procedures which might be regarded as less than perfect to today's lawyers. It may be better that thousands get to generally fair justice than that only tens get to exquisite justice — because only they can afford the costs and delays involved. The problem is not simply one of procedures. In many cases it rests on antiquated, or over-complex laws and on the present cost of going to law. On Saturday, the newly established Australian Institute of Judicial Administration will open its present operations . . . It is to be hoped that its choice of opening subject (judicial delay) reflects an appreciation that this is one of the greatest problems with present legal administration.

***n.z. call.*** Anxiety about court efficiency is not confined to Australia. On 1 April 1982 a leading Auckland lawyer, Mr Ted Thomas QC (past member of the NZPALRC) launched what the press described as 'a stinging attack on the High Court of New Zealand'. He accused the Court's Administrative Division of inefficiency and unnecessary delays which cost millions of dollars. He claimed that in the past three years there had been a noticeable increase in the delays between the times appeals were certified as ready for hearing and the date of hearing. He also mentioned a sharp increase in the delay in the giving of judgments. Mr Thomas was offering comments in a paper to the Auckland Chamber of Commerce in which he examined the implications of the High Court delays from the point of view of the commercial community of New Zealand:

> My argument is that delay is inherently costly and that much, if not all, of this cost is eventually borne by the community as a whole.

Mr Thomas is not alone in his criticism. East Coast Bay's Mayor Allan McCulloch accused the N.Z. judicial system of being 'irresponsible' in respect of two injunctions served on the city council. He complained of the long delay between the granting of the interlocutory injunction and hearing. He pointed out that the delay was costing ratepayers 'about a hundred thousand dollars' by the time the injunctions were dealt with. The criticism from across the Tasman illustrates the importance of bringing economists into consideration of court delays. Delay, it is increasingly realised, costs someone money.

## and a good judge too

Judges are no longer immune from criticism. It is directed at the process of their selection, their political values, their class bias, their knowledge, their wisdom and even their linguistic style, their spelling and their grammar. Their erstwhile friends pity them for the genteel poverty of judicial life . . . wigged and robed relics of another era.

Mr Justice G.E. Fitzgerald, Federal Court

***brigands and pop stars.*** The judge in English speaking countries was, until quite recently, typically something of a recluse. Many remain so. But in recent years, there is evidence of a much greater willingness of judges to indulge in public reflection about this most elite of professions.

The speech by Mr Justice Fitzgerald to the AMPLA dinner in Brisbane earlier this year, cited above, contained much wit and wisdom — and even a passing jab at law reform commissions (His Honour is a part-time member of the ALRC). Of judges, he said:

> Far from their being seen as a select group, divinely inspired, human frailties are not only attributed to them but often exaggerated, especially by those who know them well . . . The community stigmatises them as rapacious brigands with their hands deep in the public purse, vastly overpaid for work of marginal relevance, wigged and robed relics of another era. It is recognised that they know no law — if they did, they would be tutors at university, spokespersons on law reform, bureaucrats or Members of Parliament; or if they were really good, they would be commentators on public affairs programs on television.

One suspects a very large tongue in the judicial cheek in certain of these remarks. But Mr Justice Fitzgerald also made a number of reflective comments on:

- the impact of the growth of executive government and the 'orgy of legislation' on the role of the modern judge;
- the problem of judicial anonymity where 'anonymity is a cardinal sin in this age of pop idols and media personalities';
- the possibly counterproductive retreat to the neutralism of 'strict legalism' which may have contributed to a loss of judicial authority;
- the inability of some judges to 'shake off our colonial origins' in continuing to give English decisions a special superior status.

Reflecting on institutional law reform, the judge concluded:

> Even if it be assumed that organised law reform is capable of a better product than judge-made law, it is plainly established that neither politicians nor the general public are other than apathetic to the law and its reform. Their attention cannot be attracted to complicated, controversial and sensitive questions, unless they affect them personally, more especially unless they affect them financially.

***judicial t.v.*** But for a novel development of note, perhaps the most interesting of the past quarter was the decision of Mr Justice Murphy, now a senior Justice of the High Court of Australia, to submit to a major prime time television interview on the Australian Broadcasting Commission on 12 September 1982. Amongst points made by him in the interview:

- Australia has been too restrictive in the selection of judges, discriminating against women and other groups;
- though some lawyers are efficient, a lot are 'mediocre or hopeless';
- the legal system is at the heart of much of what happens in society and is essential to an understanding of politics;
- vigorous judicial dissents may come to be accepted later and are the judge's only opportunity to assert his view.

The Melbourne *Age* commenting (14 September 1982) in a lead editorial said:

> In the process of answering, he was refreshingly frank and controversial. Murphy's Law in the new updated version enunciated on Sunday night, states that far from being fair and just to all, the legal and judicial systems are often discriminatory, particularly where women, ethnic communities and the poor are concerned. Women and ethnic communities are badly under-represented on the Bench, while the sheer costs of litigation sometimes forces innocent people to plead guilty in minor cases rather than employ a lawyer to defend. Mr Justice Murphy, to his credit has opened up discussion on this and allied subjects. We hope it won't be the last time that he or his fellow judges do so.

***new high court.*** In the last quarter two new Justices of the High Court have been welcomed in Canberra, namely Justices W.P. Deane and D.M. Dawson. In his speech at the welcome in Canberra on 27 July, Mr Justice Deane referred to the present standing and 'impregnability' of the Federal Court of Australia — a quality which he ascribed in large part to the present Chief Judge, Sir Nigel Bowen. Sir Nigel was present with Sir Laurence Street on the High Court Bench at the welcome to the new judge. Mr Justice Deane then allowed himself a constitutional observation:

> The source of law and of judicial power in a true political democracy such as Australia is the people themselves: the governed: the strong and the weak, the rich and the poor, the good and the bad: 'all manner of people'. As the Australian Constitution itself makes clear, the Federation, in pursuance of which this court was established, was not a federation between the States of the Commonwealth. It was a federation between the peoples of the States. Under that Federation the grant of judicial power by the people was subject to what I see as fundamental constitutional guarantees, namely, that the power granted must primarily be exercised by an independent judiciary and that those exercising the power must act judicially.

The appointment of Mr Justice Dawson led some observers to point to his record as a so called 'states-righter' during his period as Solicitor-General for Victoria since 1974. But as the *Sydney Morning Herald* (3 August 1982) remarked:

> In the past there have been instances of judges determined to confirm past victories won as advocates and to right cases lost. But other judges given the freedom that the Bench provides, have surprised the community with a newly found breadth of perspective and judiciousness. Mr Earl Warren, the Californian politician who became the Chief Justice of the American Supreme Court is an illustrative warning against predetermining how a person will react when he dons the black gown.

The *Sydney Morning Herald* observed that there was evidence 'to suggest that the High Court is beginning to match' its sensitivity for the changing needs of the community 'to its concern for judicial excellence'.

***judges as writers.*** Given that few judges engage publicly in oral discussion of their works, most must depend upon the printed word as a means of contributing their piece to the legal fabric. Hence Mr Justice Fitzgerald's observations that judges in their genteel poverty, are castigated for their

'linguistic style, their spelling and their grammar'. A few recent observations on judicial expression are worth noting:

- Sir Roger Ormrod in his 'Judges and the Process of Judging' addressed to the Holdsworth Club on 7 March 1982 reflecting on the radical changes that have come about in the role of the judge and the processes of judging over the past 50 years. These changes, he declared had 'attracted astonishing little attention'. 'It is fair to say, I think that the judges of my youth would scarcely be able to find their bearings in court today'. Chief change? The growth of judicial discretion. On the subject of judicial communication, Lord Justice Ormrod points to the oral trial system in which the method of communication is so complex, depending not only on what is said but how it is said. Oral rulings and judgments by the judge involve him consciously or subconsciously 'building up the picture'. It is for that reason, that so much English judicial material is 'synthetic rather than analytic in character'.

- One English judge who has written a great deal, including outside the law, is Lord Denning. He delivered his last judgment in the quarter just past. With his departure from the Strand, it is the end of an era. According to David Pannick writing in *The Listenere* he will be remembered as a courteous, assiduous judge who revolutionised the law by articulating the feelings of the common man. And by contrast with his predecessors Lord Denning writes books which attract a wide readership. Denning, says Pannick, is no philosopher. 'The contrast with the great U.S. judges, Holmes, Cardozo and Frankfurter could not be stronger'. But in his judicial writings, he had a considerable influence on the development of the law.

- In a review of Chief Justice Richard Neeley's recent book *'How Courts Govern America'* (Yale, 1981), David Pannick comes back to the contrast between some of the top American judges and those of the British tradition. 'Judges' views on jurisprudence', he asserts, 'range from the elegance and the intelligence of the writings of Cardozo and Frankfurter to the crass banality of Judge Argyle's question in the 1971 Oz Trial, 'Who is H.L.A. Hart?'

- One of the hottest books on legal subjects to be launched in the United States since the stormy *'Brethren'* is now agitating judicial and other circles in that country. It is an examination by Bruce Allen Murphy of *'The Brandeis-Frankfurter Connection'* (Oxford, 1982). Although both distinguished U.S. Supreme Court Justices, Brandeis and Frankfurter were in their public and social utterances strongly in favour of judicial restraint. Murphy discloses, by examination of the correspondence held in the Library of Congress, how both judges behind the scenes, sought to influence U.S. Presidents on matters of high economic and other policy. Brandeis, for example, was an early Keynesian and in the midst of Depression sought to influence President Hoover's administration on economic questions. Frankfurter, a passionate Anglophile, appears privately to have advised President Roosevelt on circumvention of the Neutrality Act in the early days of the Second World War. This is a book which discloses the dangers of judicial use of 'private channels': possibly dangers greater to the judicial office than a few frank television interviews.

- In Australia, the new book by Laurence Maher and Michael Sexton *'The Legal Mystique'* (Angus and Robertson, 1982) offers comments, amongst many other things, on the narrow range of the background of superior court judges in Australia. Perhaps more thoughtful and telling are the comments of the authors on the way in which legal education has, until lately, encouraged the idea that the law is made of fixed and immutable principles, barren of policy choice. Change has a long time fuse lit in early education.

- In the *SMH* (28 August 1982) George Munster asked the question whether people of legal backgrounds and tastes will have any chance of 'getting literary'. According to Munster 'in Australia, we have been through a decade or two when lawyers themselves have written very little and thus have little empathy with writers other than journalists . . . The dirth of literate lawyers may be approaching its end. At the turn of the century our prominent lawyers revelled in literary accomplishments. Sir Samuel Griffith translated Dante and A.B. Piddington, discreetly waiting for the passing of the Chief Justice, quipped: *andante.*

***and overseas.*** In England, as has been noted, Lord Denning has bowed out, still in good form, with a few last judgments taking a blow at authority. A comment in the *Sunday Times* by Hugo Young asks whether Lord Justice Donaldson is 'the right man' to succeed Lord Denning as Master of the Rolls. He possesses, according to Young 'a quite unjudicial mania for administrative efficiency . . . His intellectual power is put to the service not of profundity or elegance but of relentless productivity, a feature he feels most other members of his trade pay far too little attention to. Meeting him, one might imagine he had by some mischance blundered into the law from an orderly calling like business or the army. He seems quite incredulous of the legal system's refusal to embrace the most elementary management principles'. At the very least there seems to be room for an occasional man of this temperament near the top.

In the United States, the appointment of the first woman Justice to the Supreme Court (Justice Sandra Day O'Connor) does not seem to have enhanced harmony in the court. According to a report in the *SMH* (29 September 1982) the Supreme Court of the United States 'is turning nasty'. The judges have started to snarl at one another in public. In language which seems unduly savage (and definitely ungallant by Commonwealth standards) Justice Blackmun dismissed one decision of Justice O'Connor as 'simply and completely misstating the issue'. Even worse! 'It only confirms how far removed from the real world she is'. Justice Brennan, in dissent, wrote of a recent opinion of the new judge that it was 'incomprehensible' containing 'tortuous reasoning'. But the lady would not be silenced. She retaliated that Justice Brennan's view 'carried more rhetoric than substance'. As for Justice Blackmun's decision, she declared it was 'an absurdity'. How pale by comparison seem the dissents and public comments of Australia's judges!

In New Zealand, the President of the Law Society, Mr Bruce Slane, welcoming Mr Justice Wallace said, according to the *New Zealand Herald* (31 July 1982), the independence and stature of the judiciary 'is one of the few safeguards the citizen has in this country'. The new judge, for his part, said that criticism of the legal system could erode public faith in its fairness. But the Chief Justice of New Zealand, Sir Ronald Davidson drew attention to the fact that:

> Those who in this day and age are prone to criticise the performance of our courts as they are prone to criticise other institutions of our democracy, have no cause to criticise the integrity of the judges.

Sir Ronald, in an earlier interview with the New Zealand magazine *Insight* (March/April 1981), identified as priority problems for New Zealand administration of justice:

- the backlog in civil and criminal cases;
- improved facilities and court buildings;
- penal reforms, especially because of the high cost of imprisonment;
- reform of family law, now partly achieved with the establishment of a Family Court.

## migrants' law

> Ethnics. It's a terrible word. But again they are dreadfully unrepresented in the ranks of the judiciary.
>
> Mr Justice L.K. Murphy,
> T.V. Interview, 12 September 1982

***promoting multiculturalism.*** On 25 July 1982 the Minister for Immigration and Ethnic Affairs, Mr Hodges, released details of a major package of welfare, education and legislative measures announced earlier in the day by the Prime Minister,