- 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,

Mr Fraser. The measures flow from the Government's consideration of the evaluation undertaken by the Australian Institute of Multicultural Affairs of the report of the Review of Post Arrival Programs and Services for Migrants in Australia. This report is generally known as the Galbally Report, after the Chairman of the Review and Chairman of the AIMA and leading Melbourne lawyer, Mr Frank Galbally. The evaluation is a major document of 350 pages. It describes the changing Australian demographic context and provides specific recommendations on such matters as:

- adult and child migrant education;
- translator and interpretation services;
- information for migrants;
- broadcasting and the arts;
- co-ordination of migrant assistance.

Of special interest to the lawyer is Chapter 12 on 'The Law and Civil Rights'. Following the evaluation, Mr Fraser announced that the Government would spend about $21 million during the next three years implementing the recommendations of the evaluation performed by the Council of the Australian Institute of Multicultural Affairs. The Attorney-General's Department is to prepare a report on all Federal legislation that discriminates against migrants. As a start, statutory provisions which give preference for Federal jobs to migrants who are British subjects over migrants from other countries are to be abolished.

In the chapter on 'The Law and Civil Rights', the evaluation makes two recommendations relevant to the Australian Law Reform Commission:

- First, it proposes that a reference be made to the ALRC to undertake a study of interpreter usage in the Australian legal system and to formulate principles, as a basis for Federal legislation and a model for uniform practice throughout Australia. This recommendation has been accepted by the Government. In some ways, such a reference will complement the work already done by the ALRC in its Evidence reference (but confined to Federal courts) on the right to an interpreter in court proceedings. Already, in an in-house research paper distributed for comment, the ALRC has suggested a change in the position concerning privilege of access to interpreters in court.

- A second recommendation pointed to the reduced protection for non-English speaking suspects in the 1981 Criminal Investigation Bill, when compared to the 1977 Bill, or the 1975 ALRC report upon which the Bills are based. By substituting a pre-condition of 'reasonable fluency' for the more imperative requirement 'fluency' in the English language (before an interpreter is dispensed with), the AIMA urged there had been a 'significant diminution in the protection offered'. The Government has decided that no amendment to the Bill should be made in light of this recommendation.

Worthy of mention, from a law reform point of view is the excellent document prepared by Mr Hodges summarising the Government's reaction to the recommendations of the review evaluation. Notable are the large numbers of recommendations accepted. It would be beneficial, indeed startling, if law reform reports could secure so prompt and positive a government reaction as has the AIMA evaluation. The report to the Miniser was dated 15 May 1982. The full Government response was issued in mid July 1982. A remarkable story, both in content and methodology. Mr Galbally was not happy, however, with the rejection of the proposal on the provision of interpreters during criminal investigation:

> I am sure the rejection of the recommendation by the Government was not intentional discrimination and they did not fully realise the importance of the difference [between the 1981 and 1977 Bills].

The Director of the Australian Greek Welfare Society, Mr Nick Polites added his voice:

> If you are talking about equality you must have equality of language. This was a very important reform which involved day to day living. Many people have come to us and asked us to ring their lawyer to find out what it was they had agreed to or signed because they were too embarrassed about their lack of fluency in English before the police. I am disappointed that the

provisions were not proceeded with and I would be very disappointed if they were not proceeded with because of police opposition.

reasonable man test. Discussion of the impact on the legal system of the changing racial, cultural and linguistic composition of Australia was the theme of the seminar held in Hobart on 28 July 1982 organised by the Ethnic Communities' Council of Tasmania.

Mr William Court, Registrar of the Family Court of Australia in Hobart, gave illustrations of a number of cases where embarrassment had restrained migrants from requesting the assistance of an interpreter. The ALRC Chairman, Mr Justice Kirby discussed the way in which the 'reasonable man' test, frequently adopted in Australian law, would need to be modified to take into account that the Australian population was no longer a homogeneous community made up only of English speaking people. He instanced cases involving the reasonableness of migrant conduct:

- in the refusal of surgery in workers' compensation cases;
- in response to provocation in cases of homicide; and
- in seeking insurance cover and filling out insurance forms.

Specifically addressed was the forthcoming report of the ALRC on insurance contracts dealing with the so called 'objective standard' imposed on the insured to disclose certain matters to the insurer. The ALRC Chairman said that such a standard could discriminate against those who had less than average education, were inexperienced or unaccustomed to business or who had an imperfect understanding of insurance forms and policies. Turning to the general question he added:

> The influx of migrants poses problems in our own legal system. We must meet these problems and adapt our system. In doing so we should not lose sight of the important values which we have inherited from the English common law and legal system. These include the principle of the rule of law, the tradition of dedicated, civilised, educated, independent and uncorrupted judiciary, hard working lawyers and the general acceptance that the law should strive after justice and seek to achieve orderly reform where injustice is shown. One of the great goals of our time should be the destruction of stereotypes and the acknowledgment, so far as may be practicable, of the idiosyncracies and varied capacities of our people. A law which is in tune with the variety of the Australian population will be worthy of celebration.

Not everyone liked this theme. An editorial in the Sydney *Daily Telegraph* (29 July 1982) suggested that the idea of diversity in the law 'should be greeted with a little caution'. Whilst conceding the need for migrants to be given more help in understanding the law, the notion of adapting the law to suit migrants was considered going too far:

> After all, migrants elect to come to Australia and choose to accept it as it stands — warts and all — in matters of law as in order areas . . . care must be taken in how far any modification of our law is taken. It may need a little fine tuning to suit our changing ethnic makeup — but that is all.

crimes commission controversy

It takes all sorts of people to make an underworld.
Don Marquis, *'Mehitabel Again'*, 1933

striking a snag. The proposal to establish a new National Crimes Commission reviewed in [1982] *Reform* 101 has met considerable opposition. In initial response, thundering editorials in the media came out generally in favour of the proposals and early in September 1982 the Prime Minister stated firmly his intention of pressing ahead regardless of opposition. First, a few sample editorial comments.

The Australian (6 May 1982) got in early. Whilst conceding the risks of McCarthyism, the editorial urged the need for an inquiry 'able to discover the truth while ensuring there are safeguards for ordinary citizens'. 'Those who have nothing to hide', declared the editor, 'should have nothing to fear'. A statement more out of line with the English accusatorial system of justice could scarcely be written.

The Melbourne *Age* came out strongly on 9 September 1982 with 'the case for a crimes buster':

> The Premiers have expressed concern about the risk of infringing civil liberties . . . The basic issue is whether existing law enforcement agencies are capable of