Time will tell whether this institutional effort at reform will be more successful than the 1974 Woodhouse inquiry.

still scurvy? Meanwhile, in Britain, general action on the Pearson report still seems a long way off. However, in March 1982, the Lord Chancellor, Lord Hailsham introduced into Parliament provisions in the Administration of Justice Bill 1982 designed to reform at least one part of the law dealing with the assessment of damages for pain and suffering. The Bill provides that in assessing damages for pain and suffering caused by injuries, courts should take into account any suffering caused by the awareness that a plaintiff's life had been reduced. Lord Hailsham pointed out that 'broadly speaking' the Bill implemented 'certain recommendations' of the Pearson Commission which had endorsed the report of the English Law Commission on the assessment of damages published in 1973. The Bill would also abolish the so-called 'conventional award' for loss of expectation of life which was 'regarded as being of little financial significance' and which 'had often been criticised as derisory in respect of the death of a wife, husband or children'. The Bill also sought to abolish a number of 'arcane actions' for loss of services. For example, if enacted it will no longer be possible for an action to be brought on behalf of the husband for being deprived of the loss of services or society of a living wife as a result of injuries sustained by her. Likewise the employer's right of action, to be brought in respect of loss of services by a menial servant or of seduction of the family servant or enticement or harbouring of servants, would be abolished as 'anachronistic'. A fixed sum of damages for bereavement is proposed: the amount is fixed in the Bill at 3500 pounds. Lord Hailsham said that no sum of money could compensate for bereavement. But he acknowledged that in expressing this view 'I am not expressing the view of the majority'.

drink and drugs

I drink to make other people interesting.

George Jean Nathan

national epidemic. The Life Insurance Federation of Australia has published a sobering booklet *Road Trauma: The National Epidemic.* It points out that the 'road toll' is killing more than 3000 men, women and children every year in Australia and seriously injuring at least ten times as many more. The grim statistics and patterns of death and injury are listed:

- total cost to the Australian community of road accidents is estimated at more than 3000 million dollars annually;
- two thirds of persons killed and injured were drivers of motor vehicles and their passengers;
- three quarters of those killed and two thirds injured were male;
- forty percent of pedestrians killed were aged 60 or more, yet this age group comprises only 13% of the population. Old pedestrians are vulnerable.
- the 17-25 age group accounts for 62% of all deaths occurring in the midnight hours.

Most sobering statistic of all is the one which shows that one in every two drivers killed on the road had a blood alcohol level of more than .05 at the time. The booklet acknowledges the road trauma cannot be eliminated. However, it urges against complacency and says that public condemnation of the road user who puts himself and others at risk is the most important element in a community fight back.

The figures of alcohol involvement in road trauma are not new. It is pointed out that, of the drivers and riders exceeding .05 alcohol who are killed, more than 50% in fact had blood alcohol levels exceeding .15. At that level 'their driving skills were so grossly impaired that they were unfit to drive or ride at the time of the crash'. They 'constitute a menace to society'. The majority 'in fact have severe alcohol problems and are in urgent need of treatment'. Various solutions are offered by the booklet. They include:

- indefinite disqualification from holding a licence of people with proved alcohol problems;
- costly and sustained educational and rehabilitation programs;
- introduction of a national road traffic code to replace the 'utter confusion' in many areas because of differing State and Territory laws;

- compulsory autopsies on all road crash casualities;
- uniform minimum penalties;
- introduction of random breath testing in all States.

random tests? The introduction of a form of random breath tests in Victoria in July 1976 has led to pressure in other Australian jurisdictions for similar moves. Random tests have been adopted in South Australia and the Northern Territory since 1976. But in the ALRC Report *Alcohol, Drugs and Driving* (ALRC 4, 1976) the view was expressed by the Commission that the case had not been made out that random tests would be effective to reduce the road toll. To warrant the very significant change in the relationship between citizens and police that would be introduced a proved effectiveness was required. Normally police need reasonable cause for suspecting an offence to intervene compulsorily in the life of a citizen. This important principle of liberty should not be surrendered, said the ALRC, without clear evidence that the gains in reducing the road toll would make the change warranted.

There is no doubt that legislatures and members of the public, frustrated by the ineffectiveness of current laws, look around for new solutions. On 3 March 1982 the *Sydney Morning Heald* reported 'widespread support' for random breath tests on New South Wales roads. The State Minister for Transport, Mr. Peter Cox was said to have changed his mind and to favour random tests. Commenting on the 'National Epidemic' booklet, the editorial in *The Australian* (17 April 1982) took a strong line:

> Among many valuable suggestions, the [Road Trauma Committee of the Royal Australian College of Surgeons] recommends that random breath testing is essential to reduce the havoc caused by drunken drivers. There is not one competent authority who does not support this proposition, whose merits completely outweigh any serious considerations for the alleged civil liberty to kill and maim others through mixing drinking and driving. The immediate action demanded by the report should be taken by our governments. There can be no excuse for not doing what common-sense and the safety of our citizens demand.

Soon after this 'demand', the State Cabinet in Queensland decided not to introduce random breath testing, claiming that the detection rate of drink driving in Queensland was better than in Victoria where random breath testing operated. New South Wales established a Parliamentary inquiry. Some observers suggested that it was being assumed but not proved that random testing had an effect. Without an effect, there would be no merit in introducing the system. On 6 April 1982 came a report in *The Australian* of a study by the Monash University and Road Trauma Committee of the Royal Australasian College of Surgeons. Reported originally in the *Medical Journal of Australia,* the study concluded that intoxicated driving was not being lessened in Victoria, despite random breath testing and other counter-measures. Authors of the study, Professors F. McDermott and E. Hughes concluded 'it is evident that present counter-measures are not appreciably reducing the Victorian drink-driving problem'.

Across the Tasman, the same debate is proceeding. The New Zealand Minister of Transport, Mr. Gair, on his return from Australia announced his conclusion that he was not convinced that random breath testing was the 'answer' to the drink-driving problem. He said that there was no 'magic wand'. He also said that the Victorian Police themselves had taken some time to be persuaded to use random tests because they apprehended fewer drinking drivers with random tests than they had before for cause. In terms of catching offenders, it was, according to the NZ Minister, 'a time waste'. However, as an adjunct to community education it might be useful. Every road safety initiative, he concluded, eventually became 'stale and time worn'. What was needed was greater community acknowledgment of the problem. The Chief District Court Judge of New Zealand, Judge D.J. Sullivan, addressing a Law Society of New Zealand seminar on drink-driving at Palmerston North during the last quarter, suggested that courts should have the power to confiscate the drinking driver's motor vehicle. This recommendation was contained in the Penal Policy Review Committee Report delivered to the New Zealand government earlier in 1982. See [1982] *Reform* 52. Judge Sullivan acknowledged such a penalty would be 'fairly drastic' but he said 'nothing else is working'.

cannabis law. Meanwhile, the issues of cannabis law reform raised in the discussion paper of the

Australian Foundation on Alcoholism and Drug Dependence (see [1982] *Reform* 58) have settled down to a serious debate in Australia after the extravagant publicity which surrounded the release of the discussion paper. In the Senate, Senator Michael Tate (Lab-Tas) welcomed the discussion paper and said that his views 'largely coincide with the views of the participants who put together that discussion paper':

> Those who argue for the status quo have to mount an argument, I believe, for the continuance of the total prohibition model, the model which was adopted in the United States in relation to trying to prevent alcohol abuse in the 1920's and 1930's with all the disastrous results which flowed from it. That is the model that has been adopted in Australia to deal with the problem of cannabis abuse.

Senator Tate singled out as his principal concerns:

- the disastrous impact that the present law has on otherwise law abiding, decent Australians, very few of whom are detected, prosecuted and convicted;
- the result that such people are forced into contact with a 'criminal subculture with which they must deal in order to obtain this drug' (*CPD The Senate)* 18 March 1982, 970).

Senator Tate's speech followed an earlier address to the Senate in which Senator Shirley Walters (Lib-Tas), the sole dissentient in the committee which drew up the discussion paper, explained her reservations. These included the concern about increasing the use of yet another drug in Australia's 'intoxicated society' and her special concern about the possible impact on motor vehicle trauma.

A new publication by the Advisory Council on the Misuse of Drugs in England has reached Australia during the last quarter titled *Report of the Expert Group on the Effects of Cannabis Use* (Home Office, 1982). The document collects a series of medical conclusions about the effects of cannabis. Generally speaking, the conclusions are cautious:

- though cannabis lowers blood pressure it is not considered of significant therapeutic importance for this purpose;
- there is no convincing evidence that there are harmful effects on respiration in the short or middle term, but there are no studies of long term use;
- there is some evidence of potentially adverse effects on reproduction in immunology;
- research on brain damage has so far proved inconclusive;
- its use as an anti-emetic in cancer chemotherapy appears to be 'most promising'.

Summing it up, the English committee concluded that:

- there was insufficient evidence for incontestable conclusions as to the effects of cannabis on the human body;
- much of the research undertaken so far fails to demonstrate positive and significant harmful effects;
- nevertheless, in a number of areas there is evidence to suggest that deleterious effects may result in certain circumstances;
- there is a continuing need for epidemiological research on cannabis; and
- therapeutic use of cannabis in treatment of some medical conditions may, after further research, prove beneficial.

On 23 March 1982, Lord Tweedale urged the House of Lords to call for the Government to 'legalise the smoking of marijuana so that its users would not be tempted to go into harder drugs' (*Times* 23 March 1982). Lord Cullen for the Government said that over the past few years there has been a substantial increase in the extent of drug misuse in Britain. He foreshadowed a major report on prevention, treatment and rehabilitation of drug users by the end of 1982 by the Advisory Council on the Misuse of Drugs. The sober, balanced report on cannabis use suggests that such a report will be of value beyond Britain.

Lord Cullen said that so long as there was substantial uncertainty about the harm caused by cannabis, the government's view was that any approach to the change of the present law should be 'cautious'. Similar views are obviously held by governments throughout Australia. But more data is now becoming available. A new Victorian survey reported in the Melbourne *Herald* (1 April 1982)

suggests that illegal drugs may be seen as a 'rescue to the unemployed'. The studies found that 45% of drug users arrested in three month periods in 1981 were unemployed. Of those arrested on marijuana charges, 40% were unemployed. The study was made by Dr. J. Hendtlass of the Victoria Police. Asked whether the fact that most persons arrested were under 30, indicated that people older than 30 gave up marijuana, Doctor Hendtlass was reported as giving the following, pertinent observation:

> I wouldn't say so. The drop in numbers is partly because the people you refer to are sitting at home having a joint. So you don't get picked up by the police.

even punishment. Also reaching Australia during the last quarter is a paper by a former ALRC Commissioner, Professor Duncan Chappell, 'Sentencing Drug Offenders in Australia: The Need for Fairness and Equality'. The paper was prepared for the symposium on international and comparative perspectives on the sentencing of drug offenders held in Canada in March 1982. Professor Chappell examines the numerous Royal Commissions and public statements in Australia about 'strong, firm and severe measures' to deal with drug offences in Australia, particularly drug trafficking. He calls attention to the gap in reliable data about sentencing of drug offenders in different parts of Australia. He refers to the ALRC interim Report *Sentencing of Federal Offenders* (ALRC 15) prepared by the ALRC division which he led in 1980. And he then concludes that 'disparities exist in the . . . severity of the sanctions imposed' on drug offenders by Australian courts. He acknowledges that for want of more reliable statistics the evidence of disparity 'remains largely circumstantial and impressionistic'. He lists various possibilities for achieving greater evenness in punishment of drug offenders (as indeed of other offenders). These include:

- informal practices and procedures of consultation among judicial officers;
- legislative imposition of determinate sentences;
- introduction of broad sentencing guidelines as recommended by the ALRC.

Professor Chappell says that until statistics are available and new procedures are introduced, disparities are likely to continue.

crime and punishment '82

> When I see the ten most wanted lists . . . I always have this thought: if we'd made them feel wanted earlier they wouldn't be wanted now.
>
> Eddie Cantor

politics of reform. In the last quarter, progress has continued in the negotiations between the Federal and State authorities in Australia concerning the establishment of a proposed national sentencing council. A council was proposed in the ALRC report *Sentencing of Federal Offenders* (ALRC 15, 1980). In a reply to a question from Mr. Ralph Jacobi MP (Lab-S.A.), Mr. Viner, on behalf of the Federal Attorney-General, told the House of Representatives on 12 May 1982:

> I have written to the State and Northern Territory Attorneys-General proposing the establishment of a sentencing council. The proposal envisages that the council would consist of Federal,State and Territory judges and that the ACT would be represented on such a council. Although the specific functions of the proposed council have yet to be agreed upon, I would see as the prime purpose of the council, promotion of greater consistency and uniformity in the sentencing of offenders throughout Australia . . . Differences in State and Federal criminal laws and procedures have in the past created problems for effective law enforcement . . . Establishment of the sentencing council is regarded as a particularly constructive reform.

Meanwhile, the Australian Law Reform Commission is pressing on with the sentencing project. In recent weeks two additional sentencing research papers have been published, each of them prepared under the direction of Mr. Peter Cashman and Ms. Concetta Rizzo — officers of the Law Foundation of New South Wales. In the sentencing reference, the ALRC is collaborating with the Law Foundation and the Australian Institute of Criminology in Canberra. The two further research papers are:

- ALRC Sentencing RP 9, Social Security Offenders.