their separate identity. Other cases of co-operative efforts between the Australian agencies were instanced.

In discussion on Mr. Malcolm's paper it was generally agreed to leave debate of the Senate Committee's Report to the next meeting of the agencies, which is to be held in Brisbane. It was felt that Governments should have time to consider and react to the Senate Committee Report.

The Law Reform Conference was closed by Mr. Ian Viner, M.P., Federal Minister for Employment and Youth Affairs. He praised the moves of the L.R.C.'s to gain public participation. He also praised the helpful spirit of co-operation amongst law reform bodies which extended even beyond Australia to overseas colleagues. He agreed that it was important to find machinery that would ensure that law reform reports were acted on and did not simply "gather dust" as a result of parliamentary indifference. The Fifth Conference was marked by the presentation of papers of a very high standard. It is to be hoped that the W.A.L.R.C. can publish them. They would form an interesting critical introspective on the state of law reform in Australia.

What of the Australian Legal Convention in Adelaide? Much of the Convention was taken with consideration of suggestions for reform of the legal profession itself resulting from the Royal Commission on Legal Services in England and the N.S.W.L.R.C. inquiry into the legal profession. In his "State of the Australian Judicature" address the Chief Justice of Australia, Sir Garfield Barwick, expressed reservations about the use of judges in commissions of inquiry. Sir Garfield's views were supported by the Melbourne *Age*. But the Attorney-General for South Australia under the previous government, Mr. Chris Sumner, disagreed, stating that some inquiries called for knowledge and skills which only the judiciary could bring to bear. "I do not believe", Mr. Sumner said, that "this has weakened or has in any way brought the judiciary into disrepute".

Summing up the Convention Mr. Justice Blackburn, Chief Judge of the A.C.T. Supreme Court, said that many of the themes of the Convention had been about law reform. It was up to lawyers themselves to work for reform. Proposals for reform should be considered dispassionately on their merit. He also cautioned against lawyers overlooking reform of technical "lawyers' law" in the headier atmosphere of social reform.

The judges were judged. Lawyers were scrutinized. Police were castigated and the law itself came in for something of a drubbing. At the end of it all, the 20th Australian Legal Convention came to a close and 1,500 scattered to the far corners of Australia and beyond. The theme of the Convention? A new relationship between the legal profession and the community and a positive response to Sir Zelman's call for special efforts to make lawyers and the law relevant to the poor and the disadvantaged.

## Parole Under Question

> Sentencing you for one crime puts you beyond the reach of the law in respect of those crimes you have not yet had an opportunity to commit. The law is not to be cheated in this way. I will therefore discharge you.
>
> N. F. Simpson, *One Way Pendulum*, 11.

Federal parole in Australia has come under the microscope in the last quarter, which has also seen a number of developments relevant to sentencing reform in Australia. The A.L.R.C. has published its Discussion Paper *Sentencing: Reform Options* (D.P.10) 1979. The main proposals of the paper urge:

- abandonment of the present Commonwealth practice of "transporting" A.C.T. offenders to N.S.W. prisons;
- provision of a full range of sentencing alternatives to imprisonment which judges and magistrates can apply in the A.C.T., including community service orders;
- establishment by the Commonwealth and the A.C.T. of a properly funded Victim Compensation Program;
- removal of the "anomalous" rule limiting prisoners' rights of access to the courts to redress alleged grievances.

The Discussion Paper reports that the public mood in Australia, and that of experts too, appears to be moving away from rehabilitation and towards retribution and deterrence as the chief legitimate aims of punishment. Although most people assume that severe punishments deter crime, the Discussion Paper asserts that this view "is not supported by the evidence".

The costs to the community, family and individual of imprisonment is recorded as one reason for looking around, wherever appropriate, for non-custodial punishments. Amongst the new forms of punishment canvassed are:

- period detention (weekend imprisonment);
- attendance centres (short-term work and guidance programs, normally during leisure hours);
- work or community services orders;
- work release (imprisonment during non-working hours only with release to enable employment);
- diversion programs, e.g., for drug or drinking offenders;
- halfway house orders;
- compensation orders and restitution.

The Commission expresses a tentative view that serious judicial disquiet about the conditions in N.S.W. prisons makes continuing accommodation of Capital Territory offenders in those prisons unacceptable.

> This is an area in which the Commonwealth should assume a leadership role, demonstrating to the States and to the Australian community its concern and initiative in dealing with an important and national social problem . . . Whilst considerations of cost and staff limitation are relevant the serious injustices being done to prisoners and their families and the unacceptable conditions to which some of them are sent, as now revealed in recent reports, warrant . . . even at a time of financial restraint, action to remedy the current situation.

The Commission proposes that a series of graded custodial institutions be established in the A.C.T.

The absence of Commonwealth and Territory compensation programs for the victims of violent crime is taken to task in the Discussion Paper.

> The Commonwealth and the A.C.T. are the only Australian jurisdictions without such a program. Local victims of violent crime do suffer injustices which remain uncompensated from existing sources.

In discussing compensation schemes, the Commission criticised the legislation operating in some Australian States by which criminal courts are used to assess compensation awards. Contrast is drawn between payments of $4,000 or $5,000 to a quadriplegic "no more than token charity" and government-sponsored schemes to provide compensation to sporting injury victims up to a maximum of $60,000. Since the publication of the Discussion Paper, Federal Attorney-General Durack has announced a compensation ordinance for the Capital Territory, with a maximum award of $7,500 provided for.

The A.L.R.C. Discussion Paper also proposed that the decision in *Dugan* v. *Mirror Newspapers* (1978) 22 A.L.R. 439 should be reversed, so far at least as Commonwealth and Territory offenders are concerned. In that case the High Court of Australia confirmed that certain felons have no right of access to the courts. (See [1979] *Reform* 30.) The Discussion Paper concludes:

> No matter how serious a person's crime the punishment of the loss of his liberty does not warrant, in addition, the loss or suspension of his civil rights as a person. Nor does it warrant denying him access to the courts of the land for impartial determination of his claim.

On this last matter, it is apt also to remember that the High Court of Australia has held valid the Rule requiring that an application for special leave to appeal to that court must be made by counsel. This rule prevents an application for special leave by a prisoner asking to be permitted to make his application in person. *Collins (Hass)* v. *The Queen* (1975) 8 A.L.R. 150. Reporting on reform of the High Court Rules, Barwick C.J. told the Adelaide Legal Convention that new Rules will enable a prisoner to present an application by written submissions. If the court thinks the matter requires oral argument

> the prisoner . . . would be likely to be legally aided for that oral argument . . . an advance on what has now been decided to be the position.

The "package" of reforms (principally for the Capital Territory) represent the first published suggestions of the A.L.R.C. on sentencing. The *Canberra Times*, commenting on the Discussion Paper, laments

> The history of careless disregard by Federal Government authorities of the rights and welfare of those citizens most directly their responsibility . . . on those occasions when they fall foul of the law, is a long and dispiriting one . . . In the long term, of course, the Law Reform Commission can only propose: it is the Government, hitherto apathetic or evasive, that finally disposes on these issues.

Sentencing and punishment has been very much in the news in Australia over the last quarter. Items of significance include:

- public opinion polls (including one conducted by *The Age* for the A.L.R.C.) showing

increasing public support for capital punishment;
- resolutions of the Australian Police Federations in favour of capital punishment;
- industrial action by N.S.W. prison warders following the alleged murder of a prison warder;
- withdrawal of Australia's invitation to host the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders.

Perhaps the most significant development has been the general review of parole. In addition to the A.L.R.C. study of Federal parole, there have been recent reports on parole law reform in South Australia, New South Wales and Western Australia. All have suggested changes in the present system. The S.A.C.L.R.C. proposed that parole decisions should be remitted from the Parole Board to the courts.

In an inhouse Research Paper (#6 *Sentencing: Federal Parole Systems*, July 1979) Mr. M. R. Richardson (A.L.R.C.) has suggested either the abolition of parole for Federal and Territory offenders (with consequent shortening of sentences) or major reforms to include:

- notification of rights concerning parole;
- provision of reasons for refusal of parole;
- general access to documents used in parole decisions;
- designation of specific officers to handle parole;
- review of parole decisions by the Federal Court.

The Commissioner in charge of the Sentencing Reference, Professor Duncan Chappell, led discussion on parole reform at a seminar organised by the Australian Institute of Criminology on the "Prospects of Parole", 7–9 August 1979. The seminar was attended by representatives of Parole Boards in every State and vigorous exchanges took place concerning the strengths and defects of current parole systems in Australia.

Coinciding with this seminar, Mr. Justice Kirby (A.L.R.C. Chairman) delivered the John Barry Memorial Lecture at Melbourne University on the theme *John Barry on Sentencing: A Contemporary Appraisal.* Sir John Barry's career as an advocate of criminal and penal reform, Judge of the Supreme Court of Victoria and first chairman of the Victorian Parole Board was sketched. Parole was described as a "flawed innovation" which had come under criticism as the "charade" of apparently long sentences which everyone knew were not intended to be served, became known in the courts, by prisoners and the community.

> The Commonwealth's system of parole is the most inefficient of them all in Australia. There is no Commonwealth Parole Board. There is no body of persons to whom the Commonwealth prisoners can look for parole decisions. They are made by the Attorney-General of the Commonwealth, on the advice of departmental officers, amidst other pressing national decisions. There is no right to reasons for prisoners denied parole. There is no right to public or judicial review. There is no right to access to documents considered in relation to adverse decisions on parole, there is no minimum term applicable uniformly throughout Australia after which parole in Commonwealth cases may be considered.

The danger of abolition of parole, especially in a federal country, is acknowledged in the A.L.R.C. document. That danger is that prisoners will serve *de facto* longer prison sentences at greater cost to the community, their families and themselves.

Two other themes from the Barry Lecture. Attention is called in it to the view of Mr. Justice MacKenna (England) that the time has come to generally shorten prison sentences in English-speaking countries. Our prison terms contrast with the length of sentences in Europe, yet without any marked social gain. They impose great financial costs on the community. Shortening prison sentences is described as the "major pressing reform". Lord Gardiner put the problem vividly 10 years ago.

> Broadly speaking it is true to say that whenever one finds three in a cell, one would have been there before the war, the second is there because of the increase in crime, and the third is there because of the increase in sentence.

Newspapers disagree and recent Commonwealth legislation on drugs suggests that politicians are unconvinced but:

> If we are serious about the costs and other disadvantages of prison, and are moved by the lamentable picture painted in the Nagle Report and other descriptions of the state of our gaols we must, as a society, do two things at least. First, we must provide reformed institutions for those who are committed to institutional punishment. Secondly, we must embrace shorter terms of imprisonment on the basis that where it is necessary, it is the *fact* rather than *duration* of deprivation of liberty that is the effective consequence of such punishment.
>
> Barry Lecture, 1979, 30.

Another interesting point emerging from the lecture was the good response to the A.L.R.C. Judicial Survey on the views of judges and magistrates throughout Australia on sentencing reform. Sir John Barry was a great supporter of gathering empirical data as a proper basis for sound criminal and penal law reform. He was one of the founding fathers of criminology in Australia. In this context, the A.L.R.C. chairman referred to the support which the judiciary had given to the survey.

> Jointly with the Law Foundation of New South Wales a survey has been addressed to every judge and magistrate involved in sentencing in Australia, 506 in all, seeking facts and opinions about sentencing, punishment and its reform. I am glad to say that more than 75% of the judicial officers of our country have returned the survey to the Commission. Most of them added thoughtful and forward-looking comments designed to help us to improve this most painful and unrewarding of judicial tasks. Only in Victoria has the judicial response been poor, namely 9% of the County Court judges and 35% of the judges of the Supreme Court. The generally high response from busy men and women, in an exercise that would require an hour or more of their time, indicates beyond doubt the concern there is in judicial quarters in Australia about the present defects in sentencing. It also signals, I believe, the general acceptance amongst judicial officers of a continuing responsibility for the state of the law they administer. The good judge, the good lawyer, strives for the reform of defective laws as part of his professionalism.

Why the poor response in Victoria? The A.L.R.C. chairman said that he did not doubt that the Victorian judges who failed to respond to the survey did so for reasons that "appeared to them to be good". He pointed out that some people were doubtful of the value of surveys of this kind. The editor of the Melbourne *Age* was unconvinced.

> It may be that many inconsistencies in sentencing are due to personal idiosyncracies and that many punishments are imposed with little knowledge of their likely efficacy. Certainly, this is a legitimate subject for research ... It would be a pity if the spirit of Sir John Barry were no longer alive on the Victorian Bench.

## Overseas Law Reform

> To 'language up' an opponent is to confuse, irritate and depress him by the use of foreign words, fictitious or otherwise ...
>
> Stephen Potter, *Lifemanship*.

*Nigeria:* On the eve of the return of Nigeria to civilian government, a Law Reform Commission has been established by the Nigerian Law Reform Commission Decree 1979. The Decree envisages seven commissioners, four of whom are to be full-time. One of the full-time commissioners is required to be "a non-legally qualified person". One of the part-time commissioners is required to have "appropriate qualifications in the social sciences or in the humanities". An Explanatory Note states that the aim is the "progressive development and reform" of substantive and procedural laws "in consonance with the norms prevailing in Nigerian society". Interesting from a Federal point of view is s.7 of the Decree. This provides that the Commission shall have the power to consider proposals for reform of State laws and to receive references from and submit proposals to States or any number of them. Recommendations for uniformity between the laws of the States may also be made. The next Commonwealth Law Conference is to be held in Lagos, Nigeria, in 1980. It is hoped that a meeting of the law reform agencies of the Commonwealth of Nations will coincide with that Conference.

*Israel:* Hot on the tail of important New Zealand reforms of court administration (see p. 78) comes the announcement of the establishment of a committee to overhaul the courts and judicial system of Israel. Chairman of the Committee is Justice Moshe Landau, Deputy President of the Supreme Court, who recently visited Australia. The Committee is to examine criticism of the heavy burden on judges, lack of facilities, prolonged delays in proceedings, and other complaints about the Israeli legal system. One sensitive question under study is the criticism of the military judicial system voiced by judges of the Supreme Court. Shamgar J. described the system as:

> the only penal system in the country parallel to the civil courts ... reaching totally different conclusions.

Attorney-General Zamir has proposed restructuring the jurisdiction of Magistrates Courts and moving some of the jurisdiction of the Supreme Court to the District Court so that the former can concentrate on constitutional and general legal questions.

*Fiji:* A Royal Commission of Inquiry has been established in Fiji "to inquire into all aspects of the treatment of offenders". The Royal Commissioner is the Fiji Ombudsman, Mr.