> "No system merits the description [of equal justice] if access is the privilege of a few and not the right of all. That principle is the foundation of our legal system, but the reality is that more than two-thirds of the American people lack easy access to the courts. The guarantee of justice has too frequently been nothing more than a hollow promise.... In the past few years many individuals and groups have begun to rethink the basic principles for effectively delivering justice. They have realised that litigation is neither the only method nor always the best method of resolving a dispute."

Senator Kennedy went on to outline the 'excellent and innovative programmes' which had begun. To 'continue and encourage' the experimentation, he introduced into the Senate the Dispute Resolution Bill 1979. If passed, this measure will provide technical assistance, a central clearing house for information and grants of funds.

Although only in its infancy in Australia, the move for conciliation services is now well advanced in the United States. R.F. Greenwald described the movement in 'Dispute Resolutions Through Mediation', 64 *ABA Journal,* 1250 (1978). Judges are increasingly calling on mediators as a third party neutral assistant. Problems have arisen, particularly with the parties in dispute, concerning the identity of the mediators and their 'terms of reference'. But when the procedure works, it may have a better chance of achieving lasting success, where the parties have to continue to live in contact, than courtroom resolution:

> "Many times parties are in litigation because there was never an opportunity for honest, in depth, good faith communication. Often the conflict is essentially the consequence of conceptual differences, misunderstandings or simple ignorance. Fact and fancy can all too easily combine to feed dissent and increase divisiveness. Parties seeking a voluntary settlement have obvious advantages over those who are cast in adversary positions of litigants for whom antagonisms typically grow stronger. It is in improving this climate that the legal profession can contribute significantly."

Commenting on the N.S.W. experiment, the *Sydney Morning Herald* (15 March 1980) in an editorial says:

> "The system and those running it will be on trial.... A good deal (some may say too much) will depend on the quality of the multi-lingual mediators who are expected to be appointed in June. The location and atmosphere of the Centres will also be important. Looking for shopfront premises [and avoiding] mystery or formality ... is sensible ..."

No-one can suggest that Community Justice Centres will ever replace the courts. The leadership in the planning phase of the N.S.W. scheme has been given by Mr Kevin Anderson SM, an experienced magistrate who took an important part in N.S.W. bail law reform. The encouragement of the State Attorney-General, the support of the courts, a modest flow of funds and a dash of good luck may result in success for this interesting, novel experiment. It is reported that other States are watching the scheme closely. It is expected that it will be in full swing by mid year. Jane Chart again:

> "Whilst the use of mediation is clearly not going to be a panacea ... the technique offers considerably greater promise for those tragically caught up in family violence than conventional adjudication. Moreover, the Centres may well, in the long term, assist in developing more positive attitudes on the part of members of the community towards each other and towards justice system personnel such as police ... insofar as mediation encourages people to take responsibility for reaching their own settlements and reduces community feelings of disenchantment with the system."

If the Centres work well, it will not be surprising to see them spread elsewhere. Indeed they may even suggest the greater use of conciliation and mediation in the court trial system itself. Readers of *Reform* will remember an interesting proposal of the Sri Lanka Law Commission that every civil court case should automatically be referred to a court official to explore, in a skilled and determined way, the possibilities of reconciliation. The N.S.W. experiment may show whether this idea has any life in it for Australian conditions.

Standing and Class Actions

> "Those who are well assured of their own standing are least apt to trespass on that of others."
>
> Washington Irving, *The Country Church,* 1819

Under the direction of Commissioner Bruce Debelle, the ALRC is continuing its work

towards a report on its reference on Access to the Courts. Already the Commission has published two discussion papers, dealing with the principal issues of the reference:

- Standing to Sue (DP 4)
- Class Actions (DP 11)

During the last quarter, the High Court of Australia handed down its decision in *Australian Conservation Foundation Incorporated* v. *Commonwealth* (unreported, High Court of Australia 13 February 1980). In a four to one decision, the Court held that the Foundation had no 'locus standi' to maintain proceedings to challenge the validity of the decision of federal authorities to approve the proposal of a Japanese group to open a tourist and resort area in Queensland. Aickin J had previously struck out the statement of claim. The High Court upheld this decision on appeal.

The Foundation, it was said, was seeking to enforce a public law 'as a matter of principle'. But an ordinary member of the public, who has no interest other than as a member of the public, has no 'standing' to sue to prevent the violation of a public right or to enforce the performance of a public duty. Gibbs J explained the orthodox rule:

> "The assertion of public rights and the prevention of public wrongs by means of those remedies is the responsibility of the Attorney-General, who may proceed either ex officio or on the relation of a private individual. A private citizen who has no special interest is incapable of bringing proceedings for that purpose unless, of course, he is permitted by statute to do so. . . . If the law is settled, it is our duty to apply it, not to abrogate it. It is for the Parliament, whose members are the elected representatives of the people, to change an established rule if they consider it to be undesirable, and not for judges, unelected and unrepresentative, to determine not what is, but what ought to be, the law."

Stephen J took much the same view but went on to point out that the reference to the ALRC might be a particular reason for withholding judicial reform:

> "If the present state of the law in Australia is to be changed, it is pre-eminently a case fo legislation, prepared by careful consideration and report, so that any need for relaxation in the requirements for locus standi may be fully explored and the limits of desirable relaxation precisely defined. Just such an investigation is at present being undertaken by the Australian Law Reform Commission."

Mason J pointed to the broader concepts of standing which had developed in United States and Canadian cases. In the latter, unlike Australia, a taxpayer has been held in certain circumstances to have locus standi, as such, to challenge the validity of a statute. Mason J then had some interesting observations on judicial reform, returning to a theme picked up in [1980] *Reform* 5:

> "The court would exceed its function if it accepted the invitation issued by the appellant's counsel to jettison the settled principle of law relating to locus standi and substitute for it a new rule recognising a mere belief as an adequate special interest on the part of the plaintiff. There are limits to what the courts can and should do by way of altering the law. . . . The court can and does elaborate the common law by judicial decision. This is an evolutionary and continuing process. It is a process which allows little scope for radical reform of a rule of law which . . . has long been settled, when it has not been demonstrated that the foundation on which the rule is based has fundamentally changed. This is particularly so when we find that the settled rule . . . is the subject of a reference by the Executive Government to the Australian Law Reform Commission for investigation and report. What is more, this reference follows the enactment of an Act and the introduction of the Administrative Procedures under that Act. As I have construed them, neither the Act nor the Administrative Procedures contain any indication of a departure from the settled rule of law governing locus standi. It is evident that they assume the existence of the rule as it has been settled."

Digressing, it is interesting to note that Lord Denning, in his address to the Law Society's national conference in Jersey in October 1979, was unimpressed by the argument that he should stay his judicial hand because a subject before him had been referred to (in this case) a Royal Commission.

> "Lord Scarman [said] there ought to be a radical way of reappraisal. But . . . we will not do it, we will leave it to other bodies. [They] can do all this and eventually report. How long will it take? Will it ever take place? I would suggest that there is still a field for judge-made law in our land. Of course I do not get my own way as a rule."
> (1979) 76 *Law Soc Gazette*, 1057

Meanwhile, on the class actions front, the debate continues. Commissioner Debelle will

proceed to North America and England for discussions with lawyers and interested groups about class actions and standing. Among interesting developments relevant to that project should be noted:

- The recent decision of Vinelott J in *Prudential Assurance Co. Limited* v. *Newman Industries Ltd.* [1979] 3 All ER 507. This decision upheld a representative action for the determination of questions common to a large class of claimants, not only in equitable suits but also in actions for damages. The *Prudential Case* demonstrates that the representative action, expanded by a little judicial activism, may provide a remedy where multiple loss has occurred but without some of the abuses seen in the United States courts with the controversial class action.
- In February 1980 Mr Debelle attended a meeting in Auckland, New Zealand, of 75 lawyers representing the estates of about 200 of the 257 passengers and crew killed in the Air New Zealand aeroplane crash at Mt. Erebus in Antarctica. The co-operation achieved between the lawyers is remarkable. At their meeting on 29 February, they resolved to delegate the conduct of initial enquiries into the complex issues of liability to a management committee of five Auckland lawyers. The N.Z. Law Society in December 1979 established a register of claims. This enabled an ad hoc committee of practitioners involved to circulate other lawyers involved thereby enabling the pooling of resources and a co-ordinated professional effort in dealing with the common issues involved.
- On 20 March 1980, the ALRC Chairman told the annual conference of the Australian Automobile Dealers Association at Surfers Paradise, Queensland that the aim of the Law Reform Commission's enquiry into class actions was to make the courts relevant to the mass produced legal problems of the mass produced society. Citing numerous cases of automobile recalls, LPG fuel leaks and consumer complaints about new and used automobiles he said:

> "[Every] case of legal wrong which is not effectively redressed stains the society that shrugs it off. The cynicism it engenders will endure. Making the law relevant to the problems of today's society is the business the ALRC is in. Today's society is the mass consumer society. If the law, the courts and the judges cling to dispensing justice in individual cases we run the risk that institutions which have served us well for centuries, will wither on the vine. Class actions may not be the answer, but I am sure we must find an answer that facilitates actions for the multiple delivery of justice to redress multiple wrongs."

Odds and Ends

■ Lord Scarman, always in the forefront of legal things innovative in Britain, has inaugurated a National Law Library in the United Kingdom with computer information retrieval systems for the supply of legal material to the judiciary and the profession. The effort has the support of the Law Society and is in some ways similar to systems of computerised legal data established in North America and many European countries. Some believe that computers are being used only just in time to help lawyers cope with the massively expanding volume of law and the cost which researching the law by traditional means necessarily involves. The Library is a wholly professional body established by the barristers' and solicitors' societies. Lord Scarman is first President of the Trust. Already seminars are being held all over the United Kingdom and principles are being developed for data base composition and access. (1980) 77 *Gardian Gazette* 81.

■ About to report is the Criminal Law Working Group established in 1977 by Victorian Attorney-General Haddon Storey, Q.C., Chairman of the group is Professor Louis Waller (Monash University). Other members are the Hon.T.W. Smith, Q.C., (former VLRC) and Judge Mullaly. The VCLWG was established initially to carry out two projects: preparation of a new statute on criminal damage and legislation to abolish all distinctions between felonies and misdemeanours.