buted to remote communities in parts of this huge country, rarely visited by whites.

lawyers' soft sell

> Lawyers do not take law reform seriously. They think the law exists as the atmosphere exists, and the notion that it could be improved is too startling to entertain.
>
> John Mortimer QC cited by Lord Goodman
> *SMH* 17 July 1982

the ads arrive. Just imagine the shock of some of the older and more staid members of the Victorian legal profession when they opened their edition of the prestigious Melbourne *Age* on 2 October 1982 and saw, for the first time, advertising by lawyers: scales of justice as a 'come on' to the potential client. The pshaws and gasps are still reverberating from the leather armchairs in some of Melbourne's top clubs. Take comfort. Victoria is not alone in this development. Under the new advertising code, approved by the Law Institute of Victoria, solicitors will be permitted to advertise in magazines, newspapers and journals details of their firms, the type of work done, hours of practice, foreign languages spoken and arrangements for the first interview. They will not be allowed to seek work from other solicitors. Ads will also be restricted to 120 sq cms — hardly space for a give-away bargain splash. President of the Law Institute of Victoria, Mr Alan Cornell told the *Age,* 9 September 1982:

> The new rules are a positive demonstration to the general public that we are prepared to deliver legal services at competitive prices, particularly conveyancing services.

One taboo, according to the Victorian rules is that signs on solicitors' offices 'must not be electrically or mechanically operated'. The flashing neon sign has not yet arrived. Developments elsewhere?

- In Western Australia, the President of the W.A. Law Society, Mr Rory Argyle said recently that the Society was considering what ought to be done on advertising by lawyers in the West. Mr Ian Temby QC, a Vice President of the W.A. Law Society expressed some doubts at the Winter Conference of the Society in Bunbury mid July 1982 whether it would be possible to draw a clear line between promotional and informative advertising. But he concluded that advertising was generally 'a good thing', expressing interest as to whether lawyers would avail themselves of the new rule.
- In New South Wales, in late August 1982, the State Attorney-General, Mr Frank Walker QC, tabled the latest report of the NSWLRC on the legal profession. The report is the third published in the course of the extensive inquiry into the legal profession by the N.S.W. Commission. A note on the first two reports is found in [1982] *Reform* 82. The third deals with lawyer advertising. It criticises present restrictions and offers specific recommendations:
  - proposing substantial relaxation of the restrictions on lawyer advertising;
  - suggesting specific limitations on advertising about fees;
  - offering special recommendations on lawyers claiming particular fields of expertise;
  - suggesting substantial changes in the present restrictions on public comments by lawyers, in order to enable lawyers to take a fuller part in the life of the community, especially in stimulating and contributing to public awareness of legal issues. At present lawyers in Australia are substantially restricted unless they comment anonymously or without disclosing that they are lawyers. Reports in the popular press suggest that Attorney-General Walker is planning early legislation to implement the proposals of the NSWLRC.

conveyancing again. An important book which became available in the last quarter tackles the related topic of competition within the legal profession of Australia (and other professions). Written

by economists John Nieuwenhuysen and Marina Williams-Wynn it is titled *Professions in the Market Place* (Melbourne Uni Press, 1982). The book offers a study of the legal, medical, accounting and dentistry professions. It compares the criteria for fair competition established by the Federal Trade Practices Act 1974 as it operates on corporations and competition within the older professions. The authors' thesis is that the loser, for lack of professional competition, is the client or patient and, in aggregate, the community. There is a sense of indignation at the attempts of the old professions to distinguish themselves from businessmen, tradesmen and people of commerce.

Special criticism is reserved for the legal profession's monopoly in paid land conveyancing in the Eastern States of Australia. Comparing the lower professional fees in Western Australia and South Australia (where lawyers must compete with land agents), the book urges the value of competition (within appropriate protections to the public) as the best means of disciplining healthy efficiency, including in the professions. The book is also of value as one of the first efforts by economists in Australia to look at the legal and other professions, from outside the assumptions that are accepted within the professions.

Meanwhile, a few practical developments on the conveyancing front:

- On 22 July 1982, the new Victorian State Premier and Attorney-General, Mr John Cain announced that legislation would be introduced in the next session of the Victorian Parliament to give potential home buyers greater legal protection and to cut conveyancing costs. Mr Cain said that the government would see how well the proposed standard form of contract worked before deciding whether to end the legal profession's monopoly on land conveyancing altogether. Mr Cain's comments followed observations by Mr L. Freeman, Managing Director of the Victorian Land Transfer Company describing as 'outrageous' charges made by solicitors for conveyancing in Australia. According to Mr Freeman, the amount of time actually spent by a solicitor on the conveyancing work for a $55 000 house was only 2.7 hours and for this he charged $616 (about $230 an hour) for the job.

- In New South Wales, the Law Society has disclosed that conveyancing, the life blood of most legal practices, has fallen by about 60% in the past year. Accordingly suburban and small city practices are often in trouble. The depressed property market has led to a decline in the normally profitable conveyancing work of Australia's lawyers.

brickbats and bouquets. The past quarter has seen the usual collection of brickbats and bouquets for the legal profession in Australia. A few developments:

- Top Sydney barrister Mr Michael McHugh QC, in a personal interview published in the *Sydney Morning Herald* was reported unconvinced by the NSWLRC proposal on reform of the legal profession — especially the Bar. Indeed, according to the report, his face 'seemed to cloud over' on the question of the proposals which he described as 'of no benefit to anybody'.

  > I take the view that it is in the best interests of the Bar that the matter be negotiated and there is nothing to be gained from a public slanging match with either the LRC or the Attorney.

- In a similar interview in the weekend *Australian* (11 September 1982) the President of the N.S.W. Law Society, Mahla Pearlman, argued for a 'strong and separate Bar' as 'absolutely essential for the just working of our legal system'. Some proposals of the NSWLRC would alter the present strict division between solicitors and barristers. Miss Pearlman, for one, is unconvinced.

- The subject of complaints against lawyers remains in the news. Mr Kevin Bell, Lecturer in Legal Studies at La Trobe University recently urged the establish-

ment of a single independent tribunal to deal with complaints against barristers and solicitors. (The *Age* 21 June 1982). Speaking for the Law Institute, Mr Gordon Lewis said that he agreed with the notion of a single tribunal but disagreed with the establishment of a new government bureaucracy.

- In Adelaide, the initiative of Attorney-General Trevor Griffin has resulted in the passage of a new Legal Practitioners Act with a novel system of handling legal complaints. The previous 'internal system' of the law society has been replaced by an independent Legal Complaints Committee. The first Secretary to the Committee is Veronica Whittaker. Mr Griffin announced (*Advertiser*, 28 June 1982) that the Government is about to appoint a lay observer, effectively a Law Ombudsman, to oversee the workings of the complaints committee and disciplinary tribunal.

- A story in the *Sydney Morning Herald* (2 October 1982) records the criticism by the N.S.W. Court of Appeal of the methodology used by the Solicitors' Statutory Committee investigating complaints against solicitors. The court in the case of Robert James Johns insisted on certain changes to the Statutory Committee's procedures. Just the same, not everyone is critical of the N.S.W. Law Society. Writing to the *Sydney Morning Herald* on 9 September 1982 S. van Dyke complimented the Law Society for the way in which it handled a claim on the Solicitors' Fidelity Fund following misappropriation by a solicitor.

- Following the report on the emergence of women in the legal profession (see [1982] *Reform* 107) it is interesting to note the result of the survey of young lawyers' incomes reported in the N.S.W. *Law Society Journal* June 1982, p. 305. The survey showed that lawyers aged under 36 earned an average of $18 800 a year in mid 1981 after an average of four years in the profession. But men earned an average of $2000 more than women, although they started practising at about the same salaries. Moreover, more women are working in industry and government than men, who tend to gain more appointments to law firms. Forty-six percent of female respondents to the survey said that they had experienced difficulties in relation to working conditions. Only 28% of male respondents had experienced similar problems. More women were disillusioned by the prospects of the future in the profession than was the case of male respondents.

- Problems of the legal profession are not confined to Australia. In Britain efforts are being made to terminate the legal restriction on the appointment of judges of the High Court of Justice only from amongst barristers. According to a report in *The Economist* (17 July 1982) an amendment to the Administration of Justice Bill pushed by the English Law Society to allow solicitors to be appointed was defeated by one vote at the committee stage. Solicitors are now appointed to the Circuit Court in England. But barristers in general have resisted what *The Economist* described as 'this modest threat to their closed shop'. The Lord Chancellor, Lord Hailsham sided with the Bar asserting that fewer young men would be prepared to embark on the risky career of the barrister without the attraction of a 'possible High Court judgeship at the end of the day'. *The Economist* was unconvinced. It was even undignified, declaring this argument 'bogus'.

> Top judges come straight from the top of the practising bar . . . all are selected in secret by the Lord Chancellor in consultation with his permanent secretary (a barrister) and the top judges (former barristers).

The Economist pointed to the significant decline (from 38% to 28%) of first class Oxbridge law graduates choosing the bar

upon graduation. It would be interesting to have a similar survey in Australia.

horse hair reform. Finally, news reports suggest that the Victorian Bar Council has voted to abolish formal court dress — wig, bar jacket, wing collar and neckbands, favouring only the wearing of a simple black gown. The Chairman of the Bar Council and former ALRC Commissioner, Mr Brian Shaw QC lamented the 'leak' of the Bar Council vote. Said Mr Shaw:

> If you publicise it at this moment you are likely to ensure that it is absolutely dead. It is essential that the matter be dealt with very tactfully, which will involve me going around to all sorts of people . . .

The spirit of freedom of information and open public discussion has, it seems, its limits in counsel's chambers. The new President of the Law Society of Queensland, Mr John Wadley in a feature item in the Brisbane *Courier Mail* (5 July 1982) expressed a personal view that the courtroom wig was archaic but that a simple gown should be retained as a uniform. Mr Wadley cautioned against lightly throwing away things which have been established and tried and trusted over the years. Australian reformers of horse hair should remember what happened in Ghana when The Redeemer, President Nkrumah ordered wigs out. The judges would not 'see' counsel without their wigs. So wigs remain to this day in the steaming climate of West Africa. An exotic relic of Empire. Like cricket and afternoon tea.

good ideas

It is impossible for ideas to compete in the market place if no forum for their presentation is provided or available.

Thomas Mann

special free trade. That great American jurist, Oliver Wendell Holmes Jr once said that the ultimate good is best reached by a free trade in ideas. But with Thomas Mann, we can ask, how will an idea (especially about law reform) triumph if it is unknown, unheard or hidden away in obscure texts? In civil law countries there is a better system for collecting at least the chief judicial proposals for law reform. Every year the highest court typically reports to the Head of State with a collection of the proposals for law reform made during the year. Some judges of the common law world have doubts about the propriety of commenting in the slightest way about defects in the law which come to their notice in cases before them. Many more would have hesitations about addressing proposals for reform to the elected government. It was not always so. David Pannick, Fellow of All Souls College Oxford, has drawn attention to the willingness of the early judges of our tradition to play a part in helping the other branches of government to improve the law. He notes Bacon's address to the judges in 1617 before their summer circuits when Bacon said:

> You must remember, that besides your ordinary administration of justice, you do carry the two glasses or mirrors of the State; for it is your duty in these your visitations to represent to the people the graces and care of the King; and again, upon your return, to present to the King the distastes and griefs of the people . . . and this makes the Government more united in itself.

Four years ago, the ALRC received the nod from the Federal Government (following consultations in the Standing Committee of State and Federal Attorneys-General) to collect major proposals for law reform. Many of these are from judges and most of them have a specific Federal content. They are now a regular part of the ALRC annual report to Parliament, being an appendix attached to the report. Only the chief points of the suggestion — whether by judge, parliamentarian, media editorial or ordinary citizen — are digested in the collection. So far, no parliamentary system has been adopted to process the suggestions. But there they are. Collected for posterity. They remain a useful check list for aspiring politicians and political law reformers concerning the possible directions of an effective legislative law reform program. Among the many law reform suggestions collected in the ALRC Annual Report 1981 (ALRC 19) were proposals on accident compensation, adoption reform, contempt of court, computer crime, de facto relations, firearms licensing, homosexual law reform, the law and artificial insemination, subpoenas and the law of standing.

A particularly happy feature of the new system is the appointment by many of the publishing houses and law journals in Australia of specific officers