> sometimes tedious, although always intellectually demanding; where we take our responsibility with the utmost seriousness; and where there is little or no time for socialising. ... I speak not of the members of the court today or at any particular time. Justices, with varying degrees of wisdom and legal scholarship, come and go. The institution, nourished by its inherited tradition, is what merits respect and confidence. Those who denigrate the courts do a disservice to liberty itself.

In the same spirit of this explanation of the 'precious ideal of ordered personal liberty' dating back to the 'many centuries of English history', is Chief Judge Irving R. Kaufman's piece, 'The Essence of Judicial Independence', 80 *Columbia Law Rev* 671 (1980). Tracing the evolution of judicial independence from England, Kaufman is cautious of the encroachments by Congress on the independence of the judiciary as in the provision of new disciplinary systems which may interfere with judicial impartiality and undermine the doctrine of the separation of powers. Specific is his criticism of the recent U.S. Judicial Conduct Disability Act of 1979.

Judicial independence, judicial creativity, the judicial role, judicial power. All these promise to be live issues throughout the 1980s.

lawyers' future?

> Woe unto you, lawyers! For ye have taken away the key of knowledge; ye entered not in yourselves, and them that were entering in, ye hindered.
>
> *St. Luke's Gospel,* 11, 52.

computerized conveyancing. According to Mr. Justice Kirby (ALRC Chairman) Ebenezer Scrooge is one of the 'least celebrated of the para-legal luminaries of the 19th century'. His 'bah humbug' approach to bright ideas ultimately gave way to personal reform. In an address to the Co-operative Building Societies of New South Wales on 1 December 1980 in Sydney, the ALRC Chairman suggested that the pace of reform in land conveyancing would be forced by modern information technology. He predicted that within 20 years this significant part of the Australian legal profession's activities (estimated to be 50% of fees in eastern States) would be significantly diminished. Referring to the present legislation which guarantees lawyers in most Australian States a 'monopoly' in certain aspects of paid land title conveyancing, Mr. Justice Kirby asked whether banks, building societies and other responsible bodies ought not to be permitted to compete, so as to bring down the costs of conveyancing, usually the ordinary citizen's greatest legal expense:

> Some observers suggest that the days of high cost and talented monopolies are numbered anyway, by reason of the new information technology. Those less familiar with the dynamic movements in automation of complex data can be forgiven a backward looking attitude to the potential of computerisation in the land conveyancing area. For my own part, I have little doubt that in time, probably before the end of the century, the great bulk of land transfer conveyancing will be a relatively simple computerised process. In such a world, the use of skilled lawyers, at least in routine transactions, would simply not be justified. Building societies and the legal profession itself should be preparing for the world of 'informatics'.

Outlining the arguments for and against revision of the lawyers' monopoly, the following points were made in favour of change:

- Most registered land title conveyancing is typically routine. Title insurance has been adopted in the United States to guard against the occasional problems that arise.
- The market for cut-price conveyancing is demonstrated by the growth of 'do-it-yourself' kits and like services.
- In South Australia and Western Australia, where land brokers compete with lawyers, professional fees are lower.
- The present system proceeds by an 'adversary process' whereas most clients look at a land purchase as purely administrative.
- The professional monopoly, excluding even responsible competitors, is inconsistent with the modern philosophy of competition, evidenced in such legislation as the Trade Practices Act.

But the ALRC Chairman pointed out that

there were several arguments in favour of maintaining the status quo:

- Clients are fully protected by the fidelity fund and, now, by compulsory professional indemnity insurance.
- Complications can arise if neither party to a transaction has a lawyer.
- High price conveyancing sometimes subsidises other less profitable legal activities as a form of 'rough' legal aid.
- Some 'conveyancing' lawyers may be unsuited for more demanding legal work.

Some commentators have suggested that if competition were introduced a great number of lawyers would be unemployed, at a time of out-of-work lawyers:

> At a time when young lawyers can sometimes not find work and when technology will, in any case, take over some of the routine work of lawyers, a decision to submit this significant sector of professional people to the bracing wind of competition, is a decision to be made after careful thought, with a clear-eyed view of the possible consequences.

Two recent reports have come out in favour of retaining the solicitors' monopoly. In England, where there is a similar growth of 'do-it-yourself' conveyancing, the Royal Commission on Legal Services *Final Report* (1979) urged retention of the monopoly. More recently, in Victoria, the Committee of Inquiry into Conveyancing, in its *Interim Report,* recommended that there be 'no change in the present situation in which the performance of conveyancing work for reward is confined to qualified members of the legal profession'. The Chairman of the Victoria Committee was Mr. D. Dawson Q.C., the State Solicitor-General. The last-mentioned report has been severely criticised from an economic perspective by J. Nieuwenhuysen and M. Williams-Wynn, 'Conveyancing: The Pitfalls of Monopoly of Regulation Pricing', published in the *Australian Economic Review,* 3/80. The advantages of competition, under appropriate conditions, to lower costs and improve services, are urged by the economists.

Hints of things to come, as suggested in the ALRC Chairman's speech, are to be found in announcements made in recent days in Victoria and South Australia:

- In Victoria, the Attorney-General, Mr. Haddon Storey Q.C., announced the introduction of a computer system to facilitate the processing and searching of dealings in land in the Titles Office. The new system is to keep track of the whereabouts of all titles and unregistered dealings. The computer will show immediately whether any relevant dealings have been lodged in the previous three months.
- In South Australia the first stage of a new computerised land information system has been launched in Adelaide. The Land Ownership and Tenure System (LOTS) was opened by the South Australia Land Minister, Mr. Peter Arnold. For a small charge, members of the public with an interest in land can make an inquiry and examine documents of an unlimited variety of government recording systems, without the need of a trained intermediary. More than 30 terminals are already in operation in Adelaide and suburbs. The prospect of a national computerised land and title data base must now be faced. (*Printout,* 10 December 1980 (No. 139, 1).

Meanwhile, in New South Wales, the debate goes on. *The Sydney Morning Herald* (14 October 1980) asked whether lawyers should not be redeployed to tasks more worthy of their training and intellect:

> The problem to be faced by the legal profession is whether the legal monopoly, justified without a doubt at that end of the scales where the skills of a highly trained legal practitioner are called fully into play, is to be permitted to continue in those areas of legal expertise where it is least called for, such as the lucrative field of conveyancing. Should not lawyers stick to the law, as doctors stick to medicine? And would not the public be better served if, like nurses and the array of para-medical, semi-professionals working in the field of public health, there was a comparable assortment of properly trained, properly regulated para-legal, semi-professionals to improve the delivery of legal services?

But a letter-writer to *The Herald* (Noel H. Peters) on 12 December saw the problem as more complex:

> The word ['monopoly'] was poorly chosen by the judge to describe a totally competitive market in which 5,400 private lawyers compete, on the basis of professional qualification, ability and service. He might just as well have addressed himself to the 'monopoly' of barristers and judges on the judicial decision market.

law is tough. Meanwhile, other developments. In New South Wales, the Premier, Mr. Neville Wran, Q.C., gave some advice to the Young Lawyers' Committee of the Law Society of New South Wales on 3 November 1980. He did so as 'something of an old campaigner in the law'. Describing law as a 'tough profession — almost as tough as politics' he reminded the lawyers that the perception the public has of lawyers is often quite different from the view from inside the profession:

> I know as well as anyone else the problem of overheads, and unexpected outgoings, of the bills you send that don't get paid. But many members of the public believe that law is beyond their reach financially and that all lawyers are grasping, greedy individuals, more concerned with their fee than with their client. ... There is an obligation on practising lawyers to keep their fees and services under proper scrutiny and to be forthcoming and honest about explaining to members of the public the real level of costs.

The Premier warned of the likely growth of a strong public sector in the legal profession and of the vitally growing role of women in the profession and judiciary of the future.

improving accountability. Speaking to the Annual Seminar of the Law Society in South Australia, Commissioner Julian Disney (NSWLRC) addressed the theme 'Lawyers and the Public'. Describing the work of the NSWLRC in its general inquiry into the legal profession, Mr. Disney discussed such issues as:

- The general regulation of the profession.
- Handling of complaints and discipline.
- Structure of the profession (barristers and solicitors)
- Fees and costs.

Expressing caution about exclusive specialties by small groups of practitioners, Mr. Disney urged lawyers to address the right priorities:

> The greatest need at present is not to develop categories of high-level certified specialists but rather to meet the need, felt particularly by clients who are not wealthy or sophisticated, for some assistance in finding their way to practitioners who have an interest in the relevant field of practice. The new Legal Services Directory in this State is a useful step in this direction. It might be supplemented, as in Scotland, by a second directory giving more detailed information about individual practitioners, including more specific information of narrower fields of practice. ... a further method for improving accountability [of the legal profession] is to provide clients with more information and education concerning legal matters so that they will be able to recognise whether the need for legal assistance has arisen, to find their way to a source of appropriate legal services, and to assess the quality of the services being provided.

Other Australian developments that deserve noting are:

- *First Law Week.* In the second week of October 1980 the Law Institute of Victoria launched 'Law Week'. Its aims included encouragement of public understanding of the law and its importance and participation in 'legal processes and law reform'. The most interesting innovation was the free 'Legal Check Up'. During Law Week, any member of the public in Victoria could consult a solicitor free of charge for up to 20 minutes for the purpose of up-to-date legal advice. According to Mr. Christopher Riordan, Chairman of Law Week, the public response to the activities, including the free legal check-ups, 'surpassed our expectations'.
- *More publicity.* In Western Australia the WA Law Society has decided, according to a report in *The Age* (4 December 1980) to speak out publicly in future concerning new legislation. In the past it sent confidential reports to the government. But according to the report, the recommendations 'have been almost entirely ignored as

government Bills went through parliament'. In future, it seems, the livelier Law Society intends to send its reports simultaneously to the Minister, the Leader of the Opposition and major news organisations. Announcement of the new approach was made by Mr. Ian Temby Q.C. at an address on 21 November at the University of Western Australia. 'If individual members of society are not heard, can they complain if the interests of the corporate state are elevated above those of individual citizens?'

- *Lawyers' survey.* In Sydney, Dr. Roman Tomasic, a Lecturer in Legal Studies at the Kuring-gai College of Advanced Education, released the results of a survey of 600 lawyers. According to Dr. Tomasic's survey, most lawyers admitted entering the legal profession because of 'an interest in the law, a desire for independence and the prospects of a high salary'. Least important amongst the stated motivations was 'to right social wrongs'. Newspaper reports attribute to Dr. Tomasic the statement that the survey 'confirms the cynical view the community holds' of the legal profession. 'Lawyers are businessmen', he declared. The number who came from low wage-earning families, single parent families or unemployed parents was said to be 'too small to quantify in the survey'.
- *Lawyers' fees.* Barristers' fees have come in for media attention in the lst quarter. The report by James Murray, *The National Times* (19 October 1980) quotes Commissioner Julian Disney (NSWLRC) as saying that one of the ways to control the cost of the law is to terminate the strict separation of barristers and solicitors and possibly abolish fee scales or hand them over to an authority drawing 'not only on legal expertise but on skills in economics, accountancy and industrial arbitration'. Senior Lecturer in Law in the University of New South Wales, Mr. John Basten, has urged that barristers should be publicly accountable for the fees they charged. He listed amongst reasons for public regulation of fees: the monopolies enjoyed in the provision of 'a wide range' of services, the vulnerability of clients at the time they are seen by lawyers and the fact that lawyers sometimes themselves define the need for their own services (*SMH* 29 October 1980).
- *Legal ombudsman?* In Western Australia, the Barristers' Board has recommended the creation of a 'Legal Ombudsman' to investigate clients' complaints about lawyers. In its submission to the inquiry being conducted by Mr. Justice Brinsden into the W.A. legal profession, the Board urged that an independent lay member be included in the disciplinary tribunal. Meanwhile, in England, the Governing Body of the Bar is to send a questionnaire to all barristers' clients investigating allegations of discrimination against black barristers. This move coincides with steps being taken by the British Commission for Racial Equality to mount a formal investigation into the Bar. The Royal Commission on Legal Services report said that the situation in England was 'unsatisfactory' and the trends 'unfavourable' (*The Times,* 27 November 1980).

professionalism again. The wider question of professionalism has also come up for consideration in a number of quarters in recent months:

- In the *Law Society Journal* (NSW, September 1980) a report is included on a Sydney Conference, 'Is There a Crisis in the Profession?'. Law Society counsellor N. Mainwaring found the Conference 'disturbing and depressing' because every speaker took for granted

the view that the public had lost confidence in the professions. A list of the actions being taken by the Law Society to overhaul its disciplinary system, to include lay participation and improve continuing legal education were referred to.

- Professor David Maddison, Dean of Medicine at the University of Newcastle, has written an interesting article, 'Professionalism and Community Responsibility' in the *Journal of the Society of Science and Medicine* (Vol. 14A, pp.91-96). Recounting the decline of the 'God/doctor era', Professor Maddison urges the need of the professional 'in whatever discipline' to re-examine his responsibility or accountability to society with the implied thrust that if he doesn't do it for himself, someone else will do it for him in ways he might strongly disapprove'. Professor Maddison pointed to the increasing preoccupation of some professionals with the level of financial reward. He said this led to the feeling that 'at least some professionals have achieved a financial status quite out of proportion to their contribution to society as a whole'.

- Dr. Warren Pengilley, a Member of the Australian Trade Practices Commission, delivered a paper on 24 November 1980 to a seminar organised in Brisbane by the Queensland Council of Professions. Titled 'The Trade Practices Act and the Professions' Dr. Pengilley asked the question 'Are professions really different?' In a specially useful section, he seeks to define what the 'professions' are. Of course, his interest is principally upon professional codes preventing price competition and advertising. As predicted by Professor Maddison, he finishes with the view that 'the professions must change voluntarily or be changed mandatorily'. Unfortunately, he concludes, the regulation of professions in the public interest, to protect against 'quacks and shysters', all too often leads to 'control which can be said to benefit only the relevant practitioners themselves'.

- In the accounting profession, October news stories reveal that exposure drafts for new professional standards suggest quite new practices in the area of independence from client control, tax practice and quality control. The draft standard on tax statements warns accountants of the danger of entering into a tax arrangement intended to 'misrepresent the true nature of the transaction or which depends upon a lack of disclosure for its effectiveness'. This warning may now be supported by new federal legislation designed to discourage tax avoidance advice by criminal sanctions.

Let the last word be had by the Governor-General, Sir Zelman Cowen. In an address to the South Australian Council of Professions at the University of Adelaide on 18 September Sir Zelman cautioned against any retreat from the hard questions facing professionals today:

> The issues faced by professional groups and bodies should receive a 'positive response' by their active participation in the processes leading to reform. There have been angry responses to some proposals. ... Sometimes they produce anger: in this city some time ago, I heard the national leader of an important profession say that he was sick and tired of hearing and reading criticisms of him. The processes of our society invite debate and reasoned argument, and while it is understandable that there should be occasional explosion, I am sure that the debate on the professions will continue, and the future health of the professions will depend upon a continuing readiness to engage in debate and self-examination. Times are such that criticism will not go away by such expressions of repudiation, impatience and rejection; we are well warned that while the claim to expertise carries weight, that claim seems to have less weight in a society where the political temper is less authoritarian and more egalitarian. Moreover, the fact is that the authority of every profession is increasingly called into question as individuals and groups assert their right to participate in decisions that affect their future. ... That, whether we like it or not, is the world in which we live.