety risks of nuclear reactors, the international proliferation of nuclear weapons, and other similar dangers which fall outside the competence of JUSTICE.

We thought it right to enquire from the Secretary of State for Energy whether the dangers to civil liberties outlined in that pamphlet were merely fanciful, and in the course of a meeting with Mr. Benn, attended by Lewis Hawser and Paul Sieghart, it became clear that they were nothing of the kind. Accordingly, the Executive Committee authorised Paul Sieghart to write to *The Times*, and our letter was published there on 31st March. A substantial debate has followed. Meanwhile, President Carter has reversed the US Administration's policy about plutonium and nuclear power, at least in part because of the risks to civil liberties.

At the time of preparing this report, we anxiously await a statement of our own Government's position on this issue.

ROYAL COMMISSION ON LEGAL SERVICES

In common with many other organisations, JUSTICE has submitted evidence to this Commission. This involved a great deal of work for the

three special Working Parties charged with assembling material for consideration, the Steering Committee which put the draft together, the Criminal Justice Committee, and finally the Council. We took the opportunity for a wide-ranging review. Where possible, we based our evidence on published JUSTICE reports, but we also had to make up our minds on several questions we had not considered before. We should like to thank very warmly all those who contributed to the task of preparation, and who enabled our evidence to be submitted so promptly.

We intend to publish our Memorandum of Evidence shortly in the form of a JUSTICE report.* Meanwhile, the following were the most important of our conclusions and recommendations:

1. The continued existence of an independent legal profession is an essential condition for the maintenance of the Rule of Law and the protection of human rights. Independence means the ability to represent, press and advocate a client's case without any limitations other than those set by the demands of justice and integrity.
2. Our system of law, centred as it is on the rights and duties of individuals, is sound; what is needed are better means to ensure that those rights are known, perceived and understood, and better access to the procedures for enforcing them.
3. We were unable to agree about "total fusion". A few of us were in favour: most of us were against. But some of us, while taking the view that a separate Bar conferred substantial benefits on the public, thought there was a case for gradual "convergence" between the functions of the two branches of the profession.
4. Subject to some important safeguards, there would be substantial advantages in concentrating all Government responsibilities for the state of the law, the administration of justice, and legal services, in a single Department of Justice headed by the Lord Chancellor.
5. Legal Aid should be available for all contentious matters before civil courts, criminal courts, or administrative tribunals; better provisions should be made for the trial of small claims; a Suitor's Fund should be set up to pay the cost of appeals where the original winner loses; a Contingency Legal Aid Fund should be considered; and there should be a single Advisory Committee to advise both the Home Secretary and the Lord Chancellor on criminal as well as civil legal aid.
6. There is a case for some minority lay representation (without voting power) on the profession's governing bodies; and a single Legal Professional Advisory Committee, composed of both lawyers and laymen, should advise the profession and the Lord Chancellor.
7. Subject to certain safeguards, barristers should be allowed to enter into partnership with each other, and to promote themselves to leading counsel, leaving the title "Queen's Counsel" as an honour in the Lord Chancellor's gift.

* At £1.50 (members at £1.10 including postage.)

8. The rules of conduct and etiquette of the profession should be properly codified by a single body having a substantial lay representation.
9. A law degree should not be a necessary condition for admission to the legal profession.
10. Barristers should be liable for negligent advocacy, and professional negligence insurance should be compulsory for all lawyers in private practice.
11. Transfer between the two branches of the profession should be made as easy as possible.
12. In all cases it should be the responsibility of heads of chambers and senior partners in solicitors' firms to ensure that accused persons are not represented by counsel who have been inadequately briefed and that in criminal cases counsel should be asked to advise on evidence and to see his client in conference.
13. Where counsel considers there are valid grounds of appeal, a Legal Aid Order should cover all reasonable steps necessary to pursue an application for leave to the Full Court, and there should be some form of post-appeal legal aid certificate, issued by a Legal Aid Area Committee, for the purpose of obtaining or verifying new evidence and drafting a petition to the Home Secretary.

The composition of the various contributing groups was as follows. *Steering Committee:* Paul Sieghart (Chairman); Michael Bryceson; Philip English; Gerald Godfrey; Philip Kimber. *Working Party on Legal Services:* Philip English (Chairman); Stuart Elgrod; David Graham; John Samuels. *Working Party on Organisation of the Profession:* Gerald Godfrey (Chairman); Michael Ellman; Paul Haverman; Philip Lewis; Laurence Shurman. *Working Party on Work and Renumeration of the Profession:* Michael Bryceson (Chairman); Roy Goode; William Goodhart; Philip Kimber. *Working Party on Criminal Justice:* Lewis Hawser (Chairman); Stuart Elgrod; Jeffrey Gordon; Allan Levy; Michael Sherrard; and Charles Wegg-Prosser.

CRIMINAL JUSTICE

In last year's Annual Report we expressed regret that, following the demise of the Eleventh Report of the Criminal Law Revision Committee, no serious attempt had been made to rescue any of its more valuable proposals or to work out any acceptable proposals which would reduce the risks of convicting the innocent and acquitting the guilty which are inherent in our system. We deplored the confrontation between the police and the legal profession, and stressed the urgent need for a constructive dialogue.

Despite the opportunities offered by the Criminal Law Bill now before Parliament, everything which we said then remains true today. We had ourselves planned and hoped to sponsor an inquiry in depth into the merits and inadequacies of the accusatorial system, but were unable to mobilize the necessary manpower and financial resources. We are glad to see that Prof. Michael Zander, in an article in last month's Criminal

Law Review, has called for a wide-ranging inquiry into every aspect of our criminal procedure.

Verbal Admissions

One of our foremost concerns has always been the lack of effective control over police interrogation, and the unprofitable battles over the reliability of alleged admissions that are a feature of so many criminal trials. The only step taken to date is the appointment of a Home Office Working Party to consider the feasibility of a pilot scheme of tape-recording police interviews. A consultative document recently issued by the Working Party indicates, by the timidity of its approach, that the problem will be with us for many years to come. No active consideration is being given to the JUSTICE proposals that verbal admissions should not be admissible in evidence unless confirmed in the presence of a magistrate or by some other reliable means.

Meanwhile the Court of Appeal seems powerless to check any abuses. Our own view was well reflected in the words of a Lord Justice which we quoted in last year's Annual Report, "In our judgment something should be done, as quickly as possible, to make evidence about oral statements difficult either to challenge or concoct."

We recently assisted in an appeal in a case where, after two men had been charged and assurances had been given to their solicitors that no admissions had been made and that they would not be interviewed again except in the presence of their solicitors, the prosecution produced full admissions alleged to have been made at later interviews of which the solicitors were unaware. Both of the men agreed they had been visited by the police in their cells, but maintained that they had refused to say anything. There was also considerable doubt as to whether the questioning conformed to the Judges' Rules. But after a full day's legal argument, the trial judge ruled that, despite any assurances which had been given to the defence, the police accounts of the interviews were admissible, and both men were convicted.

In the case of one of the men, leave was sought on appeal to call a handwriting expert who had certified that the police officer could not have written contemporary notes of the interview in the time recorded in his notebook, but the Court declined to hear him on the grounds that this could have been tested at the trial and that it was not best evidence. In the course of the argument on admissibility the presiding judge appeared to lament the fact that there was no "Dirty Tricks Act" and implied that the trial judge had been naive, but he made no criticism of the police when he came to give judgment.

After Devlin

The reactions of the authorities to the Devlin Report have so far been disappointing. The judgment of the Court of Appeal in *R.* v. *Turnbull* and others laid down guidelines which, up to a point, closely follow the Devlin Committee's recommendations.

It directs judges to point out to the jury all the weaknesses and inconsistencies in the evidence of identification, and to withdraw from the

jury the case in which the evidence of identification is weak and uncorroborated by evidence of another kind. But it falls short of the recommendation of the Devlin Committee that the trial judge should be required *by statute* "to direct the jury that it is not safe to convict upon eye-witness evidence unless the circumstances of the identification are exceptional or the eye-witness evidence is supported by substantial evidence of another sort".

This means that there is still a large area of discretion which is not open to appeal and indications are reaching us that the guidelines are not being followed.

The reaction of the Home Office to the Devlin Report has been even more disappointing. New instructions for the conduct of identity parades and the showing of photographs have been drafted and issued for consultation, but with clear indications that they are not going to be given statutory force. Unless they are, they can be ignored with impunity. There seems to be a curious belief on the part of the administration that administrative guidelines have the force of law. There has been no hint of legislation to proscribe dock identifications or to require the prosecution to give to the defence all descriptions given by witnesses, as recommended by the Devlin Committee. We have recently obtained leave to appeal in a case where the prosecution did not disclose the first description of her assailant given by a victim of rape. This was wholly different from that of the man who was afterwards charged and convicted. What is even more disturbing, the police refused to allow the prosecuting solicitor to supply JUSTICE with a copy of the statement for the purposes of the appeal.

In the lifetime of JUSTICE there have been two previous outcries about wrong convictions in identification cases. They have both been allowed to subside without any effective new safeguards being introduced. It is now three years since the cases of Luke Dougherty and Laszlo Virag hit the headlines and over a year since the Devlin Committee reported. It will be tragic if the lesson of these cases and many others has still not been learned.

Notice of Alibi

One of the matters dealt with at some length in the Devlin Report was the responsibility for interviewing alibi witnesses. JUSTICE had specifically drawn the attention of the Devlin Committee to the failure of the police always to observe the undertaking, given when the Notice of Alibi provision was enacted, that the police would not interview alibi witnesses without giving the defence solicitor an opportunity to be present. The Committee accepted our view that it was desirable that this undertaking should be strictly observed.

Our Secretary made a number of enquiries and discovered that not only police officers, but some judges, counsel and prosecuting solicitors were unaware of this undertaking and regarded it as normal for the police proceed to interview witnesses as soon as the notice was received. Our Chairman then enquired of the Home Secretary whether these instructions had been renewed since they were sent out in 1967 and was told that they had not. The Home Secretary expressed the view that

there was no need to renew them as there was no evidence that they were being ignored but, after Lord Devlin's concern about the problem was pressed on his attention, he eventually agreed to send a reminder to all Chief Constables.

Criminal Law Bill

In so far as this Bill implements the procedural recommendations of the James Report we can give it a warm welcome. Its passage through the Lords, however, illustrates the lack of awareness of informed legal opinion on the part of Home Office advisers, and the value of constructive criticism.

Thus the Bill proposed to implement the recommendation of the James Committee that persons accused of thefts of the value of less than £20 should no longer have the right to trial by jury and set out an elaborate procedure for determining where such cases should be tried. This proposal had been rejected by all the bodies representing practising lawyers, including JUSTICE, and when this opposition was voiced it was gracefully withdrawn.

On the other hand the James Report had recommended that in all cases capable of being tried on indictment, the prosecution should provide the defence with witness statements in advance of the hearing in the magistrates' courts, and that there should be a greater disclosure of the prosecution case to the defence in advance in summary trials. These proposals, which had been urged and supported by JUSTICE and others as the best means of reducing the number of jury trials and of inducing guilty pleas, were not included in the Bill but under pressure the Government has introduced a clause providing for disclosure in offences triable either way and has undertaken to extend this to offences triable summarily.

We greatly regret that it has not yet been thought fit to provide a statutory requirement that in all indictable cases the prosecution should make available to the defence all statements taken from witnesses whom it does not propose to call, which we recommended as long ago as 1966, and have asked for ever since.

Criminal Appeals and Home Office Reviews

Our committee considering this problem has not yet reached its final conclusions. It is fairly certain to recommend a general power to order a retrial, as against the limited power to order a new trial on new evidence, but the problem of finding an effective and generally acceptable way of dealing with cases where new evidence is brought to light after an appeal has been dismissed is far more difficult to solve. In particular, it involves the evaluation of evidence which may not be strictly admissible in appeal proceedings, a reversal of the burden of proof, and a possible conflict between the executive and the judiciary.

The present thoughts of the committee were voiced and discussed at this year's Annual Members' Conference of which a transcript is now available.

Luton Murder Case

The problems referred to above emerged very clearly during the second reference back to the Court of Appeal of the cases of David Cooper and Michael McMahon. The conviction of Patrick Murphy, who had been named as the driver of the getaway van, had been quashed on the evidence of a new alibi witness at an earlier reference of his case alone.

In our 19th Annual Report we briefly recounted how, on the first reference, the Court refused to allow Matthews, the principal prosecution witness at the original trial, to be re-examined. He had identified the three men as his companions on the trip to Luton saying that they asked him to go with them to help them to collect some parcels. They all denied having been to Luton and produced credible alibis. Statements made by two eye-witnesses which clearly pointed to Matthews being the driver of the getaway van were not disclosed to the defence. Nor were they given the opportunity to identify Matthews as the driver.

On the second reference, the Home Secretary specifically invited the Court to test the credibility of Matthews. He was called and cross-examined, as were ex-Commander Drury, who had been in charge of the case, and a number of new witnesses. Matthews was clearly shown to be lying and at one point one of the judges asked him if he expected them to believe such a cock-and-bull story. But in the outcome the Court dismissed the appeal, saying that, whatever lies Matthews may have told, it accepted his evidence regarding the parts played in the murder by Cooper and McMahon, and clearly inferred that it thought the earlier Court had been wrong to allow the appeal of Murphy.

The most disturbing feature of this case centres on the two undisclosed statements. If they had been disclosed to the defence and the jury at the time of the trial it is difficult to believe that the three men could have been convicted. Yet this case has been before the Court of Appeal on four occasions without attracting a single word of adverse judicial criticism on this score, or the Court requiring these witnesses to be heard.

Two Noteworthy Cases

In last year's Annual Report we referred to two cases which, after investigation and representations by JUSTICE, had been referred back to the Court of Appeal by the Home Office on the basis of new evidence. One was a case of armed robbery for which Tom Naughton had been sentenced to 10 years. The other was a case of rape for which Donald Benjamin had been sentenced to 12 years. We are glad to report that Naughton's appeal was allowed. In the case of Benjamin, the Court ordered a new trial at which he was acquitted after the jury had retired for 35 minutes.

Complaints against the Police

It is still too early to forecast the effectiveness of the new machinery being set up to monitor the investigations of complaints against the police. We are, however, convinced that it will not solve the serious problems of cases where complaints of malpractice are made after a

trial and the investigation is postponed until after the appeal or, if it is carried out before the appeal, the report of the investigation is not made available to the appellant's solicitors. Further representations have been made on this matter and the Home Secretary has informed Lord Gardiner that the guidelines for the new procedure will recommend greater flexibility in the timing of the investigation in cases in which appeals are outstanding. This is a partial concession but it does not meet the urgent need for disclosure.

Boards of Visitors

The Home Secretary announced in November of last year that he had decided not to accept the recommendation of the Joint Working Party of JUSTICE, the Howard League and the National Association for the Care and Resettlement of Offenders that Boards of Visitors should cease to exercise disciplinary powers and be concerned only with the welfare and fair treatment of prisoners. Following the reports of the riots in Hull Prison, and of the treatment of prisoners involved in them, the three bodies sent a joint letter to *The Times* regretting the Home Secretary's decision and stressing their view that, by reason of their dual function, Boards of Visitors provide a wholly inadequate instrument for protecting prisoners against oppressive treatment and for remedying their grievances.

The recently published JUSTICE report *Our Fettered Ombudsman*, deals with this question in detail and urges that the Parliamentary Commissioner should actively exercise his jurisdiction to enquire into any aspect of prison administration, and that any prisoner should have the right to send him an uncensored letter.

The Prosecution Process

The possibility of introducing a system of prosecution similar to that of the Procurator Fiscal in Scotland is still being actively discussed. Its object is to secure that decisions to prosecute are not made by the police, but by an independent authority. Opinion generally appears to be swinging in favour of the proposal and the question is whether the remaining opposition—which is mainly on the grounds of alleged expense—can be overcome. We argued the case strongly in our report *The Prosecution Process in England and Wales* (1971) and will continue to press for this important reform.

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

During the year, the first phase of the research commissioned by this Committee has been largely completed. With the help of a grant

from the Nuffield Foundation, all the offences listed in the 1975 edition of Stone's Justices' Manual have been reduced to computer-readable form, classified by statutory origin, mode of trial, maximum penalty, mens rea required, and the head of public policy which each of them is assumed to serve.

No such exhaustive taxonomy of the English criminal statute law has ever before been attempted, and our special thanks are due to John Doris, who has devoted much of his spare time during the year to its preparation, and whose patience must have been sorely tried by it on many occasions. IBM (UK) Ltd. have also been most generous in putting their data preparation facilities at our disposal.

The result forms a unique collection of material, which is now available to the Committee to conduct research on our criminal law which has never been practicable before. With the appropriate computer programs, it will now be possible to ask such questions as "What are the offences known to English law which consist solely of a failure to give information, without any dishonest (or other) intent, which were enacted more than 75 years ago, and which carry a maximum penalty of £25 or less?"—and to obtain an accurate answer within seconds.

The Committee's next task will be to specify questions of this kind, arrange for the necessary computer programs to be written, and to make its recommendations and prepare its report in the light of the answers. The Committee hopes to be able to complete its task within the year.

The members of the Committee are: Paul Sieghart (Chairman), Mrs. Leslie Bonham Carter, Chief Inspector Donald Carter, John Clitheroe, Anthony Cripps Q.C., Sir Denis Dobson Q.C., Lord Foot, Tom Harper, Mrs Mary Hayes, Clifford Hindley, Prof. R. M. Jackson, B. J. Reason, Alec Samuels and Ronald Briggs (Secretary).

In addition, the Committee has access to the advice of Crown Court judges and to the Home Office, and Dr. Bryan Niblett, Professor of Computing Science at the University College of Swansea, is available to advise it on matters of computing.

ADMINISTRATIVE LAW

This year the Committee has two reports to its credit: *The Citizen and the Public Agencies—Remedying Grievances* and *Our Fettered Ombudsman.* The first was prepared by a sub-committee of which Professor Garner was Chairman; the second was prepared by the whole Committee. Both are considered below.

Sub-committees are now studying the Commission for Local Administration and special inquiries.

As in previous years the Committee has dealt with a wide variety of other matters and has been in communication with Parliamentary Committees, Government Departments and other bodies.

Complaints against Statutory Agencies

In September of last year we published an important report entitled *The Citizen and the Public Agencies: Remedying Grievances.* A generous

grant from the Leverhulme foundation had made it possible for extensive research to be carried out into the effectiveness of the system of consultative councils for the redress of grievances against nationalised industries, including the B.B.C. and the I.B.A.

Alternative systems were considered, but our committee concluded that it would be better to improve the existing arrangements than to devise new ones.

The research showed that the greatest need was for the consultative councils to be more widely known, more accessible, more effective in providing remedies and more understandable to the public at large. The proposals designed to help to achieve these objects covered such matters as standardization, access, publicity, staffing and coverage.

Our committee felt however that the greatest need was that the consultative councils should be independent both in appearance and reality, and for this reason the most substantial recommendation is to strengthen the independence of the present grievance redressing machinery by establishing a Nationalised Industries and Agencies Commissioner (N.I.A.C.). His task would be to investigate and report in cases where the complainant was not satisfied with the outcome of a consultative council's action or the subsequent response of the statutory agency. He would be an officer of Parliament reporting to Parliament. He should have power to make a report to the Minister supervising the particular statutory agency, and to recommend that the Minister should direct the agency to take action either to remedy a grievance or to ensure that it is not repeated.

The report further foresees that the chief sanction of the Commissioner would be publicity. His function would be to give a final and clearly independent judgement on complaints which the consultative council machinery had been unable to resolve satisfactorily.

He would thus reinforce public confidence in the system, help to bring about a greater degree of uniformity in the methods of dealing with grievances and provide it with a national focus.

Publication of our report closely followed the publication of a report on the same subject by the National Consumers' Council and both reports were debated at the N.C.C.'s Annual Conference. The JUSTICE report was warmly commended.

The detailed research was carried out by Dr. Philip Giddings, who also drafted the report, and Dr. Wyn Grant, assisted by the late David Peirson, a former Secretary of the U.K. Atomic Energy Authority. We are grateful to them for their invaluable services.

The members of the committee were: Professor J. F. Garner (Chairman), Albert Chapman, Dr. Philip Giddings, Dr. Wyn Grant, Victor Moore, Professor Frank Stacey, David Widdicombe Q.C. and Ronald Briggs (Secretary). David Peirson was a member of the committee until his death in March 1976.

Our Fettered Ombudsman

The interest and discussions stimulated by the joint conference of the French Section of the I.C.J. in July, 1975 on the institution of the

Ombudsman led the Executive Committee to ask the Administrative Law Committee to undertake an up-to-date study of the role of the Parliamentary Commissioner for Administration. JUSTICE played a significant part in the campaign that led to the institution of a Parliamentary Commissioner, and thus has a continuing interest in his work.

Our Fettered Ombudsman, the title of the Administrative Law Committee's report recently published, expresses our essential criticism of the British version. The report concludes that within its restricted framework the institution of a Parliamentary Commissioner for Administration has worked well, and has become a permanent part of the constitution. There are, however, many deficiencies and limitations, and the report makes numerous suggestions for improvement. Among the principal of these are:

(1) The Parliamentary Commissioner should be more independent of the Executive. He should not always be a former civil servant, and his staff should not be composed solely of civil servants. Treasury control of the numbers of his staff and expenses should be replaced by House of Commons control, and when he needs legal advice it should be that of his own legal advisers rather than of the Treasury Solicitor.

(2) Complaints should be made to the Commissioner either through an M.P. or directly by members of the public, and detained persons should be allowed to send letters uncensored to their M.Ps. or to the Commissioner.

(3) The term "maladministration" should be abandoned in favour of "unreasonable, unjust or oppressive action" to describe what the Parliamentary Commissioner is to look for.

(4) The Commissioner should be empowered to undertake investigation of his own initiative and to suggest changes in legislation, including statutory instruments, and in departmental practices.

(5) There should be more publicity for the Commissioner's work. He should supply full details of all his results reports unless asked not to by the referring Member of Parliament or the complainant. Quarterly and annual reports should be more readable and informative, and he should make more use of press conferences, and of radio and television interviews.

(6) His jurisdiction should be extended to include, among other matters, commercial transactions of government departments or authorities which are otherwise under his jurisdiction and to personnel matters relating to service under the Crown.

We should like to thank Butterworths for their assistance in the publication of this report. Copies may be obtained only from JUSTICE, price £1.50 (members £1.00), postage 10p.

Administrative Division of the High Court

With a view to focusing influential opinion on the issues involved in the establishment of an Administrative Division of the High Court, the Committee invited the Hon. Mr. Justice White of the New Zealand

Supreme Court to open a discussion on the subject, and Sir Norman Anderson, Q.C., kindly offered hospitality for this at the Institute of Advanced Legal Studies on 22nd June. The evening was well attended and went well and there appeared to be general support for the idea of an Administrative Division.

Mr. Justice White also gave of his limited time for a meeting with the Committee (on 17th June) at which the operation of the Administrative Division in New Zealand was discussed in greater detail.

An outcome of the meeting at the Institute of Advanced Legal Studies was that both the Attorney General and the Solicitor General met members of the Committee in July for an informal but useful discussion on the prospects for an Administrative Division in this country and alternative possibilities.

The Committee has for some years advocated a broadly based government-sponsored inquiry into administrative law. Finding little official enthusiasm for this it has considered the possible alternative of an independent committee of distinguished and informed persons whose conclusions carry weight. As Lord Devlin succinctly observed: "It the Government will do nothing, it (the proposed committee) seems of me to be the best next step!"

Planning

In March of last year the Committee raised with the Minister for Planning, Rt. Hon. John Silkin, M.P., the suggestion that enforcement action in respect of continuing uses of land should be subject to a 12-year limitation period. The Minister expressed willingness to consider evidence of substantial problems caused by the absence of any such limitation and there has been considerable correspondence with the Department since then. The Committee countered departmental objections to their original proposal by suggesting that the use of land for a particular purpose for more than 12 years should entitle the user to obtain a certificate of established use. On 16th November a long meeting took place between members of the Committee, representatives of the Law Society's Standing Committee on Planning Law and Officers of the Department. The present position is that the Department is still considering whether it can accept any of the Committee's suggestions as a basis for any proposed legislation.

In December the Secretary of State invited comment on his proposals for the improvement of the enforcement procedure in the development control system with a view to early legislation. Shortly afterwards, Mr. Dudley Smith, M.P., introduced his Town & Country Planning (Amendment) Bill embodying some of the Secretary of State's proposals and the Committee was asked to submit its comments in advance of the deadline previously given. In preparing its comments, the Committee has adopted the criterion that planning should be no more burdensome for the citizen than is essential. It was therefore sought to enlarge the minimum time limits proposed for the production of information, to make provision for out of time appeals against enforcement notices, and to ensure adequate compensation provisions. It has also advocated that rules for the conduct of enforcement inquiries should be made independently of new legislation.

But the two principal points emphasised by JUSTICE in this connection are that the stop notice procedure by which a local planning authority can bring development to a halt should not be extended indiscriminately to all uses, and that there should be some limitation in time on the power of enforcement against a change of use of land, and the consequential power to require information. Both points arise in Mr. Dudley Smith's Bill, which enjoys departmental support. The Bill as it stands would undoubtedly extend the scope of the bureaucracy and could well prove oppressive in the hands of a wrong-minded authority. Efforts to have the Bill amended are therefore continuing. JUSTICE supports the desire to control offensive uses effectively and understands that planning authorities need to have proper information, but to achieve these desiderata in a way that puts great numbers of harmless uses at risk and imposes burdensome obligations with no limit of time is wrong.

The Committee has also considered the thorny issue of listed building control, some of the difficulties of which were spotlighted in *Amalgamated Investment and Property Co. Ltd.* v. *John Walker & Sons Ltd.* (1976) 3 AER 509; (1977) 1 WLR164, where it was held that there could be no rescission of a contract for the sale of a building listed after the contract had been formed. A purchaser can no doubt guard, by a condition in the contract, against the risk of listing in the period between contract and completion, but not all purchasers are so well advised and the existing provisions can give rise to other difficulties. The claims of culture have to be reconciled with those of everyday business life.

New Zealand Ombudsman

The Chairman was host for a meeting on 29th July of the Committee and some members of the Council with the then New Zealand Ombudsman, Sir Guy Powles. Sir Guy explained the working of his Office in some detail.

Sir Guy covered many interesting areas of comparison between the scope and operation of the New Zealand Ombudsman (as he is officially known) and the Parliamentary Commissioner for Administration in the U.K. The first-hand information he was able to give was of great value in the preparation of the report *Our Fettered Ombudsman.*

Sir Guy has now retired from the position of Ombudsman. It was evident from the meeting that he was a man of exceptional qualities and that New Zealand was very fortunate to have secured the services of such a person as first holder of the Office. Unfortunately Sir Guy has been unwell lately and we all wish him a speedy recovery.

Administrative Law Committee

The members of the committee are David Widdicombe, Q.C. (Chairman), Albert Chapman, Philip English, Percy Everett, Arthur Gadd, Prof. J. F. Garner, Dr Philip Giddings, Keith Goodfellow, Q.C., John Harris, Matthew Horton, Victor Moore, Kenneth Oates, Graham Rodmell, Guy Roots, Harry Sales, Alec Samuels, Prof. Frank Stacey, Donald Williams, and Ronald Briggs (Secretary).

Privacy

In our last Annual Report we drew attention—not for the first time—to the importance of privacy in our increasingly complex and over-regulated society, and regretted that there were still no signs of the Government paying any serious attention to the notorious gaps in our law. Another year has passed, and still nothing has happened. The Data Protection Committeed, promised in the White Paper "Computers and Privacy" has been appointed and is at work. The Consumer Credit Act 1974, which gives the citizen the right to know why he is refused credit, is in force. But the rest of the Younger Committee's many recommendations remain on the shelf, six years after they were published. There is still no sign of the English Law Commission's final report on Breach of Confidence, originally referred to them four years ago.

This masterly inactivity really cannot go on for ever. The United Kingdom is bound to guarantee privacy to its citizens both under the European Convention (which it ratified in 1951) and under the International Covenant on Civil and Political Rights, which it finally ratified last year. There was even a promise to do something about privacy in the Labour Party's manifesto at the last election. Meanwhile a statutory Privacy Committee is doing excellent work in New South Wales, and both the Australian Commonwealth and the Western Australian Law Commissions are working hard on wide-ranging privacy references. There is hardly a civilised country in the world which does not have privacy laws, in force or in preparation.

Of course the subject of privacy is a difficult one, in which there are many conflicting values and interests. But that is precisely why it needs to be regulated by laws which balance those values, and which can resolve the conflict of interests. Although the nettle may be painful to grasp, that is what politicians and governments are for. To continue to ignore a visibly mounting problem will do nothing to enhance their reputation with the ordinary citizen whose private sphere shrinks with every year that passes.

Compensation for Disablement

Here too, we are only able to report that another year has gone by without any ascertainable progress. It is now nearly four years since we submitted our report *No Fault on the Roads* to the Royal Commission on Civil Liability and Compensation for Personal Injuries, and 4½ years since that body was appointed. There are still no signs of its report.

But even when that does appear, and even if it recommends radical changes to mitigate the gross injustices of our system, that will not be the end of the matter. Parliamentary time and will must be found to enact what the Commission recommends. And by that time, many more thousands of uncompensated (or under-compensated) victims will have been added to the roll of those who were already on it when the Commission was first appointed. What will they have to hope for? Will they be included among the beneficiaries of any new compensation scheme, as was proposed in Australia? The cost of including them cannot be great, and the injustice of excluding them would be difficult to explain away.

Data Protection Committee

In response to an invitation from the Data Protection Committee, JUSTICE submitted evidence in the form of a memorandum which argued that the Data Protection Authority promised by the Government in its White Paper (*Computers and Privacy*, Cmnd. 6353) should have enough "teeth" to enforce standards for computerised information systems, and should therefore have power to license, or to refuse to license, such systems in both the public and the private sectors; that the Authority should be independent and not subject to Ministerial directions; and that its decisions should be subject to appeal on points of law, or of mixed fact and law, to the Divisional Court. We also said that the statutory objectives set out in paragraph 34 of the White Paper should be regarded as minima; that *any* information (including information previously published) about any identifiable individual, or any body or association, should be "personal information" for the purposes of the statute; and that no special qualified privilege should attach to the publication of information held in a computer system for the purposes of the law of defamation. We also expressed views about medical, social work, personnel, police and national security records. Copies of our memorandum of evidence are available from JUSTICE, price 20p.

Freedom of Information

A committee has been set up, under the chairmanship of Anthony Lincoln Q.C., to consider freedom of access to official information in the United Kingdom and the desirability of extending it. Its other members are: Michael Beloff, David Donaldson, Sir John Foster, Dr. Philip Giddings, Alec Grant, Mrs. Blanche Lucas, Prof. V. W. E. Moore, Sir Robert McEwen, K. G. Robertson, Harry Sales and Ronald Briggs (Secretary).

OVERSEAS AFFAIRS

During the past year we have endeavoured to increase our activity in overseas affairs, either through formal interventions, or by informal personal visits, or by participation in meetings with other European Sections. We have been considerably helped by a generous grant from the Drapers' Company.

Charter 77

On 2nd February 1977, Sir John Foster wrote to the Czechoslovak Ambassador in London at the request of the Council of JUSTICE expressing concern about reports of the persecution in that country of several people who had signed the manifesto of "Charter 77". In reply, the Ambassador assured Sir John that human rights were fully protected in his country. Sir John then wrote to ask why, in that case, some of these people had been arrested, and what they were to be charged with. No further reply has been received from the Ambassador. On 14th February 1977, *The Times* published a letter from Sir John reporting this correspondence.

South Africa

In November of last year Sir John Foster visited South Africa on behalf of JUSTICE to attend the closing stage of the Black Consciousness Trial. Unfortunately the hearing was postponed but he was able to make valuable contacts with South African lawyers anxious to further the objectives of the International Commission

Paul Sieghart's Tour

In August and September of last year, Paul Sieghart visited Brazil, Peru, New Zealand, Australia, Singapore, Sri Lanka, the Seychelles and Kenya, and was able to meet members of the ICJ., or of its national sections, as well as judges, ministers, and government legal officers in several of these countries. He was greatly impressed with what he saw of the struggle for human rights in South America, and with the enthusiasm and effective machinery for law reform in New Zealand and Australia, which have now far outstripped our own.

But perhaps the most memorable event was the discovery that the recommendations of our report *Going to Law*, which we published in 1974, and which have not so far produced any visible results here, have led to far-reaching reforms of civil procedure in Sri Lanka. The Administration of Justice Law of 1975 in that country is very largely based on our recommendations.

Trinidad

In January of this year, Lord Kilbrandon was asked by a group of lawyers and businessmen concerned about human rights to give two lectures in Trinidad, and Geoffrey Garrett and Tom Sargant were invited to accompany him. The lectures and other less formal talks were widely reported in the Press and on radio and television.

When it framed its new republican constitution, Trinidad chose to retain the right of appeal to the Judicial Committee of the Privy Council but lawyers there are concerned about the very limited value of such a safeguard. Although the new constitution specifically gives the Judicial Committee all the powers of the Trinidad Court of Appeal, including the power to receive new evidence and to order a new trial, it refused in a recent murder application to hear important new medical evidence.

Contacts with other European Sections

French Section. In July of last year 12 members of JUSTICE visited Paris for the 20th Anniversary celebrations of the French Section in which representatives of a number of other European Sections also took part. The theme of the lectures and the discussions which followed was the impact of the European Court of Human Rights and the Court of the European Economic Community on the domestic laws of the subscribing countries. We were entertained in an outstandingly warm and generous way. We much look forward to the visit of the French Section to London at the week-end of 2nd/3rd July for our 20th Anniversary celebrations.

Portuguese Section. At the invitation of "Direito e Justica", the newly formed Portuguese Section of the International Commission, Paul Sieghart gave an address on human rights at its inaugural meeting in Lisbon.

Italian Section. In April of this year Paul Sieghart and Tom Sargant attended a conference in Venice organised by the Italian Section with the support of the German and Austrian Sections. The theme of the conference was "The Judiciary and Politics", which has become a serious problem in Italy.

Hong Kong Branch

The Hong Kong Branch of JUSTICE remains active and now has well over fifty members.

Its main concerns during the past year have been to scrutinise and comment on new bills coming before the Legislative Council and to keep a watchful eye on the use of the strong powers vested in the Independent Commission against Corruption and other law enforcement authorities.

In April of this year the Branch gave its public support to the view expressed by Lord Denning in the course of a lecture in Hong Kong that it was a grave mistake to retain on the Statute Book the death penalty for murder which is regularly imposed and pronounced but since 1966 has always been commuted.

The branch now has in mind to renew its campaign for the appointment of an Ombudsman. The need for such an office has been clearly shown by the case load of Mr. Robert Primrose who, as Secretary to the Unofficial Members of the Legislative Council has acted as an unofficial Ombudsman in many matters concerning citizen's rights and welfare. He retires this year and has good reason to be proud of his achievements.

INTERNATIONAL COMMISSION OF JURISTS

In April of this year, twenty-five years after its foundation, the International Commission of Jurists held a four-day meeting in Vienna. It was attended by twenty-four members of the Commission—all distinguished jurists—from twenty countries. The occasion was made possible through the generosity of the Austrian Government and the Ford Foundation.

Alternate members of the Executive Committee and a representative of each national section were invited to attend the Commission's meetings as observers, and the three working groups as participants. Those attending from the British Section were Lord Gardiner, Geoffrey Garrett, Paul Sieghart and Tom Sargant, together with Norman Marsh, a former Secretary-General of the Commission.

The main topics on which the working groups were asked to prepare reports were:

(1) International procedures for the implementation of Human Rights Law;

(2) Human Rights—their protection and the rule of law in the one-party state;
(3) the definition and scope of minority rights within the United Nations.

The conclusions reached in plenary session will be published and obtainable by members in due course.

General Activities

The Secretary-General was able to report another very active and fruitful year. Perhaps the most notable international event was the Seminar held in Dar-es-Salaam in September last year on Human Rights—their protection and the Rule of Law in one-party states. The general conclusions of the Seminar, which were endorsed at the meeting of the Commission referred to above, were that the existence of one party states throughout Africa, and elsewhere, has to be recognised, and that, in the absence of democratic checks on the power of governments, there is a greater need and considerable scope for safeguarding human rights through legal and Ombudsman-type institutions, freedom of the press and of association, and popular consultative procedures.

A memorandum prepared by the International Commission of Jurists on torture in various countries was circulated to members of the United Nations Sub-Committee on the Prevention of Discrimination and Protection of Minorities which met in Geneva in August, 1976. It was given a hostile reception by some of the countries named in it and as a result received world-wide publicity. In the same month, the Secretary-General gave oral evidence before a Working Group on Chile of the United Nations Human Rights Commission, and a number of supporting documents were later submitted.

The Commission has been active in its efforts to safeguard the rights both of Parliamentarians and of lawyers where these have been threatened and violated. It has agreed to provide the Secretariat of the Inter-Parliamentary Union with background material on the legal situation in the countries concerned, and has encouraged Bar Associations and Law Societies to give all possible support to lawyers in other countries who are victimised for their defence of human rights. We are very glad to report that our own Law Society has responded favourably to this request.

In the course of the last twelve months the Commission has sent observers to the trial of Christian leaders in Seoul, South Korea, for issuing a statement declaring their adherance to democratic principles and to the trial of Bishop Donald Lamont in Rhodesia for failing to report terrorists. Missions of enquiry have been sent to the Philippines to gather information on the operation of martial law, and to South Korea to enquire about political prisoners and lawyers believed to be held in detention. In addition to the above, the Commission has made well over fifty interventions by way of press statements or representations on unsatisfactory situations in some thirty different countries.

The Commission now has national sections of varying strength in

forty different countries and a number of other important lawyers' organisations are affiliated to it.

Report on Uganda

In May of this year the Commission published in one volume a comprehensive report on Uganda and Human Rights for submission to the United Nation's Commission on Human Rights. This report includes the Commission's previous reports and studies, and gives an account of the situation to date.* It has achieved wide publicity not only in the United Kingdom, but all over the world.

I.C.J. Review

The review of the I.C.J., which is published in December and June, contains up-to-date studies of the state of the Rule of Law in various countries. It is recommended reading for all those who are concerned with human rights outside Great Britain, and can be supplied to members of JUSTICE at a special reduced rate of £1.50 a year.

GENERAL INFORMATION AND ACTIVITIES

Membership and Finance

In the past twelve months we have enrolled 150 new members, which is a considerable advance on recent years. This is largely due to an article and membership form which appeared in a special Human Rights issue of the "Guardian Gazette" and a new and more attractive membership leaflet. We also have to thank a volunteer member of the Bar, Peter Ashman, who while waiting to take up an appointment overseas has personally addressed a letter and reprint of the Guardian Gazette article to every member of the Bar in Gray's Inn, Lincoln's Inn and part of the Temple. His efforts have, however, brought in no more than a total of 40 new members to date from 1,300 letters delivered.

Unfortunately we continue to lose old members at a distressing rate, not so much through actual resignations as through untraceable removals and failure to respond to subscription reminders. Thus, of the members included in the estimated figures given below, some 50 have not paid their subscriptions due last October and about the same number have not increased their banker's orders to the full amount due. We can only point out that such a degree of forgetfulness or indifference creates enormous administrative problems and ask that it be remedied. Estimated figures as at 10th May are (see page 28):

The total of subscriptions paid to JUSTICE shows an increase at £5,500. The proceeds of the piano recital in Lincoln's Inn were £1,600 and we have received £450 compensation for some enforced loss of space and amenities in 2, Clement's Inn. Expenses have, however, risen to such an extent that the greater part of the burden of rent and rates has had to be borne by the JUSTICE Educational and Research Trust out

* Copies of the above report (167 pp) are obtainable from JUSTICE at £3.50 plus 20p postage.

	Individual	*Corporate*
Judicial	56	
Barristers	445	3
Solicitors	502	48
Teachers of Law	150	
Magistrates	41	
Students (incl. pupillage and articles)	110	
Associate Members	126	17
Legal Societies and Libraries		31
Overseas (including Hong Kong Branch)	91	21
	1,521	120

of its reserves. This year we can only look hopefully to our 20th Anniversary Ball in November to bridge the gap.

JUSTICE Educational and Research Trust

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

During the past 12 months it has received donations of £1,000 from the Max Rayne Foundation, £2,000 from the Nuffield Foundation (for the Decriminalisation project), £750 from the William Goodhart Charitable Trust, £500 from Mr. and Mrs. Jack Pye's Charitable Trust, £500 from the Drapers Company (for attendance at overseas conferences), £500 from the International Publishing Co., and £250 from Hill Samuel & Co. The Trustees would like to express their warm gratitude for these generous contributions.

Members of JUSTICE are invited to enter into covenants, either as an alternative, or in addition to their ordinary subscriptions, and they can help by drawing our needs to the attention of those who can influence the allocation of charitable funds.

The Council

At the Annual General Meeting in June 1976, Lord Foot, Lord Wigoder and Peter Carter-Ruck retired under the three year rule and were re-elected. Charles Wegg-Prosser and David Widdicombe, who had served as co-opted members, were elected to fill two vacancies. In the early part of this year Glyn Hardwicke, who had given valuable service on the Executive Committee and the Criminal Justice Committee, retired through ill-health. Anthony Lester, Q.C., and David Graham, Q.C., were co-opted at the October meeting of the Council.

Officers

Following the retirement from office of Geoffrey Garrett, to whom tribute is paid in the Chairman's Introduction, Lewis Hawser and Paul Sieghart were appointed Joint Chairmen of the Executive Committee.

The other officers, re-appointed at the October meeting of the Council, are:

Chairman of Council:	Sir John Foster
Vice-Chairman:	Lord Foot
Hon. Treasurer:	Michael Bryceson

Executive Committee

The Executive Committee consists of the officers, together with Philip English, Edward Gardner, Roy Goode, William Goodhart, Muir Hunter, Philip Kimber, Blanche Lucas, Edward Lyons, Michael Sherrard, Laurence Shurman, Charles Wegg-Prosser, William Wells and David Widdicombe. Alec Samuels, our Director of Research, is an ex-officio member.

Finance and Membership Committee

This committee consists of Michael Bryceson (Chairman), Paul Sieghart, Philip English, William Goodhart, David Graham, Blanche Lucas and William Wells.

Annual General Meeting

The 19th Annual General Meeting of JUSTICE was held in the Old Hall, Lincoln's Inn on Tuesday, 29th June, 1976.

Sir John Foster presided and in presenting the Annual Report expressed his personal regret that because of the extreme positions taken up by both sides no progress had been made in the reform of the Criminal Law. He would willingly do away with the right of silence provided verbals were suppressed. A criminal trial should not be a game but an enquiry into the truth and there should be no artificial restrictions on the calling of new evidence on appeal.

In the general discussion which followed, Arnold Rosen called for more meetings and higher subscriptions. Sir John Foster expressed his admiration for the French Conseil d'Etat. Muir Hunter expressed gratification at the extent to which our representations had improved the Insolvency Bill. Alfred Finer praised the growth of duty solicitor schemes, and stressed the need to see that they worked fairly and efficiently. Charles Wegg-Prosser said that it was important that duty solicitors should interview prisoners in their cells before they were brought up and that the Law Society was concerned about denials of access to suspects.

In presenting the Annual Accounts, Michael Bryceson sounded an urgent note of alarm at the prospects facing the Society if its income could not be substantially increased. Despite the compensation received through our enforced removal from Crane Court, there was a deficit of around £1,000 for the year ending 31st March, 1976, and an even greater deficit was to be expected in the current year.

Lord Kilbrandon's Address

Lord Kilbrandon looked with perspective at the important subject of the police and the public. Due to historical reasons the English police

had a unique organisation, and were uniquely organised. The prevention and control of civil disorder and rioting had always been a most important element of the police function, and still was. But the job of the police was becoming more difficult, if not impossible, because of the proliferation of criminal offences and the drawing in of practically everybody into the scope of the criminal law, e.g. the motorist. The criminal law should either be strictly enforced or repealed.

The English system of police prosecution was nearly unique in the civilised world. It would be better if the responsibility for bringing and presenting the charges in court did not lie upon those responsible for the preliminary investigation and the selection of the accused.

The current phrase "assisting police with their inquiries" was odious because it concealed the truth. What was needed was a form of interrogation under magisterial or impartial supervision, electrically recorded. The present unsatisfactory situation poisoned police-public relations and led to over-reaction on both sides.

In relation to youth, Lord Kilbrandon said that most crime was committed by young males under 17, most of whom fortunately did not progress to adult crime. So this was the nature of the problem. Following the Kilbrandon recommendations as enacted in the Social Work (Scotland) Act 1968, in Scotland juvenile courts had been replaced by hearings conducted by lay persons. Scottish experience had shown that the fact of the commission of a crime by a young person was largely irrelevant or fortuitous, the real problem was frequently a family problem calling for the intervention of the social services, who alas often lacked the necessary organisational support. But this was not to say that the juvenile liaison scheme had not an important role still to play. Close and informal contact between the police and the juvenile and his parents could bring both juvenile and parents to realise that the police, especially local police, were on their side, and relationships could be greatly improved.

> "We must demand, and be prepared to pay for, the necessary legal, technical and social machinery, without too much reliance on traditional methods. This must be the common objective of police and public, to be pursued in partnership. Otherwise we threaten the protection of society, a condition precedent to any concept of human rights."

Annual Members' Conference

The annual conference of members and invited representatives of governmental and professional bodies was held in the Lord Chief Justice's Court on Saturday, 12th March 1977. Mr. Justice Bristow presided and the theme was "Casualties of the Legal System".

The morning session was devoted to civil matters and was opened by Master Jacob. He said that there were many ways in which a person who had suffered misfortune at the hands of the legal system needed to be helped. He might be unaware of his rights, unable to find access to a solicitor, or to a solicitor well versed in housing or welfare matters. The litigation process involved delay, expense and technicality which should be constantly reviewed. Settlement at the door of the court, "on

the spot", was not a very satisfactory way of doing things. Confrontation, or even conciliation, at an earlier stage and in a calm atmosphere, ought to be possible. Payment into court was a blunt instrument, and could work harshly on the plaintiff who won on the issue of liability, which took 4½ days to try, but obtained slightly less on quantum than was paid in, that issue taking ½ day. For a technical reason, interest was not payable on money paid into court. The court order might take a long time to draw up. Limitation could still work hardships, and the judge should have a discretion. Amendments to pleadings should be more liberally allowed. Discovery and pre-trial procedure generally should be more open. Representative actions should be much more widely available, e.g. in consumer and environmental and securities matters. The litigation system was basically a sound system, but for the litigant in person and the small man it needed constant tuning.

Admiral Godfrey Place, the Lay Observer; said that the common grounds for criticism of solicitors was that they or the law were too slow, too expensive, and too difficult to understand. Judging the merits of any particular case was necessarily extremely difficult, but certainly in a number of cases there did appear to be regrettable delay in reaching a settlement in a dispute or in bringing proceedings promptly, e.g. in injunction cases. Professional services were necessarily "expensive" to provide, and the public often had no real idea of this. The solicitor should try to give a careful forecast of costs, within a bracket, with a defined upper limit, the case being reviewed as it went along, and the client kept fully informed throughout, so that he knew what were the costs implications of a settlement and a trial and was not taken completely by surprise when the final bill arrived. The solicitor who took on unremunerative work which had to be impersonally delegated to subordinates, or who took on more work than he could handle, was running the risk of error and delay. The law was not too easy to understand, the client often had no knowledge of legal concepts and terminology. This made the necessity for careful, early, and repeated explanation very important, in order to avoid misunderstanding so far as possible.

Norman Turner, the Official Solicitor said that he acted as a sort of last resort or longstop in contempt cases, handling nearly 500 cases a year. Application was made to the court where the contemnor appeared to be unfit, or solicitors refused to act (often after patient but hopeless advice), or it could be argued that the contempt had been sufficiently purged by effluxion of time, or there might have been a technical flaw in the proceedings. Sometimes the Judge asked for his help as an *amicus curiae*. Application was made at an appropriate time, immediately in the case of medical grounds, promptly in the case of the contemnor willing to apologise; otherwise a general review was made after about three months, perhaps longer in the case of the persistent offender. The Judge had the power to direct release at a future date. The Phillimore proposal that all committals should be fixed term committals would be welcomed. The fixed term had the advantage of simplicity, especially in the case of the obdurate contemnor, involving the balancing of the time served against the gravity of the offence.

Members speaking from the floor drew attention to the low level

of eligibility for legal aid, the difficulty of ascertaining the specialities of solicitors, the need for a sort of casualty or emergency examination service, the desirability of an agency specifically designed to assist casualties, and the lack of instruction in the schools in the elements of the law. The client sometimes expected a lot of professional and unremunerative service for a small fee, he sometimes broke a contract, ignored the advice of the solicitor, and then blamed the solicitor for the consequences.

The afternoon session was devoted to criminal matters and opened by Tom Sargant, Secretary of JUSTICE. He said that the convicted man alleging wrongful conviction faced a very difficult task. It was difficult to find somebody to listen to him, apart from believing him. His story might be incredible or unlikely, but it could be true. Allegations of unfair trials could be unjustified, or based upon a misunderstanding of trial procedure, but in recent years there have been a disturbing number of exposures of wrongful convictions. Sometimes the lawyers were not as competent as they should have been in tracing witnesses and ensuring their attendance at the trial. The law itself needed improvement, in order to deal, for example, with the vexed problem of the disputed verbals and of identification, where statutory safeguards were required. Legal aid provision for appellants was still inadequate, despite improvements in recent years, because of the difficulty and expense of carrying out extensive investigations. The success of an appeal or petition should not depend upon the chance that the matter happened to be taken up by TV, or the press, or an MP, or JUSTICE. Even if an investigation was carried out by the police, the report to the Home Office was not disclosed. Fresh evidence was often very difficult to track down and produce, and both the Home Office and the Court of Appeal were extremely reluctant to consider it, let alone to accept it.

Ben Hytner, Q.C., spoke as a member of a Justice Committee which is taking a new look at the problem of criminal appeals and Home Office reviews. He said that the problem of incompetence or error of judgment of lawyers could never be completely overcome, but the system of appeals was susceptible to reform. The power to order a new trial could be extended, e.g. irregularity due to wrongful admission of evidence or excessive judicial interruption. The application of the proviso, because of judicial reluctance to quash, was an unsatisfactory device in such circumstances. The problem of fresh evidence was very real. The Court of Appeal was more amenable to fresh evidence than formerly, but the large number of judges involved had led to a certain lack of consistency in the law and practice. Fresh evidence might involve an allegation of impropriety on the part of the police, and the Court of Appeal was not properly equipped to deal with that. Nor indeed were the police. Fresh evidence might appear late in the day, and the Court of Appeal and Home Office machinery was not too well equipped to deal with this. The Home Office was civil servant rather than lawyer orientated and relied upon the police in order to carry out investigations. Some sort of new review body might be necessary in order to investigate allegations against the police and late fresh evidence.

Master Thompson: said that only about 1 in 10 cases in the crown

court led to an appeal and only about 1 : 100 cases in the Crown Court led to an intervention by the Court of Appeal. So a sense of perspective had to be maintained. Legal aid had been greatly improved, especially the duty to advise and if necessary to present grounds of appeal, including the calling of evidence before the Court of Appeal. The Court of Appeal had the discretion to hear fresh evidence. He felt there was a danger in proliferating procedures in the hope that one more level of appeal would cure deficiencies or insensitivities of professional work. In his view, everything depended upon the cultivation of professional devotion and excellence, and not in complicating the machinery.

Speakers from the floor drew attention to the switching of counsel at the eleventh hour, the illiteracy of many convicted persons, and the difficulties facing a prisoner in disciplinary hearings before Boards of visitors.

Natalia Karp's Piano Recital

On Tuesday, 6th July, 1976, in Lincoln's Inn New Hall, Natalia Karp, a Polish-born pianist of international fame, gave a piano recital of works by Handel, Schubert and Chopin. She generously offered her services to raise funds for JUSTICE, and the brilliance of her playing and warmth of her personality gave 270 members and their friends an evening of sheer delight. The Lord Chancellor honoured us with his presence and welcomed the audience at the buffet reception which followed.

We would like to express our warm thanks to the members of the committee who organised the event. They were Mrs. William Goodhart (Chairman), Mrs. Michael Bryceson, Mrs. Bryan Blackshaw, Mrs. Michael Burrell, Miss Diana Cornforth, Mrs. Michael Miller, Mrs. Paul Sieghart and Mrs. Roydon Thomas.

We are also grateful to John Mackarness for organising the sale of advertisement space in the programme, to the companies who responded to his appeal, and to the Under Treasurer and staff of Lincoln's Inn for their courtesy and helpfulness. The proceeds of the occasion were over £1,500.

20th Anniversary Ball

A 20th Anniversary Ball will be held at Hurlingham Club on Friday, 11th November. Members are asked to note the date and to organise parties. The price of tickets, including dinner, is £8 and there will be after-dinner tickets at £2.50.

Scottish Branch

Contact with individual members has been rather less this year but the work of the branch has greatly increased. This has been partly due to the greater amount of law reform material which has been studied with a view to providing comment or briefing, but the main amount of additional work and time has been devoted to consideration of individual cases which have been submitted to us in greater numbers.

Always time-consuming and requiring careful attention, the number and complexity of these individual applications have greatly increased

recently. Crusading in individual cases is not our primary function nor even one of the main objects contemplated in our foundation. Nevertheless such cases are valuable to us as they make available to us the raw material illustrating areas in which reform of law or procedure may be needed. Only a small number of cases can be selected for follow-up or for full examination as relevant to an important point of principle. From these our support for the Meehan inquiry was originated by the Secretary of Justice and followed up in the branch. In this case public pressure has now successfully led to the grant of an inquiry which we shall watch with interest. The case of the conviction of David Anderson, Q.C., has also been taken as an important example indicating need for reform of summary criminal appeals in Scotland and also illustrating problems of identification evidence with special reference to the Devlin proposals. We continue to press for review of unsatisfactory features of this case.

We have concerned ourselves with the matter of summary criminal appeals in Scotland, where such appeals may be taken on points of law alone. There is no appeal on fact from the judge sitting alone and that contrasts sharply with the position in England where such appeal on fact is competent to the extent of an absolute right of retrial in full after conviction by a magistrate. Lord Hailsham commented in the House of Lords that a right of appeal on facts also was ". . . an absolute necessity for the protection of the subject".

Material has been submitted to Sheriff Bryden's Working Party on the application of the Devlin proposals to Scotland, where we commented upon identification evidence, and to Lord Thomson's Committee on criminal procedure, where we commented on summary appeals.

Although we do not have members' meetings of a social character, any member who is in a position to undertake any work for JUSTICE is invited to contact Ainslie J. W. Nairn, W. S., 7 Abercromby Place, Edinburgh. Perhaps our main contribution as a branch is to make available to the Council and to any of the committees our own particular view and experience of our separate system of law within the U.K.

A.J.W.N.

Bristol Branch

During the past year the Bristol Branch, of which David Roberts is the Secretary, has held regular discussion meetings. The subjects have included a Bill of Rights, evidence of identification, ethical problems of advocates, the discretion to prosecute and trade unions and the law.

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

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:	£2.00
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.

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