JUSTICE

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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

Before reviewing the work of the past year, I have to recall with deep regret the sudden and untimely death of our Honorary Treasurer Michael Bryceson. The service he has rendered to JUSTICE since he joined the Council as a founder member in 1957 cannot be measured in words. He was the first Chairman of our Finance Committee and was invited to become Honorary Treasurer on the appointment of Lord Elwyn-Jones to the office of Lord Chancellor. His enthusiasm for the work and well-being of the society was infectious and he responded selflessly to any demands that were made on his time and energy.

He also served on our Company Law and Civil Justice committees and his concern for litigants in trouble led him to play a leading part in the preparation of our evidence to the Royal Commission on Legal Services. He was a true lover of justice and of his fellow men and we shall miss him greatly.

Following the completion of our submissions to the Royal Commision on Legal Services, our main concerns during the last year have been the preparation of evidence to the Royal Commission on Criminal Procedure and two important enquiries into aspects of administrative law.

The first part of our evidence to the Royal Commission was published in April under the title "Pre-Trial Criminal Procedure" and I hope you will regard it as a well-balanced and wholly constructive document. Its recommendations, if adopted, would put an end to the dubious verbal admissions which undermine the objectivity and integrity of our criminal trials and lead to many miscarriages of justice.

At the same time they would provide the police with properly defined powers of detention and questioning and do away with the right of silence and the present over-elaborate and hampering rules for cautioning. We have also reaffirmed our earlier recommendations that decisions to prosecute should be taken out of the hands of the police and entrusted to independent prosecuting solicitors. Our work on various aspects of trial procedure is also well in hand.

For the second year running I should like to draw attention to the accounts of some disturbing cases which appear in the body of this report. They all show the inadequacy of the Home Office procedures when it is presented with evidence which points to the innocence of a convicted man. In the cases of Roy Binns and James Stevens, after the Home Office had refused to act on the recommendation of a Chief Superintendent of Police, a remedy was eventually found by an application for leave to appeal to the Court of Appeal out of time. In

another case, that of Albert Taylor, the fact that a Chief Superintendent had found new evidence which would have affected the verdict of the jury, and had recommended that it should be the subject of an independent review, only came to light through the intervention of a friendly Welfare Officer, and by the time he was released Albert Taylor had served five years of his life sentence.

Our Secretary has encountered considerable obstacles in other cases, mainly because of the secrecy surrounding the outcome of police investigations and the content of the reports submitted to the Director of Public Prosecutions and/or to the Home Office. I take the view that, as in a criminal trial, any statements taken which are in favour of a prisoner should be made available to his legal advisers. This would make it easier for justice to be pursued and lessen the sense of frustration which is so often caused and felt.

The other disturbing feature of these cases, as in previous years, is the pessimistic nature of advices on appeal given by some counsel. This could well arise from the experience of having meritorious grounds of appeal turned down by an unreceptive court and of the particular difficulties facing any counsel who seeks to show that his client's conviction was in part obtained by police malpractice. It should be the overriding duty of the Court of Appeal to ascertain whether there has been a miscarriage of justice.

In the discharge of this duty the Court of Appeal should never refuse to hear relevant new witnesses, whether or not they were known about at the time of the trial. It cannot be right that an innocent man should have to pay the penalty for the incompetence or bad judgement of the lawyers who defended him.

In the field of administrative law, we have embarked during the year, in conjunction with All Souls College, Oxford, on a wide ranging review of administrative law. This is something we have repeatedly asked government to undertake and it has been made possible by a generous grant from the Leverhulme Foundation. We were fortunate indeed to be able to persuade Patrick Neill, QC, the Warden of All Souls College, to be Chairman of the Advisory Committee, and Ronald Briggs has been seconded to it as its Secretary.

Our enquiry into the work and effectiveness of the Commission for Local Administration is making good progress and its report should be completed by the end of the year.

In the course of the year we have prepared and submitted to the appropriate departments memoranda on the Companies Bill, on the powers and duties of trustees, and on the Fourth Report of the Select Committee on the Parliamentary Commissioner for Administration. This was an outward looking report and it is to be regretted that the Government has not responded to its challenge.

We hope to complete our report on British nationality in time for

it to influence impending legislation on what is a human as well as a technical problem.

The Council has recently set up a committee to enquire into the advisability of setting up a debt counselling service attached to or working in close relationship with county courts. Such a service would relieve pressure on the courts and relieve the distress of those who continually appear before them.

The anxieties I expressed last year about the prospects of finding suitable new office accommodation were unexpectedly relieved by the generosity and helpfulness of our former landlords, Mobil Services Ltd., who, out of appreciation of the value of our work, have not only provided us with funds to meet the increases in rent and rates for the next three years but have also paid all the expenses of our removal and the redecoration and recarpeting of our new offices in Chancery Lane. We could have wished for nothing more and are most grateful for their timely help.

Although our rent problem has thus been relieved, our general financial position still causes us great anxiety. Indeed, we already face a substantial deficit in the current year. We cannot carry on the work of the society as we would like to on a subscription rate which was last raised nearly five years ago and with expenses increasing every few months. The Council has decided against a general increase for the time being and I earnestly hope that a sufficient number of senior members will respond to the challenge being made to them and enable us to face the future with more confidence than we can at present.

Finally I would like on behalf of the Council to pay a warm tribute to Tom Sargant, Ronald Briggs and Peter Ashman for the burden of work they have successfully carried throughout the year, to Kie Sebastian who joined us a year ago and has coped efficiently with problems of administration, and to all those members who have taken part in the work of our committees.

JOHN FOSTER.

REPORT OF THE COUNCIL

HUMAN RIGHTS

Internationally, progress in the field of human rights law continues, but at a disappointingly slow pace.

In the last year, the event with probably the most important long-term consequences was the coming into force of the American Convention on Human Rights, first signed 10 years ago. That instrument is modelled broadly on the European Convention and creates similar supranational fora in the form of a Commission and a Court. It is therefore now the second international human rights instrument that provides means for binding adjudication and enforcement of its provisions against the State Parties to it – means which are still signally lacking in the case of the U.N. Covenants and Conventions.

Where such means do not exist, governments that have signed and ratified human rights conventions can ignore them with impunity, and extreme legal positivists can continue to argue that a law which cannot be adjudicated and enforced by a competent court is not a law at all. Adjudication and enforcement must therefore be the principal objectives of the further development of international human rights law, and it is heartening that they now exist in two of the world's regions. In recent years, the International Commission of Jurists has sponsored regional human rights seminars in East and West Africa, and in the Caribbean; another is being held in the Andean region this autumn, and a fifth is planned for next year. It is conceivable that further regional conventions may grow from enterprises of that kind; adjudication and enforcement seem to be easier to achieve within a region with common cultural and economic ties than they are on a global scale.

In January of this year, the first European conference on human rights law officially attended by lawyers from both East and West took place in Warsaw. Appropriately enough, at the beginning of the International Year of the Child, the theme was "the Rights of the Child". The ICJ and the International Association of Democratic Lawyers were joint sponsors, and the Polish Association of Democratic Lawyers acted as hosts. The participants came from 20 Eastern and Western countries, and included the Ministers of Justice of Poland and Bulgaria. Paul Sieghart attended on behalf of JUSTICE and chaired one of the three Working Commissions, which, among others, presented resolutions, ultimately adopted by the plenary conference, to the effect that parents should have a choice in the educa-

tion of their children, school curricula should not be imposed unilaterally by the State, and children should be free to pursue forms of recreation which they enjoyed and which did not harm others.

An important event in Great Britain was the holding of a two-day colloquium last December at the Palace of Westminster on the subject of "The Role of Human Rights in U.S. and U.K. Foreign Policy". The sponsors of the event were JUSTICE, the American Association for the ICJ, the British Institute of Human Rights, and the Parliamentary Human Rights Group. Senior officials from the State Department and the Foreign and Commonwealth Office exchanged much useful information, and three British Ministers attended and spoke. A summary of the proceedings will be published later this year by Random House in New York.

What human rights law is ultimately about is the proper relationship between the official organs of a society and the individuals who compose it. That has always been a contentious subject. But events like these show that, once it is regulated by an agreed body of law, practising lawyers can do much that is useful in working out the consequences and filling in the details – even if they come from countries with quite different constitutional and institutional structures, to say nothing of their economic systems or political ideologies.

It remains a pity that so few practitioners in Great Britain have so far taken much interest in the subject. It will need a substantial educational effort before that regrettable state of affairs can start to improve.

NUCLEAR POWER AND CIVIL LIBERTIES

Both here and abroad, the "Nuclear Debate" continues at all levels from rational discussion to violent confrontation. Doubtless the recent reactor accident at Harrisburg will re-emphasize the risks from accidental releases of radiation, as Windscale focussed on the routine ones. But in the past year, increasing attention has been paid to the possible social changes which a large-scale commitment to nuclear power – and particularly to the plutonium fuel cycle, with its reprocessing plants and fast-breeder reactors – could bring in its train, and especially to the gradual erosion of personal freedom which might follow from the very stringent and pervasive security measures that will be needed in order to ensure that even very small quantities of plutonium do not fall into the wrong hands.

In part at least, the rising interest in this subject has been stimulated by the JUSTICE report, *Plutonium and Liberty**. As the first dispassionate analysis of this problem published in Europe, it has received gratifying attention and has been widely quoted at conferences in Davos, Strasbourg, Geneva and elsewhere. It also formed

*Obtainable from JUSTICE, price 75p.

part of the source material for the Gorleben International Review, a panel of international experts (of which Paul Sieghart was a member) commissioned by the State Government of Lower Saxony to analyse and report on a proposal for the construction of the world's largest nuclear reprocessing plant in West Germany. The State Government has since decided not to go ahead with the new plant.

Here, the next step will be the public enquiry into the proposed Commercial Demonstration Fast-Breeder Reactor. In our Annual Report last year, we said that such enquiries should not be held in piecemeal fashion, limiting each to only one stage of the plutonium fuel cycle. We therefore welcomed the announcement last September by the then Secretary of State for the Environment, Mr. Peter Shore, that the CDFR inquiry would have two stages, the first of which would "assess the background and the need" in the course of "a wide-ranging investigation". For a project as important and difficult as this, that must be right: in the words of Mr. Shore, it will "involve technological judgement of great complexity, can affect our whole way of life, and involve issues of utmost importance to the safety and health of future generations."

The critical questions about such an inquiry will be those of procedure – for appointing it, for its investigations, for the rights of parties, for the form of its report, and for what will happen after that has been rendered. A joint working party of the Council for Science and Society, the 'Outer Circle' Policy Unit and JUSTICE has been convened to consider these questions, under Paul Sieghart's chairmanship. Two other members of JUSTICE committees, David Widdicombe and Sir Dennis Dobson, are members of the working party, which hopes to publish its report shortly.

CRIMINAL JUSTICE

Royal Commission on Criminal Procedure

Part I of the written evidence of JUSTICE to the Royal Commission was endorsed by the Council and submitted at the beginning of April. It was published last May under the title *Pre-Trial Criminal Procedure* and covered police powers of search, arrest, detention and interrogation, and the power to prosecute. As regards police powers in general, we recommended that they should be extended in a number of areas, but defined by statutes strictly enforced, and that no incriminating statements should be admissible in evidence unless authenticated by a magistrate or by a specially appointed referee or by a solicitor or by a tape-recorder. We further enlarged upon and reaffirmed our earlier proposal that decisions to prosecute in all except minor cases should be taken out of the hands of the police and en-

trusted to independent county prosecuting agencies under the general supervision and control of a Department of Public Prosecutions. The more important recommendations are as follows:

(1) The police should not be given a general power to stop and search any individual or vehicle on reasonable suspicion, but they should be given an absolute right to stop, question and search within the boundaries of sensitive areas such as docks, airports and military installations and on reasonable suspicion in an appropriate area surrounding the boundaries.

(2) The police should be given power to stop and search for potentially dangerous weapons any person entering a sports arena or taking part in a public procession or gathering if they have reason to believe there is a danger of disorder or violence. This power should extend to special trains and coaches.

(3) The police should be given power to seize and retain for a reasonable time property found in a public place and believed on reasonable grounds to be of evidential value, the owner to have access to the courts.

(4) In respect of interrogation, the police should be entitled to question a suspect for an adequate length of time for the purpose of obtaining information, but no confession or incriminating statement obtained from him should be admissible unless it is authenticated by a magistrate, or by a solicitor or by a tape-recording.

(5) The safeguard to which we give priority of choice is interrogation before a magistrate or other qualified person, who should record and certify any replies which are given. This can be at the request of the police or the suspect.

(6) Remarks made by a suspect on his arrest or in a police car should so far as is practicable be recorded on pocket tape-recorders.

(7) Because of the length of time before a universal system of tape-recording of interviews at police stations can be agreed and brought into operation, and because of the urgency of the problem of verbals, our second preference is that statements must be authenticated by a solicitor if they are to be admissible in evidence.

(8) The police should be given a lawful power to detain an arrested person without charging him for a maximum period of 36 hours, but only on condition that:

(*a*) After 3 hours a solicitor must be informed of the arrest and the nature of the suspected offence;

(*b*) After a total of 6 hours, the investigating officer must dictate a note to the station officer, which must later be made available, giving his reasons for continuing to detain the suspect. On receipt of this note, the station officer should see the suspect and record any complaints;

(*c*) After a total of 12 hours, he must take the suspect before a

magistrate and justify the need for detention for a further 24 hours. At the end of this period he must be either charged or released;

(*d*) At any hearing before a magistrate, the suspect should be present and represented and be entitled to ask for a private consultation with his solicitor;

(*e*) Once a person has been at a police station or otherwise in police custody for 3 hours (whether or not he went there voluntarily in the first place), he shall be deemed to have been arrested when he first arrived.

(9) The right of silence, as at present understood, should be abolished, as we regard it as having only an evocative and mythological value. A suspect's refusal to answer questions before a magistrate would be reported to the jury and the trial judge should be able to comment on this and on his failure to go into the witness-box in reasonable terms, but failure to answer questions should not be given any evidential value. The accused's right to make an unsworn statement from the dock should be abolished.

(10) We would be content to abolish the Judges' Rules in their present form, including the rules relating to cautioning, provided they are replaced by effective provisions for the authentication of statements and, subject to the same safeguards, we would give the police the right to question a suspect after he has been charged.

(11) If these safeguards are not provided, the Judges' Rules should be given statutory force with the onus placed strictly on the prosecution to satisfy the court that any admission is voluntary. The Home Office directives regarding the treatment of suspects should remain and be given statutory force in any event and any serious breach should result in the disciplining of the officer concerned and the exclusion of any evidence obtained.

(12) New rules should be introduced to cover the taking of statements and the writing-up of police officers' notebooks.

(13) The police should be under a duty to obtain any forensic evidence relating to articles under their control which might help to clear a suspect, and to make it available to the defence.

(14) There should be established a Department of Public Prosecutions, to be responsible both for decisions to prosecute and for the conduct of prosecutions in all except trivial and routine offences, the line to be drawn by the Director of Public Prosecutions.

(15) This Department should be entirely independent of the police and have regional offices under Assistant Directors, and be developed out of the staffs of existing prosecuting agencies.

(16) Prosecutions at present dealt with by government departments and public bodies should remain in their hands and the right of private prosecution should be retained.

(17) The Department should be entitled to take statements from witnesses and to suggest additional lines of enquiry to the police.

(18) To reduce the overloading of the courts with trivial offences, greater use should be made of the system of issuing written cautions.

(19) The system of mitigated penalties should be extended to failure to obtain or renew television licences.

(20) Consideration should be given to extending the system of fixed penalties to less serious traffic offences, nuisance and litter offences, and travelling with intent to avoid payment of fares.

The following members of JUSTICE took part in preparing this Evidence:

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Copies of this report are available at £1.50 (members £1).

Further sections of evidence are in course of preparation and submission, covering evidence of identification, changes of plea, preparation for trial and mutual disclosure.

Criminal Cases

During the past twelve months the office has received more requests for help and advice from prisoners claiming they have been wrongly convicted than in any previous year. They have become so numerous that it has been impossible to pay serious attention to more than a small proportion of them.

We have no staff to undertake outside investigations and no funds we can set aside to cover the cost of transcripts and visits to prisoners. We therefore have to rely on such funds as we can obtain from private sources and the generous co-operation and help of our barrister and solicitor members.

Apart from the direct approaches to us by prisoners and their families, a substantial number of cases have reached us through the intervention of assistant prison governors and welfare officers, defence barristers and solicitors, members of Boards of Visitors and M.P.s.

Taken as a whole, the letters we receive and such documents as subsequently become available present a disturbing, if not alarming, picture of what is happening in some of our criminal courts. Complaints which appear with monotonous regularity indicate police pressure and malpractice of various kinds, perjury by prosecution witnesses, undue pressures to plead guilty, inadequately prepared defences, last-minute representation, failure to call witnesses, hostile judges and inadequate advice and representation on appeal.

It is true that we hear nothing of the tens of thousands of cases which are tried properly and fairly, and that some of the complaints we have received are prompted by malice or indignation or misunderstanding of the limitations and potential pitfalls of the accusatorial system. But the residue of well-founded complaints and claims to innocence which remains is in our experience far higher than it should be, and the consequences are all the more serious because of the inadequacy of the remedies available at all levels.

Apart from the complaints detailed above, there are two disturbing aspects of some cases which have come under notice. The first is an apparent over-readiness of juries to convict of murder in cases when there was a reasonable doubt and where a verdict of manslaughter would have been more appropriate, for example when there was a substantial element of provocation or fear and no evidence of clearly formed intent. The scope of defences available to the defendant in such cases is too restricted. Provocation depends upon the reasonable man test. Fear amounting to panic is not accepted as a defence in itself, nor is drunkenness. Self-defence is extremely difficult to substantiate. As for criminal intent, judges still tend to adhere to the objective instead of the subjective test, and do not require the prosecution to prove a clearly formed intent. It sometimes happens that an offer by the prosecution to accept a plea of manslaughter is refused because the accused insists, or is advised by counsel, that he has a good defence, and the jury returns a verdict of murder.

The second is a disturbing incidence of cases of men who had a valid defence and might well have been innocent, but were found guilty because they were advised not to give evidence or not to advance their true lines of defence. This happens most frequently when the accused has previous convictions.

There are many matters which do not fall within the terms of reference of the Royal Commission but some of the hazards could be reduced by greater vigilance, integrity and concern on the part of all those involved at various stages in the criminal process.

George Naylor

In last year's Annual Report, we gave a long account of the case of George Naylor, who had been convicted of the rape of an elderly lady who lived in the flat below him in Bradford and sentenced to 15 years' imprisonment. Apart from some matching fibres which were difficult to explain, the evidence against him was almost entirely circumstantial.

The outstanding feature of the case was that the officer in charge of it, Detective Inspector Senior, had suppressed the complainant's original description of her assailant as a man 5'6" tall, with a Scottish or Irish accent and not smelling of alcohol, and substituted for it a later statement pointing to George Naylor, who is a 6ft. Yorkshireman and had been drinking on the night of the rape. When asked in the witness box about any earlier description, Det. Insp. Senior denied any knowledge of it. At the Court of Appeal he admitted that when he gave this evidence he had the statement in his pocket and had not disclosed it to his superior officers or to prosecuting counsel.

It was further admitted that he had discarded an opinion of an odontological expert from Leeds University, Mr. Francis Ayton, to the effect that some bite-marks on the complainant could not be attributed to Naylor and had substituted for it the evidence of a police doctor that the marks created a strong suspicion that Naylor was the assailant. Despite these two serious material irregularities, the Court of Appeal declined to quash the conviction because of the strength of the fibre and circumstantial evidence, saying that it pointed clearly to Naylor's guilt.

The Court, however, censured Det. Insp. Senior and asked for an enquiry into his conduct. JUSTICE sent all the papers to the Home Secretary requesting a full investigation, and Edward Lyons, Naylor's M.P., later made direct enquiries of the West Yorkshire Chief Constable. In the meantime, Naylor's solicitors received a letter from the Deputy Chief Constable saying that he had thought it fit to give Det. Insp. Senior a suitable warning and did not propose to take any further action. The Minister of State at the Home Office subsequently informed JUSTICE that the Chief Constable was fully satisfied that no criminal offence had been committed and that he was not prepared to challenge this ruling. Replying to Edward Lyons, the Deputy Chief Constable said that the evidence of Mr. Ayton had been discarded because it was later discovered that he was only a dental student. He had in fact qualified in 1960 and had appeared with the police doctor on a radio programme of forensic science experts.

The Police Act of 1964 lays down that after the investigation of a complaint the Chief Constable must send the investigating officer's report to the Director of Public Prosecutions unless he is satisfied that it discloses no evidence of a criminal offence. In relation to this, we

take the view that the most serious offence which a police officer can commit is to conceal evidence favourable to an accused and to commit perjury on oath when asked about it in the witness box. In France such an offence is punishable by a term of imprisonment equal to that imposed on the convicted man.

Consideration was given to the possibility of applying to the Divisional Court for an Order of Mandamus requiring the Chief Constable to send the report of the investigation to the Director of Public Prosecutions but our Secretary decided to consult the Director before doing so, with the result that a Chief Superintendent of the Merseyside Force has been asked to undertake a full investigation into all aspects of the case, including the alleged perjury and concealment of evidence.

Albert Taylor

This case was mentioned briefly in last year's Annual Report, as one of three cases in which the Home Office had failed to act upon the report of a police investigation pointing to the innocence of a complainant prisoner. It has since been given considerable publicity by reason of the fact that the main item of new evidence which led the Court of Appeal to quash Albert Taylor's conviction for murder, after he had served five years, related to a clicking clock.

The victim of the murder was the young sister of Taylor's fiancée. According to his account of events he called to see his fiancée at her home just outside Peterborough at about 2 p.m. She was not at home and the body of her sister was lying on the sitting-room floor covered in blood. After examining the body and trying to clean it up, he panicked, returned to Peterborough, took his trousers to the cleaners and went off to find his fiancée. While he was with her, the news of the sister's death reached them. He collapsed and it was some considerable time before the police were able to question him.

According to the evidence, the murdered girl came home for lunch every day and would normally have left the house at 1.45 p.m. to return to school. Taylor had an interview with a prospective employer at the Station Hotel Peterborough at 1.30 p.m. which would have made it impossible for him to have reached the girl's house before she would have left it. He supported the timing of this interview by maintaining that before keeping it he went to buy a paper at the station bookstall. He heard the station clock click and saw that the time was 1.30 p.m. The evidence of the taxi-driver who had taken Taylor to the girl's house supported the prosecution's case, but he had made two statements and his log-book was shown to be inaccurate. The prosecution however brought expert evidence to the effect that the station clock did not click and this effectively undermined Albert Taylor's credibility.

He protested his innocence to JUSTICE shortly after his conviction, but the judge's summing-up was wholly fair and an application for leave to appeal argued by his trial counsel was refused.

Taylor however persisted in his claim to innocence and complained to the Chief Constable of Huntingdonshire that the police had loaded the evidence against him. In January 1977 Chief Superintendent Peter Crust of the Essex Constabulary was asked to investigate his complaints. In April 1977 he took a statement from a railway engineer about the clock and in July he visited Taylor and told him that he had uncovered some helpful new evidence relating to the clock and the probable time of the girl's death. At the end of September 1977, Taylor became impatient, and his Welfare Officer wrote to Chief Supt. Crust asking him about his findings. He replied to the effect that he had said in his report that, in his view, the new evidence he had uncovered *would have affected the verdict of the jury and that it should be the subject of examination by an independent body.*

In January 1978, Taylor was informed by the Chief Constable that there had been an eight months' investigation into his complaint, that the report had been submitted to the Director of Public Prosecutions who had decided to take no action, and that he (the Chief Constable) did not propose to pursue the matter any further.

At that point, Taylor consulted a firm of solicitors in Hull who were able to obtain from the Director a copy of the engineer's report on the clock, which confirmed that it had been clicking at the time of the murder, and details of the new medical evidence. Our Secretary was asked to advise and subsequently assisted in the drafting of a petition to the Home Secretary which invoked, among other matters, Chief Supt. Crust's letter to the prison Welfare Officer. In December 1978, some fifteen months after Chief Supt. Crust had sent in his report, the Home Secretary referred the case back to the Court of Appeal.

Roy Binns

The case of Roy Binns was reported at some length in last year's Annual Report under the heading "compensation". The brief facts are that, after a Chief Superintendent of Police had recommended Binns' release because another man had confessed to the offence which he was alleged to have committed, the Home Secretary, on the advice of the Director of Public Prosecutions, refused to take any action.

Binns' solicitors eventually applied for leave to appeal out of time and the Court of Appeal quashed the conviction with the full approval of the prosecution. Binns' solicitors then asked for compensation to cover at least the six months he had spent in custody between the time his innocence was established and the time of his release. After a long

delay the Home Office refused to make any payment, and further joint representations by Mr. Michael Shaw, Binns' M.P., and JUSTICE met with no success. A detailed submission alleging maladministration has since been made to the Parliamentary Commissioner, one of the main grounds being that the duty of adjudicating on the merits of a conviction lies entirely with the Home Secretary and that it is unconstitutional for him to rely on the advice of the Director of Public Prosecutions.

The Parliamentary Commissioner has accepted the complaint as suitable for investigation and if, as we hope, his findings are favourable, they might help to establish a principle for which JUSTICE has been fighting for many years, namely that after the investigation of a complaint, the Director of Public Prosecutions' role should be confined to the conduct of police officers and the report of the investigation should be automatically sent to the Home Secretary for entirely independent adjudication on any new evidence disclosed, and its possible effect on the complainant's conviction.

We have further urged, and will continue to urge, that in the interests of natural justice the factual findings of an investigation should be made available to the complainant's solicitors. The cases we cite in this report fully justify this recommendation.

James Stevens

The case of James Stevens has similar characteristics. Stevens was found guilty in March 1976 at Durham Crown Court of robbery with violence and sentenced to five years' imprisonment on the evidence of an alleged verbal admission to a police officer on the night he was arrested. A strange feature of this evidence was that, although he was alleged to have admitted to a very serious offence, he was given police bail on his own recognisance of £50 and re-arrested and charged only a month later on the strength of an alleged conversation with a former associate who had a grudge against him and a minute fragment of glass in one of his pockets. Furthermore, according to the victim, the two robbers repeatedly called each other Fred and Bill, names which were never used for Stevens. The trial judge failed to point out these two important matters to the jury in the way he should have done, but counsel advised that an appeal was unlikely to succeed.

Stevens then complained to the Chief Constable about the alleged admission. A Chief Superintendent carried out a long investigation and, on a visit to Stevens, told him that, although he had not been able to obtain any written confessions or hard evidence, he was satisfied that he was innocent and would report to this effect.

In the outcome the Home Office refused to pardon Stevens or to refer his case to the Court of Appeal, saying that it was not prepared to rely just on the opinion of a police officer. Stevens' M.P., Mr.

Gordon Bagier, approached JUSTICE and after some delay his solicitors accepted our suggestion that they should follow the precedent of Binns' case and apply for leave to appeal out of time. But no legal aid was available. There was no solid new evidence on which to base an appeal. On the advice of the Home Office the Chief Constable refused to disclose the contents of the statements taken during the investigation, and the Registrar indicated that the Court would not be willing to order their production on a speculative basis.

Finally, after further representations by JUSTICE, which were supported by counsel's advice on the merits of the application, it was agreed that the Chief Constable should supply Stevens' solicitors with the names and addresses of the witnesses from whom statements had been taken and that the solicitors should be given legal aid to take their own statements from them, and to brief counsel for an application for leave to appeal.

When, early in May of this year, the case came before the Court of Appeal, it became clear in a very few minutes that the Court had already decided to allow the appeal. After very brief argument, it treated the application as an appeal and quashed the conviction on the two grounds mentioned above.

We regard it as quite unacceptable that so many obstacles should be put in the way of a man who is believed to be innocent by a senior police officer who has investigated the case in depth.

David Anderson

There have been no further developments in the David Anderson case, except that, prior to the dissolution of Parliament, Edward Gardner and Sir David Renton expressed willingness to initiate a debate in the House of Commons. We hope that a debate can be arranged and that the new Secretary of State for Scotland will be less unyielding than was his predecessor.

There has been some obstruction to the staging of John Hale's play, but the BBC are currently working on a documentary film on the case.

Sidney Draper and William Doran

The publicity provoked by the David Anderson case led to the receipt of representations from or on behalf of a number of Scottish prisoners claiming that they have been wrongly convicted of serious offences, including murder. With the valuable help of Ainslie Nairn and other Scottish lawyers we have attempted to deal with them but the obstacles to effective action have appeared to be too difficult to overcome.

Three months ago, however, and after prolonged investigations, our Secretary made representations to the Secretary of State on behalf

of two Englishmen who in 1974 were convicted of a murder committed in the course of an armed robbery in Glasgow and sentenced to minimum terms of 25 and 18 years respectively.

The robbery was planned and carried out by a Scottish gang which had recruited two Englishmen. One of them was a friend of Draper and was known to have been associating with him just before the robbery. Two members of the gang had been trying to organise post-office frauds in London and had separately enlisted the help of Draper and Doran, who were then unknown to each other. When this plan broke down, both men were asked if they would like to take part in a robbery in Glasgow which was described to them as "an easy snatch". They indicated some interest but withdrew when they were told that guns were going to be used.

On the day after the robbery, in the course of which a factory guard was shot, the leader of the gang, Robert Marley, was arrested in London. Under pressure he admitted his part in the robbery and gave the police a long and detailed statement describing how the robbery had been planned and carried out, and how the gang had dispersed after the robbery and disposed of the guns and proceeds. The account was however false in one serious particular, in that Marley substituted the names of Draper and Doran for two Scotsmen, one a relative and the other a close friend, who beyond any shadow of doubt had played active parts in the robbery. They had been picked out on identity parades by eight and seven witnesses respectively whereas sixty witnesses to the robbery, and to the events before and after it, had failed to pick out Draper and only one witness said, quite correctly, that he had seen Doran with a member of the gang in London on the following day.

Apart from Marley's statement, which was vigorously pressed by the prosecution and given to the jury when it retired, there was no other real evidence against Draper and Doran, and they both had substantial and credible alibis as to their presence in London at the time of the robbery. In the course of the trial Marley promised them that he would tell the truth when he went to the witness box, but he later decided or was persuaded not to give evidence. The jury was told that two other men had been arrested on a charge of conspiracy and would be dealt with later, but it was not told of the identifications, which would have put Draper and Doran out of the picture because there would not have been room for them. Marley was ordered to serve a minimum period of 15 years because of the assistance he had given to the police.

Both men appealed unsuccessfully on grounds which should have carried weight, but the identifications were not mentioned.

The investigation into this case took a considerable time. Transcripts and depositions had to be obtained and studied.

Permission had to be obtained and arrangements made for the other convicted men to be interviewed. Two of them said firmly that Draper and Doran had not been involved. The other two, who were close associates of Marley, had indicated their willingness to help, but one of them refused to make a statement and the other said that Draper had been involved but had protested against the use of guns. Statements taken from three further alibi witnesses were included in the submission and the Secretary of State has ordered a full investigation.

Boards of Visitors

In last year's Annual Report we gave a detailed account of how the Divisional Court had refused a number of applications for Orders of Certiorari made on behalf of prisoners involved in the Hull Prison riots who had subsequently been awarded unduly severe punishments including losses of remission of up to 690 days by the Board of Visitors. It was alleged in affidavits taken from these prisoners that the proceedings had violated all the rules of natural justice.

The Divisional Court acknowledged that disciplinary hearings before the Boards of Visitors were judicial proceedings, but took the view that, as they were exercising internal disciplinary functions, they were not bound to observe the rules of natural justice, and the Divisional Court had no power to intervene. We concluded our account of the matter with the question, "To what authority or judicial body can prisoners look for protection?"

Such a ruling clearly had to be challenged. After some initial difficulties, solicitors acting for the applicants were granted legal aid to go to the Court of Appeal, which unanimously reversed the judgment of the Divisional Court. The Divisional Court has since heard seven substantive applications of which it has reserved judgment. In the meantime some of the applicants had already been released. In one of the cases sponsored by JUSTICE, in which 690 days' loss of remission had been ordered, the Home Office released the prisoner six days after his normal release date. The Home Secretary, to whom a right of appeal in such matters has always existed, had previously turned down his petition.

In our view the events which preceded and followed the Hull Prison riot clearly demonstrate the urgent need to review the existing provisions for the protection of prisoners' rights and particularly in relation to the dual function of Boards of Visitors, as the Jellicoe Report recommended.

At Hull, the Board appears to have failed to remedy the grievances which led to the riot. After the riot, the Chairman of the Board investigated the prisoners' complaints of ill treatment on their return to their cells, and found nothing wrong. He and some of his

colleagues later dealt out the punishments which were the subject of the applications to the Divisional Court. It was not until smuggled letters reached the Humberside Police that the investigations were begun that led to the prosecution of eight prison officers and a young assistant governor who was charged with neglect of a duty which in our view should more rightly have been undertaken by the Governor himself, together with the Chairman of the Board of Visitors and the Home Office Regional Director.

Decriminalisation

This committee has been bedevilled by misfortune. Last year, there were troubles with the computer. These have now been largely resolved, and the machine was beginning to produce some interesting material, but just at that point, another disaster struck: the researcher on whose help we relied for the next stage had his passport impounded by the authorities of Sri Lanka, his home country, not on the ground that he had done anything wrong, but because he was required to give evidence to a Commission of Enquiry into the conduct of the previous Government, which he had served as a senior official. The passport has only just been restored, and we hope to see him again soon. Meanwhile, we shall not tempt providence again by guessing at the publication date of the Decriminalisation Report.

ADMINISTRATIVE LAW

JUSTICE—All Souls Review of Administrative Law in the United Kingdom

The most important development during the past year has been the setting up of the JUSTICE—All Souls Review of Administrative Law in the United Kingdom. In 1969, the Law Commission for England and Wales recommended that administrative law should be reviewed on a United Kingdom basis by a Royal Commission or by a body of comparable status. In this it was supported by the Scottish Law Commission and by the Standing Advisory Commission on Human Rights of Northern Ireland. Successive governments have failed to follow this recommendation, in conspicuous contrast to the serious thought that has been devoted to problems of administrative law in several Commonwealth countries and in the United States of America. JUSTICE has for several years actively pressed for such a review in this country.

A generous grant from the Leverhulme Trust Fund and a helpful contribution from the Sir Jules Thorn Charitable Settlement have enabled a review of the kind envisaged by the Law Commission to be launched. The review is sponsored by the JUSTICE Educational and

Research Trust and by All Souls College, Oxford. Without having any pretensions to being of comparable status to a Royal Commission, the Review Committee will make a comprehensive survey of administrative law on a United Kingdom basis with a view to making practical proposals for the reform of administrative law that will achieve clarity, coherence, comprehensiveness and accessibiiity. The Review Committee hopes to report towards the end of 1980.

The members of the Review Committee are: F. P. Neill, Q.C., Warden of All Souls College (Chairman), Prof. A. W. Bradley, Lord Croham, G.C.B., Lord Crowther-Hunt, Prof. Aubrey Diamond, Percy Everett, Prof. Samuel Finer, Prof. J. F. Garner, Prof. Sir Otto Kahn-Freund, Q.C., Lord McGregor, Sir Lou Sherman, O.B.E., J.P., David Widdicombe, Q.C., and David Williams.

A consultative panel has also been set up and those who have so far agreed to serve on it are: The Lords Wilberforce, Devlin, Dunpark, and Mackenzie Stuart, Baroness Serota, Mr. Justice Cooke, (of New Zealand), Sir John Foster, Sir Arnold France, Sir Nicholas Morrison, Sir Peter Parker, and Prof. Donnison.

Lord Hailsham had agreed to serve before his appointment as Lord Chancellor. Ronald Briggs has been seconded to serve as full-time Secretary to the Review.

Parliamentary Commissioner for Administration

In last year's Annual Report we welcomed the fact that Sir Idwal Pugh had of his own volition made a number of important administrative changes designed to meet some of the recommendations in the JUSTICE report, *"Our Fettered Ombudsman"*. This report further prompted the Select Committee on the Parliamentary Commissioner for Administration to undertake an exhaustive review of the powers of the Commissioner, and was the focal point for the questioning of witnesses, who included representatives of JUSTICE.

The Fourth Report of the Select Committee was in many respects an outward looking and constructive document. It welcomed and endorsed measures taken by Sir Idwal Pugh to make his office better known, more easy of access and less dominated by civil servants. It also endorsed a number of other JUSTICE recommendations of which the more important were that:

(1) the Commissioner should be able to investigate complaints by British citizens against consular offices and overseas posts,

(2) the Commissioner should be able to investigate complaints about matters relating to contractual or other commercial transactions,

(3) the Commissioner should be able, within defined limits, to investigate complaints about public service personnel matters,

(4) the Commissioner should draw Parliament's attention to any

unforeseen injustices arising from legislation.

On this point JUSTICE recommended that he should be empowered to suggest changes in the law, including statutory instruments, and in departmental rules,

(5) the Commissioner should be able, subject to the Committee's approval, to carry out inspections of branches or establishments of bodies within its jurisdiction,

(6) the Select Committee should continue as part of the committee structure of the House of Commons.

The Select Committee's report was however disappointing in two important respects. Firstly, it rejected the JUSTICE recommendation that members of the public should have direct access to the Commissioner, taking the view that Sir Idwal Pugh's new procedure of enlisting the participation of a direct complainant's M.P. instead of returning the complaint went a considerable way to meet it. We agree that this reduces the obstacles which face a would-be complainant, but it does not get over the fact that a substantial number of M.P.s, who must all receive complaints, make no use of the Commissioner's services. In 1975, only 381 M.P.s submitted complaints, and 63 M.P.s in the last Parliament had never sent a complaint to the Commissioner. In our view, it is also indisputable that the holding of ministerial office and differences in political attitudes often deter would-be complainants from approaching their own M.P.s and they are not aware of the fact that they can approach any M.P.

Secondly, the report made no mention at all of the stress laid by JUSTICE on the importance of the Commissioner's jurisdiction over prisons and other custodial establishments, which has not been developed to the extent it should have been. The reasons are that far too few M.P.s are aware of it, prisoners cannot complain to them until they have exhausted all their internal remedies, and they cannot write directly to the Ombudsman as they can in other jurisdictions.

A detailed memorandum supporting the Select Committee's recommendations and pressing for the further recommendations by JUSTICE was prepared and forwarded to the Treasury but to no avail. The government White Paper which eventually appeared found reasons for rejecting all the Select Committee's recommendations except that relating to consular offices.

In its final report, the Select Committee on Procedure of the House of Commons proposed *inter alia*, the abolition of the Select Committee on the Parliamentary Commission for Administration. With the approval of the Executive Committee, a letter was sent to the Lord President of the Council urging that no action be taken by the Government on this proposal.

Prior to the White Paper's appearance, the Hansard Society organised a seminar of national and local Ombudsmen from Europe

and the Commonwealth at Ditchley Park. It was attended by David Widdicombe, who was invited to give the opening paper, and our Secretary, and they both came away with the impression that successive British governments have sadly failed to appreciate the potentialities of the institution.

We should, however, like to pay a warm tribute to Sir Idwal Pugh for the way in which, during his tenure of the office, he contrived to overcome the limitations placed on his powers. We further welcome the appointment of a distinguished lawyer to the office and are confident that Mr. Cecil Clothier, Q.C., will continue to increase its usefulness and influence.

Duplicate copies of this memorandum are available at 30p.

Inquiry into the Commission for Local Administration

In the course of the year, surveys of complaints investigated or rejected by the Commission for Local Administration, or withdrawn by the complainant, have been carried out by Dr. Wyn Grant, assisted by Mr. R. Haynes, and a survey of councillors who have referred one or more complaints to the Commission for Local Administration is still in progress. A number of complainants on the one hand, and local authority executive officers on the other, have been interviewed. There has been another meeting with the Commissioners for Local Administration (making three in all) and also with the Representative Body. There has also been contact with the Commissioner for Local Administration, Wales, and the Commissioner for Complaints in Northern Ireland.

The committee hopes to complete its report in the autumn.

Small Land Claims Compensation Court

Rules providing for the disposal of cases before the Lands Tribunal without an oral hearing have now been introduced and the view of the Department of the Environment is that the effect of these should be observed before the possibility of establishing a small land claims compensation court is reconsidered. Our view is that the need for the proposed court has already been demonstrated.

Report of the Data Protection Committee

The Administrative Law Committee was asked by the Council of JUSTICE to prepare comments on this report (Cmnd. 7341), with particular reference to its central proposal to set up a Data Protection Authority. Whilst these were in general agreement with the Data Protection Committee's views, one proposal that is not acceptable is that the Data Protection Authority, which would be the controlling, investigatory and prosecuting authority, should also have the quasi-judicial role of giving authoritative rulings on matters such as the

application of regulations in particular circumstances, the interpretation of regulations, or rulings that a user was in breach of the regulations. These are matters for the courts. We also consider that to describe regulations as codes of practice blurs a useful distinction between law and guidance. Another matter about which we are concerned is the detection of infringements, about which little is said in the report.

Duplicated copies of this memorandum are available at 30p.

British Nationality Working Party

The work of the British Nationality Working Party of which the Chairman is Sir Amar Maini is well advanced and its report should be published before the end of the summer. This is opportune as the Queen's Speech expressed the intention of introducing legislation on the subject of nationality during the present session.

The dismantling of the Empire has left a residue of serious problems relating to British nationality and it is certainly time that these were resolved. But any changes in the law are of crucial importance to those affected by them and it is essential that they should both be guided by a humane spirit and introduced with sensitivity.

Administrative Law Committee

The members of the Administrative Law Committee are: David Widdicombe, Q.C., (Chairman), Peter Boydell, Q.C., Albert Chapman, Philip English, Percy Everett, Arthur Gadd, Prof. J. F. Garner, Dr. Philip Giddings, Susan Hamilton, John Harris, Matthew Horton, Victor Moore, Kenneth Oates, Guy Roots, Harry Sales, Alec Samuels and Ronald Briggs (Secretary).

CIVIL JUSTICE

Privacy and Related Matters

Here, there has been only one event of note during the year: the publication of the report of the Data Protection Committee, under the chairmanship of Sir Norman Lindop, last December. Lindop now joins Younger, Franks, Phillimore and Faulks on the growing bookshelf of recommendations about the law of information. As this was based on a White Paper in which the Government committed itself to legislation, one can only hope that his recommendations will be carried into law more quickly than those of his colleagues, some of which have rested on that bookshelf for seven years.

Government departments are now engaged in a mammoth consultation exercise about the Lindop recommendations, before deciding what to do next. In our response, prepared by our Administrative Law

Committee, we welcomed the report with few qualifications, and pointed out that its proposals coincided to a considerable degree with the recommendations which we have made ourselves over a good many years.

It is instructive to look back over that history. In January 1970 we published our report, *Privacy and the Law.* In the same month, the draft Bill appended to the report came before the House of Commons on second reading, on the sponsorship of Mr. Brian Walden, M.P. On that occasion, the then Home Secretary (Mr. James Callaghan) announced the setting up of the Younger Committee, which reported in July 1972. Among its many other recommendations (all but one—the Consumer Credit Act—so far unimplemented) that committee made specific proposals about personal information held in computers. The Government's response to those came in a White Paper published $3\frac{1}{2}$ years later, in December 1975, stating the general policy conclusions, and announcing that another committee (Lindop) would be set up to work out the details. JUSTICE submitted evidence to Lindop, as it had to Younger. The detailed recommendations of Lindop now follow closely the broad recommendations we first made, nine years before, in *Privacy and the Law.* There is no special magic in this: the subject has its internal logic, which yields the conclusions as a necessary consequence of the given premises.

Meanwhile, 10 countries abroad have legislated on data protection, much on the lines that Lindop recommends. It will be interesting to see how much longer it will be before we finally follow suit. Law reform in the U.K. is a slow and thankless business: the principal qualities needed for it are persistence—and the patience of Job.

Freedom of Information

The JUSTICE report, *Freedom of Information,* which was published in June of last year, aroused considerable interest in the Press and official circles. When the Government of the day published its Green Paper, *Open Government,* it was gratifying to find that it favoured a non-statutory scheme based on a Code of Practice approach, which was the central feature of the scheme recommended by JUSTICE. Furthermore the Government was not unsympathetic to our recommendation that the Parliamentary Commissioner should monitor adherence to the Code, although it foresaw some possible incompatability with his existing functions.

The publication of the Green Paper was to some extent prompted by the introduction of Mr. Clement Freud's Official Information Bill, which was lost on the dissolution of Parliament. We sincerely hope that the new Government will be as sympathetic to our proposals as was its predecessor.

The Companies Bill

As in 1974, the dissolution of Parliament resulted in the loss of a Companies Bill. Following the publication of the 1978 Bill, the Company Law Committee had submitted a memorandum to the Department of Trade on Parts IV-VI of the Bill. (The Committee did not think it necessary to comment on Parts I-III of the Bill, which dealt with amendments of a technical nature required by the EEC Second Directive for the harmonisation of company law in the Community.) The 1978 Bill gave effect to certain proposals contained in the 1977 White Paper on the Conduct of Company Directors which we regarded as unsatisfactory (see pp. 26-7 of the 21st Annual Report of JUSTICE)—in particular, the statutory endorsement of the rule that a director is required only to exercise the degree of skill which may be required of a person of his knowledge and experience rather than the degree of skill required for the proper performance of his duties. Our memorandum also expressed the view that directors should be entitled (but not bound) to take into account the interests not only of employees but of other persons likely to be affected by the company's activities. The memorandum gave a warm welcome to the principle of making insider dealing an offence (as advocated in the 1972 JUSTICE Report *"Insider Trading"*) though doubt was expressed about the drafting of some of the provisions, and in particular the uncertainty involved in deciding whether price-sensitive information is "generally available" in the absence of any guidance as to the meaning of those words. Other proposals for the amendment of company law were also welcomed—notably, the extension of Section 210 of the Companies Act 1948.

The Conservative Bill of 1973 and the Labour Bill of 1978 both contained a number of useful and largely non-controversial alterations to company law, and it is unfortunate that both the Bills were lost. It appears that the present Government intends to introduce a new Companies Bill containing Parts I-III of the 1978 Bill and to review the proposals in Parts IV-VI, in contemplation of a further Bill (which will also implement the EEC Fourth Directive on company accounts) to be introduced in 1980. We hope that this timetable will be maintained and that the review will not result in the exclusion of legislation on insider dealing or of other useful amendments.

The members of the Company Law Committee were: William Goodhart (Chairman), Michael Bryceson, Philip English, John Farrar, Stephen Hood, Laurence Shurman, Paul Sieghart, and Barry Rider.

Powers and Duties of Trustees

The Law Reform Committee issued a consultative document on this topic in February, 1978. An ad hoc sub-committee was set up by JUSTICE to consider the consultative document, and the sub-committee

duly submitted a memorandum. Among the recommendations made were that:

(*a*) the statutory power of investment should be greatly extended, and the main protection against improper investment should be the obligation to obtain competent advice rather than restrictions on the nature of authorized investments,

(*b*) there should be a statutory right for professional trustees to draw reasonable remuneration,

(*c*) trustees should have statutory powers to delegate certain functions to some of themselves and to appoint nominees,

(*d*) the rule in *Howe v. Lord Dartmouth* and the other technical rules relating to apportionment of receipts between trust income and capital should be abolished,

(*e*) the rules for the appointment, retirement and removal of trustees should be made applicable to personal representatives.

The members of the committee were: William Goodhart (Chairman), Michael Browne, Q.C., Philip English, Philip Kimber and Arthur Weir.

Duplicated copies of this memorandum are available at 35p.

Statute Law

On the prompting of the President of the Holborn Law Society, the Statute Law Society has set up a working party to consider problems caused to Statute users by the present system of bringing Acts of Parliament into operation piecemeal, and to formulate proposals for improving the present system. Alec Samuels and Ronald Briggs have been invited to represent JUSTICE on the working party.

Debt-Counselling

The Council has recently set up a committee to inquire into the feasibility of setting up a debt-counselling service attached to or working closely with County Courts. It is believed that such a service would relieve the distress arising from accumulations of debts and the pressures on the courts.

The Chairman of the committee is David Graham Q.C. and the other members are Mary Burke, O.B.E., Michael Buck, Christopher Drew, Christopher Grierson, Donald Hamilton, David Marks, T. J. Meagher, D. M. Morgan, Alec Samuels, M. Travers Smith, Gerhard Weiss, Clive Woolf and John Higham (Secretary).

The Citizens Advice Bureaux and two existing debt-counselling services have offered to assist in the inquiry.

HONG KONG BRANCH

In the course of 1978, the Hong Kong Branch of JUSTICE

increased its membership to 50 and its Chairman, Ian MacCallum, has sent us the following report of its activities:

On the positive side, the Government has at last taken steps to deal with the position of the uninsured driver; a matter on which we have been pressing the Government for a number of years. We have also offered the services of our members to the Consumer Council in any matters on which they feel that we could be helpful to them in formulating proposals to improve consumer legislation.

During the year, the Committee had a meeting with the Committee of the Magistrates Association. Among the matters discussed was the proposal to appoint lay assessors to assist magistrates. Both our Committee and the Magistrates Association felt that this was an unsatisfactory proposal and was unlikely to work out well in practice. We therefore wrote to the Government to express our opposition to the proposal. Our Committee were also concerned about the status of magistrates and felt that this needed to be improved in order to get the best quality of person sitting on the Magistrates' Bench. Suggestions towards this end were made to Sir Denys Roberts for him to consider during his leave and the matter will be considered again after Sir Denys has taken up his position as Chief Justice.

We also had a meeting with Sir Donald Luddington and other senior members of the Independent Commission Against Corruption. In particular, we discussed the possibility of departmental proceedings taking place before criminal proceedings were disposed of. We also reviewed the question of government systems to prevent corruption and the topic of accountability. We have written to the Chief Secretary to ask how it is proposed to apply the concept of accountability in the public sector and he has now offered to meet members of our committee to discuss this matter with them.

Towards the end of the year, the Government brought out draft legislation to amend the provisions relating to bail. While most of these provisions were unexceptional, it was felt that the legislation was mainly of a cosmetic nature and did not deal with the main problem which was the excessive delay in bringing accused persons to trial. Representations have been made to the Attorney-General dealing with certain minor matters on the bail legislation but stressing again that steps must be taken to speed up the hearing of criminal trials.

INTERNATIONAL COMMISSION OF JURISTS

The quarterly reports of the Secretary-General of the ICJ once again testify to the effective part played by the Commission and its

Secretary-General, Niall MacDermot, in international endeavours to promote the cause of human rights. Throughout the year, full advantage has been taken of the Commission's consultative status with the United Nations agencies to assist in the work of the U.N. Commission on Human Rights and its sub-commissions, and to press for positive action in various fields—especially in the elaboration of an international convention on torture, in which the ICJ has played a leading role. These activities have been accompanied by efforts to mobilize regional concern for human rights, and by interventions in individual countries.

In September of last year, the Commission organised a seminar in Dakar devoted to the promotion of human rights in the French-speaking countries of Africa. Twelve countries took part and the participants included senior government officials and judges, and representatives of the Organisation of African Unity and other international bodies.

In November, the Secretary-General visited the capitals of Colombia, Ecuador,, Peru, Bolivia and Chile to make preparations for a seminar on "Human Rights in the Rural Areas of the Andes Region". Despite the unfavourable political climate in those countries, he was able to enlist considerable support for the project. During his visit to Chile he addressed an international symposium on human rights organised by the Catholic Church in Santiago and discussed with the leaders of all the political parties a draft democratic constitution they had jointly prepared for presentation to the President.

Observer missions on behalf of the Commission included one undertaken by Philip Ogden, Q.C., a member of the English Bar, who in October of last year went to South Africa to attend the trials of 18 defendants charged with terrorist activities and of 11 members of the Soweto Students' Research Council charged with sedition and incitement to violence arising out of the disturbances in June 1976.

Representations were made to some 25 governments of varying political complexions.

The Centre for the Independence of Judges and Lawyers, which is a separately funded adjunct of the Commission, has also made a number of important studies and interventions. It gathers meticulous reports of situations in which the independence of judges and lawyers is being undermined by threats, dismissals, disbarment, imprisonment, and in some cases torture, murder or "disappearance", circulates them to lawyers' organisations all over the world and encourages them to take whatever supporting action lies within their power. It is a matter of regret that the Bar Council and the Law Society have not yet thought it right to follow the example set by their counterparts in the U.S.A., who have now made more than one successful intervention on behalf of persecuted colleagues in other countries.

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

The approximate membership figures at 1st June were:

	Individual	Corporate
Judicial	59	
Barristers	512	2
Solicitors	510	50
Teachers of Law	158	
Magistrates	38	
Students (incl. pupillages and articles)	103	
Associate Members	126	10
Legal Societies and Libraries		35
Overseas (incl. Hong Kong branch)	104	27
	1610	124

In the past twelve months we have enrolled 150 new members but the effective gain from this has been offset by the loss of 100 old members and by the failure of some 60 old members to renew subscriptions which were due last October. We earnestly hope that many of these will want to continue their membership when they receive this Annual Report.

Our present financial situation and the prospects for the immediate future are better than we had reason to expect because of the generous help we have received from our former landlords, Mobil Services Ltd. This will effectively cover all our removal expenses and our increase in rent for the next three years. But there is a deficit of over £1000 in the JUSTICE account which can be covered only with the help of an equivalent surplus in the account of the JUSTICE Educational and Research Trust. Because of ever-rising expenses the outlook is bleak unless we can substantially increase our income in the coming years.

Our present subscription rates were fixed in 1974 and logic suggests that they should be raised. The Council has however decided that it is more in keeping with the spirit of JUSTICE that we should ask

for a voluntary increase from those who can afford it, and thus keep those many valued members to whom an increase would come as a hardship or a deterrent to maintaining their membership.

JUSTICE Educational and Research Trust

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

During the past twelve months it has received donations of £1000 from the Max Rayne Foundation, £500 from the William Goodhart Charitable Trust and £500 from the International Publishing Co. A generous grant of £28,000 spread over two years has been made to the Trust by the Leverhulme Foundation for a Review of Administrative Law to be undertaken jointly by the Trust and All Souls College, Oxford. Ronald Briggs has been seconded to this Review. Peter Ashman has been appointed full-time legal assistant to the Trust.

Members of JUSTICE are invited to enter into covenants, either as an alternative to or in addition to their ordinary subscriptions. We would draw special attention to the advantage to the Trust of single-payment covenants, of which details will be supplied on request.

The Council

At the Annual General Meeting in June 1978, Sir John Foster and Philip Kimber retired under the three-year rule and were re-elected. Blanche Lucas and Prof. Roy Goode, who had served as co-opted members were elected to full membership, and the co-option of Prof. Aubrey Diamond, Stuart Elgrod and Andrew Martin, was confirmed. At the October meeting of the council, Peter Danks, Joe Harper and David Sullivan were co-opted, and Norman Marsh was invited to rejoin the Council on his retirement from the Law Commission.

Officers

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

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

Executive Committee

The Executive Committee has consisted of the officers, together with Stuart Elgrod, Michael Ellman, Philip English, Edward Gardner, Prof. Roy Goode, David Graham, 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 has consisted of Michael Bryceson (Chairman), Paul Sieghart, Philip English, William Goodhart, David Graham, Blanche Lucas, Andrew Martin and Laurence Shurman. On the death of Michael Bryceson, Philip English was appointed Chairman.

Annual General Meeting

The 21st Annual General Meeting was held on Wednesday, 28th June, 1978, in the Old Hall, Lincoln's Inn.

Sir John Foster presided and in presenting the Annual Report stressed the importance of the recent JUSTICE reports on Freedom of Information and the proposals for a Contingency Legal Aid Fund we had submitted to the Royal Commission on Legal Services. Referring to the evidence which JUSTICE was preparing for the Royal Commission on Criminal Procedure, he expressed the hope that it would deal effectively with the problems of verbals and the right of silence and the inadequate response of the Home Office and Court of Appeal to the recommendations of the Devlin Committee.

He concluded by paying a warm tribute to Lewis Hawser who had been appointed a Circuit Judge and Official Referee. He had been a Joint-Chairman of the Executive Committee and, as Chairman of the Criminal Justice Committee for many years, had made an outstanding contribution to the work of the society. He further paid tribute to Tom Sargant, Ronald Briggs and Peter Ashman for their work during the year, and to Glenys Brown who had recently left for personal reasons after three years' invaluable service.

In presenting the annual accounts, Michael Bryceson said that he was glad to be able to report a small surplus, but this was entirely due to the £3,500 proceeds of the Anniversary Ball and a record recruitment of 200 new members. The outlook for the forthcoming year was very uncertain. It was not practical to hold another Ball, although a piano recital was being planned, and there was no way of knowing what our future commitments for rent might be. It was vitally necessary further to increase our membership, particularly among solicitors, and to look for new sources of income.

After a general discussion, the report and accounts were adopted.

At the close of the meeting, Sir Idwal Pugh gave an address on "The Ombudsman's Role: Present and Future".

Sir Idwal Pugh's Address

Sir Idwal gave a characteristically lucid and forthright address on the Role of the Ombudsman, Present and Future, in the light of his own practical experience as Parliamentary Commissioner for the previous two years.

Having spent his first year learning the job and the practices of government departments, he had then set out to make the existence of his Office more widely known, using publicity and personal appearances throughout the country. In his third year, he was engaged with the Select Committee of the House of Commons in a thorough review of the working of his Office. This had been prompted by the JUSTICE report *Our Fettered Ombudsman.*

Sir Idwal saw his central jurisdiction as investigating complaints of injustice sustained through maladministration, and in securing remedies for them, when justified. In defining "injustice" both he and his predecessors had been very flexible. It had to be caused by "maladministration" which he felt was adequately defined as actions or decisions which were "plainly wrong" or "thoroughly bad in quality". He had no objection to the JUSTICE redefinition of "unreasonable, unjust or oppressive" behaviour—this already fell within his jurisdiction.

Individual cases revealed common factors in the type of activity which led to maladministration: the delays in implementing new legislation at local level; the complexity of the systems employed, as in, for example, the Inland Revenue or D.H.S.S.; the activity whose basic concept inevitably provoked complaints, or "the Swansea Syndrome"; the conflict between "the public interest" and "natural justice" as in the Chalkpit case; cases involving more than one department with no single, answerable authority; and finally the limited number of cases involving unfair or oppressive conduct.

From meeting his foreign counterparts, Sir Idwal concluded that the activities and experiences of Ombudsmen were almost identical and did not depend on the formal limits of jurisdiction. His role was essentially that of a sort of small claims court in the field of citizen/executive relations, whose powers of investigation, disclosure and calling for remedies gave him wide-ranging and growing influence. Although his conclusions and proposals for change could only be recommendations, he was able to employ certain sanctions: the authority of the individual report and that of his Office; publicity, in which the Press were his greatest ally;and, most powerful of all, Parliament through individual M.P.s and the Select Committee.

In March 1978, with the agreement of the Select Committee, Sir

Idwal had instituted a modified procedure of access, whereby he indicated to an M.P. his willingness to investigate a complaint sent direct to him, in order to reduce confusion and remove a practical difficulty which appeared to inhibit would-be complainants. This had succeeded in increasing references from M.P.s and the public by 50%, both in his capacity as Parliamentary Commissioner and Health Service Commissioner.

For the future, Sir Idwal felt that policy should be based on the interests of the consumers of the Ombudsman service and not those of the providers. The overriding requirement was for simplicity and wherever possible there should be a one-tier system for handling complaints. This argued in favour of direct access, which he supported for all Ombudsmen except the Parliamentary Commissioner, whose Office could not cope with a greater number of complaints. Moreover, individual M.P.s had a crucial constitutional role in remedying grievances, and they could do this quickly and informally in the vast majority of the 100,000 or so cases which they handled each year.

Two difficulties still remained unresolved: the individual who did not wish to involve his M.P., and the M.P. who did not wish to involve the Parliamentary Commissioner, and the Select Committee was examining these.

In conclusion, Sir Idwal reiterated his belief that he had resolved the problems of the remoteness and under-utilisation of his Office and of diversifying his staff:

"My aim is, by keeping our methods of work and the composition of the office always under review, to adapt ourselves to what I am sure will be a growing number of cases, to what is known as a 'higher profile' while retaining the quality of thoroughness and accuracy, and above all, the essentially personal nature of the Ombudsman's jurisdiction."

Annual Members' Conference

The Annual Conference of members and invited representatives of official and professional bodies was held in the Lord Chief Justice's Court on Saturday, 5th May. Lord Gardiner presided and the subject was "Prisoners' Rights".

Martin Wright, Director of the Howard League for Penal Reform, urged the improvement of prison conditions. Resources were needed in order to provide for minimum conditions and for minimum needs. The prisoner should be entitled to choose his doctor. Censorship of mail should be abolished, or retained only in certain limited categories. Family contact should be facilitated, e.g. by more home leave. New grievance procedures should be evolved after consultation with all groups concerned. Access to a solicitor should be made a reality, and the jurisdiction of the Parliamentary Commissioner more frequently

invoked. The power of the governor to impose two or more consecutive sentences involving substantial loss of remission should be circumscribed. Punishment for making false and malicious complaints should be abolished. The prison population needed to be substantially reduced by eliminating alcoholics, vagrants and prostitutes, and by shorter sentences overall.

William Driscoll, Governor of Liverpool Prison (the largest prison in Europe), emphasised the logistic problems of maintaining order and controlling the environment in a situation involving overcrowded conditions and limited resources and some prisoners who were unstable, disturbed and dangerous. The existing "privileges" involve heavy demands, e.g. family visiting facilities, and correspondence requiring censorship because of the risks to security and reputation and peace of mind of other people. The policies for the 1980's should be shorter sentences, more parole, more home leave and day release, and more open prisons. In its approach to penal problems the public should try to understand more and judge less.

David Evans, Assistant Secretary of the Prisons Officers' Association, spoke of the pressures created by overcrowding, poor hygiene, risk of contagion, security and safety, and initimidation of the weak prisoners by the evil and strong prisoners. Any problems created by the regime led to prisoners projecting their feelings against the prison officers. Buildings needed to be improved. Officers should be better trained and more closely involved in the system. The socially inadequate and the mentally disturbed ought to be eliminated from the penal institutions.

Professor John Martin, a member of the Jellicoe Committee which produced a report on Boards of Visitors, argued that the welfare and protective functions of Boards of Visitors were incompatible with their power to administer punishment and urged that the latter should be entrusted to independent judicial tribunals. The two roles were incompatible and were so regarded by inmates. This destroyed confidence in the Boards who were looked upon as being on the side of the governor and the prison staff. Such a change would not necessarily lead to confrontation, but a certain amount of tension would be desirable.

The 1976 Hull prison riot had exposed the shortcomings of the Board of Visitors. Complaints were insufficiently investigated and cellular confinement was not the subject of sufficient concern. The adjudications were not properly conducted, and alibi witnesses were not permitted to be called by prisoners. The aftermath of the riot was not sufficiently supervised. The 1978 Gartree riot was very much better handled. The Board members attended at the prison and interviewed the prisoners, and there were no injuries and no interferences with the property of prisoners.

Alistair Logan, a solicitor who acts for prisoners, said that he was

concerned with the difficulties experienced by prisoners in obtaining or recovering their property, e.g. spectacles and hearing aids and books. Access to a solicitor in civil matters, e.g. for divorce proceedings, was often extremely difficult. Considerable obstruction was experienced by prisoners seeking to persuade the authorities to prosecute for conspiracy and assault arising out of the Hull riots. He urged improvement in the rights of access to a solicitor and to independent outside bodies.

In the general discussion a number of ideas were supported. A greater measure of independence for the prison department from the Home Office, coupled with greater openness in the system generally, would promote more flexibility and sensitivity. Independent adjudication of the more serious disciplinary charges brought against a prisoner, and a greater involvement on the part of the Parliamentary Commissioner, though necessarily concerned only with maladministration and not merits, would improve morale. Judicial review of proceedings before Boards of Visitors was a healthy principle. The teaching of literacy and rudimentary social skills might reduce abrasive clashes between prisoner and prison officer. Sentences should be reduced in length. "Warehousing" could be tried, i.e. placing very substantial numbers of prisoners in certain selected prisons, solely for containment purposes, and thus freeing the other prisons from overcrowding and enabling them to concentrate on treatment and positive work.

Piano Recital

On 24th October, in Lincoln's Inn New Hall, Yitkin Seow, a Singapore-born pianist who has won international acclaim, gave a recital of works by Beethoven, Brahms, Chopin, Debussy, Ravel and Schubert. He generously gave his services to raise funds for JUSTICE and delighted an audience of 250 with the brilliance of his playing and the sensitivity of his interpretation.

We would like to express our warm thanks to the members of the committee who organised the event. They were Mrs. Michael Miller (Chairman), Miss Margaret Bowron, Mrs. Michael Bryceson, Miss Diana Cornforth, Mrs. David Edwards, Mrs. William Goodhart, David Graham, Tom Sargant, Bernard Weatherill and Ronald Briggs.

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 amounted to £1600.

Meeting with French Section

In July of last year twelve members of JUSTICE went to Paris for

the annual joint meeting with the French Section. The first discussion was on prisoners' rights, on which papers were presented by Prof. Georges Levasseur and Graham Zellick. We learned with interest the important role played in French prisons by the "juge de la peine", who not only has the responsibility for seeing that complaints are properly dealt with, but also has the power to grant home leave and to allow non-security prisoners to serve their sentences in instalments.

The second discussion was on the French "law of the prodigal" which allows relatives of spendthrifts who are dissipating the family inheritance to apply to the Courts for a control order and to exercise powers which, in a more limited area, are exercised in England by the Official Solicitor and the Court of Protection. The papers on this theme were presented by Christian Huglo and David Graham. The French Section entertained us with their usual warm and generous hospitality.

We have mutually agreed to postpone their next visit to London for one year and we look forward to welcoming them in July 1980.

German Section

In October of last year the German Section organised an important conference in West Berlin on the rights of defence lawyers and the merits of Berufsverbot, the law which bars enemies of the constitution from employment in the public service.

Our Secretary was invited to attend and spoke to a paper on Berufsverbot which had been prepared by Paul Sieghart.

Bristol Branch

In the course of the year, the Bristol Branch has held well-attended discussion meetings on "Police Interrogation", "Restrictions on Press Reporting" and "Taking a Case to the European Court". Members living in the area who do not receive notices of meetings and other activities should get in touch with David Roberts, 14 Orchard St., Bristol 1.

Scottish Branch

During the year our Scottish Branch has continued to provide memoranda and comparative notes for a number of committees and organisations and has provided speakers on several occasions. The Branch continues to receive a large number of enquiries and requests for assistance in individual criminal cases. While a certain amount of general information and guidance can be offered it is not really possible to undertake very much in the way of investigation. The material supplied, however, continues to prove a valuable source of research material illustrating the main areas in which individuals feel a sense of injustice about the operation of the criminal prosecution process. The

information forms an interesting contrast with the practical necessities for the preparation and management of the prosecution. Enquiries about membership or offers of assistance from existing members should be directed to Ainslie Nairn at 7 Abercromby Place, Edinburgh, EH3 6LA.

Acknowledgements

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

Membership Particulars

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

The minimum annual subscription rates are:

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

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

Covenanted subscriptions to the JUSTICE Educational and Research Trust, which effectively increase the value of subscriptions by 50%, 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. Members who wish to receive twice yearly the Review of the International Commission of Jurists are required to pay an additional £1.50 a year.

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

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

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

Contempt of Court (1959)
Legal Penalties and the Need for Revaluation (1959)
Preliminary Investigation of Criminal Offences (1960)
The Citizen and the Administration (1961)
Compensation for Victims of Crimes of Violence (1962)
Matrimonial Cases and Magistrates' Courts (1963)
Criminal Appeals (1964)
The Law and the Press (1965)
Trial of Motor Accident Cases (1966)
Home Office Reviews of Criminal Convictions (1968)

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

The Citizen and his Council—Ombundsmen for Local Government ? (1969)
The Prosecution Process in England and Wales (1970)
Home-made Wills (1971)
Living it Down (1972)
Insider Trading (1972)
Evidence of Identity (1974)
Going to Law (1974)
Bankruptcy (1975)

Duplicated Reports and Memoranda

Report of Joint Working Party on Bail	25p
Evidence to the Morris Committee on Jury Service	25p
Evidence to the Widgery Committee on Legal Aid in Criminal Cases	25p
Reports on Planning Enquiries and Appeals	40p
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Select Committee on Parliamentary Commissioner	30p
Transcript of JUSTICE Conference on—	
"Eleventh Report of Criminal Law Revision Committee" (1973)	£1.00
"Children and the Law" (1975)	£1.00
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"The Rights of Prisoners" (1979)	£1.50

Memoranda by Committee on Evidence

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