

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 Com-

mission 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.

Justice Moti Tikaram. The Terms of Reference of the Commission involve it in the study of many questions which are under consideration in the A.L.R.C. project on punishment of Federal offenders (see p. 84). The A.L.R.C. research papers and other material have been sent to Tikaram J., who also called at the Commission during his visit to Australia in September.

*Papua New Guinea:* The Chairman of the P.N.G.L.R.C., Mr. William Kaputin, and the Secretary, Samson Kaipu, attended the Law Reform Agencies Conference in Perth and led discussion on the recognition of customary laws within milieu of a common law legal system. Also participating were Mr. Victor Tennekoon, Q.C. (Chairman, Sri Lanka L.C.) and Mr. P. M. Bakshi (Secretary, India L.C.). William Kaputin is developing quite an expertise on this question. Recently, with Commissioner Joseph Nombri, he toured the Highland Provinces of Papua New Guinea and proposed the statutory recognition of customary compensation payments arising out of death or injury of clan members. The proposals made reflect current traditional practices. To curb excessive demands for compensation, it is proposed that maximum values should be set and that modern money and goods should not be used. The discussion on customary laws drew comment from Federal Minister Ian Viner, M.P. It was when he was Minister for Aboriginal Affairs that the A.L.R.C. received its reference to study the recognition of Aboriginal customary laws in the Australian legal system. Commissioner Bruce DeBelle and Researchers Bryan Keon-Cohen and Paul Peters have just returned from a three-week inspection tour of Northern Queensland where the recognition of Aboriginal laws and traditions was discussed with Aboriginals and Torres Strait Islanders.

## Odds and Ends

■ Australian Chief Justice Sir Garfield Barwick has been elected President of the Bentham Club of University College London. In his Presidential address *Judiciary Law: Some Observations Thereon* (16 July 1979) he explored Bentham's views that the judge, though

nominally doing no more than declaring existing law "may be said in truth to be making it". Sir Garfield took the opportunity to express reservations about too much judicial inventiveness:

[S]eeming rigidity in the administration of the common law is, I think, preferable to allowing the judiciary to act as a law-reforming agency and thus to usurp the proper function of the legislature. It is worth saying that the legislature, notwithstanding its burden of party politics, is better fitted to ascertain and express the common will, the common consent of the realm — to use the language of the great charters — than is the judiciary which does not have at its command the information required to decide on the acceptability of an existing rule in times of change. As well, these days the legislature is served by law-reforming commissions able to present the various facets of the problem of what the law should be ... I am inclined to think that the judiciary should not be reticent in calling the attention of the legislature to the situation, so that the legislature may attend to its remedy by such a change as the legislature finds appropriate.

■ The Australian Government has announced its intention to enact new procedures for dealing with complaints against Federal police. The procedures will follow reports of the Australian Law Reform Commission. The Minister for Administrative Services, Mr. John McLeay, and Federal Attorney-General Durack indicated that the provisions would ensure that "high standards and discipline would be maintained in the new Australian Federal Police Force". One variation from the A.L.R.C. reports is that the recommendation that the Commonwealth Ombudsman should have a reserve power to order investigation of complaints is to be replaced by a reserve power in the Minister responsible for the Force. The Ministers also announced that similar complaints procedures for customs and narcotics officers were also under consideration, as recommended by the A.L.R.C.

■ The Australian Embassy in Peking has sent copy of the speech by Peng Zhen, Director of the Commission of Legislative Affairs, to the Fifth Chinese National People's Congress on 26 June 1979. Seven draft laws were introduced to establish a "socialist legal system". "People are craving for law" and for a "sound legal system" declared Peng Zhen. Amongst law reforms introduced is a draft