> judge and two specialist auditors who would be able to recognise quickly the critical points at issue and determine the verdict on them alone. A trial under such a system would not only be more professional, less laborious and less outrageously expensive. It would also be fairer to all concerned.

- In New Zealand, at the 1981 Law Conference, Mr. Justice Roper questioned aspects of the jury system as 'cumbersome and time-consuming'. He predicted that within 20 years juries would be unable to cope with the volume of criminal business. A 1981 amendment of the Juries Act of New Zealand did little in the way of radical reform. The most important provision was designed to ensure a better cross section of the community in jury panels. A 1978 Royal Commission in New Zealand rejected majority verdicts and reserve jurors in long trials. The New Zealand *Herald* again:

> Objections endure over costs, cumberousness, uncertainty or 'perversity' of verdict, lack of reasons, time taken and difficulty in dealing soundly or justly with amassed facts or complex issues. For all such flaws, juries do usefully ameliorate precise legal thought and judgment with lay views. On the whole, they work — and, in the circumstances they work better than any alternative advanced.

- In Britain, Lord Shawcross is reported in the *Times* (19 January 1982) as saying:

> It is often very difficult for a jury to understand what fraud cases are about. . . . Often the judges do not really understand it themselves. Or they are not strict enough and allow the defence counsel to confuse everyone and drag out the trial for a ridiculous length of time. It was quite impossible for a jury to cope with the case sitting for months on end.

- The present English Attorney-General, Sir Michael Havers QC, has made suggestions for improving the system of prosecuting fraud by ensuring increased co-operation between the police and the Director of Public Prosecutions. But in an article titled 'Fraud Trials — The Legal System Reaches Breaking Point' — journalist Margaret Drummond suggests that 1982 is already threatening to be a vintage year for City scandals eliciting the usual chorus of complaints about self-regulation not working (*Times*, 19 January 1982, 19). Dr. Michael Levi, Lecturer in Criminology at University College, Cardiff, comments on the need for a 'special jury' to deal with corporate fraud:

> The original idea of a jury in criminal cases was trial by one's peers — people acquainted with the customs of the area. Nowadays in fraud trials it is really not the case. Frankly even I would have difficulty in following some of the evidence. . . . I spoke to several jurors who had sat on major fraud trials. They said they felt completely disorientated and had been asked to deal with matters they felt they were really not able to understand.

Two ancient legal institutions under the microscope!

alcohol and drugs

> What contemptible scoundrel stole the cork from my lunch?
> W.C. Fields

random tests. One of the first questions posed for the ALRC related to the social response to alcohol and drugs in the Australian Capital Territory. The result was the report, *Alcohol, Drugs and Driving* (ALRC 4, 1976). The recommendations in the report were adopted by the Federal Government and form the basis of the ACT law on driving impairment by alcohol or other drugs. An issue specifically posed for the ALRC was whether random tests should be introduced. Whilst recommending a wider scope for permissible police testing of motorists (including outside hotels and clubs) the ALRC came down, on the available evidence, against random breath tests of motorists:

> It is traditional in British societies, before police intervention into the ordinary conduct of citizens is tolerated, that some reasonable cause to warrant a suspicion on the part of the police officer is generally required. This tradition, which is at the heart of our liberties, ought not lightly to be sacrificed. It ought not to be sacrificed at all, in this context, without the

> clearest evidence that the results, in a diminished road toll, warrant the departure from time-honoured legal requirements. Far from supporting such a conclusion, the preponderance of expert opinion before the Commission is to the effect that no long-term diminution in the road toll could be anticipated. We should not sacrifice precious rights without assurance of the most substantial gain (ALRC 4, xvii).

This view was adopted by the Federal Government in the legislation based upon the report. However, the road toll in Australia continues to rise. In 1981, the national road toll was 3,318 dead, a rise of 42 on 1980. This shocking loss of life, with the added impact of injury and disability, a good proportion caused by alcohol and other drug-impaired driving, has led to further calls in a number of jurisdictions in Australia for police powers of random testing. The calls have been encouraged by experience in Victoria, which was the first State to introduce compulsory seat belt laws in 1970 and which passed legislation permitting a form of random breath testing in 1975. Until the 1970 change, Victoria had been consistently above the Australian death average. Since then, it has been below. Pressure built up especially following a big dip in road deaths in 1980 (183 lower than 1979). This dip was attributed by supporters to random tests. The position is confused by an increase of 120 in 1981 and a precise examination of the impact of random breath test legislation has not yet been completed. Other factors may be affecting the Victorian pattern, including:

- introduction of low alcohol beer;
- spread of radar speed traps;
- improvement of roads and signals;
- introduction of compulsory rear seat safety belts.

But even if the evidence is still equivocal, the pressure continues to grow for the random test facility. In January 1982 the report of the Standing Committee on Management of the ACT House of Assembly report acknowledges the principles of available. The report shows that ACT deaths per 10 000 registered vehicles is below the Victorian level and well below the Australian average. The Federal Police supported the introduction of random breath testing considering that, although low when compared to Australia as a whole, the ACT road toll was still 'excessive'. The House of Assembly report acknowledges the principls of civil liberty and that it was easier to lose freedoms than to regain them. However, it concludes that random breath testing 'could have a positive effect on the road toll' although 'at the cost of a loss of individual liberty by some road users'. Balancing the considerations, the committee believed that the loss of liberty should be tolerated:

> The right to travel freely without being involved in an accident with an alcohol-affected driver was a major factor in the committee's decision to recommend the introduction of random breath testing. . . . The committee considered that the main aim of random breath testing is to deter people from consuming alcohol and driving on public roads.

An informal telephone survey conducted for the *Sun Herald* (7 March 1982) in New South Wales disclosed nearly 72% of those asked wanted random breath tests introduced. However the precise form of the question and conduct of the poll was not disclosed.

raising perceptions. Already the facility of random testing has spread to South Australia from 15 October 1981. The general media approach has been supportive of change. Casting aside the principle of legal restraint in police/citizen contact, the Australian newspapers have, with a single voice, called for random tests. The *Canberra Times* (3 December 1981) urged that random testing would raise the driver's perceived chance of being caught. It also pointed out that the Victorian Council for Civil Liberties had not received a single complaint about police victimisation:

> In any case whatever threat random testing might pose is small beside the threat posed by the offence to life itself. Driving a vehicle is not a right, like walking; it is a privilege conferred by society which requires that drivers be licensed. They have to prove competence through testing, and it follows that they have to be in control of their faculties and, therefore, not intoxicated. Random testing catches some drunks before damage is done, and it discourages other drunks from driving; it does not discourage, and it hardly inconveniences, the sober.

To the same point was the editorial in the *Australian* (2 January 1982):

> Drinking drivers are potential murderers. They must be treated as such. Non drinkers should be prepared to suffer the occasional inconvenience of a random breath test to help stop the carnage.

In New Zealand calls for the introduction of tougher drink driving laws have been made by Professor R.D. Batt:

> The Victorian press has persuaded politicians that their future would not be at risk if they accepted random testing. It was safe, politically, to support random testing, and all the talk about the rights of the individual was not very significant. When random testing was brought in, there was not very much reaction at all from the people.

Professor Batt predicted that random testing would come to New Zealand. He pointed out that one in five people born in New Zealand would be injured and one in every 150 killed in a motor accident before the age of 25, unless there was a better social and legal response.

marijuana laws. Also in the news during the last quarter was a discussion paper issued by the Australian Foundation for Alcohol and Drug Dependence. On the initiative of people such as Major General Sir William Refshauge, a past Commonwealth Director of Health in Australia, and the Very Reverend Canon Ian George, Chairman of the AFADD Social Policy Committee, a group of citizens with relevant backgrounds was brought together in a workshop in April 1981 to consider Australia's social policies on drugs. The workshop was chaired by Mr. David Biles, Assistant Director of the Australian Institute of Criminology; it included ex-Police Commissioner Ray Whitrod (SA), newspaper editor Ian Mathews (ACT), Professor of Community Medicine Narelle Lickiss (Tas) and ALRC Chairman, Mr. Justice Kirby. Also participating were representatives from trade union, Aboriginal, youth and other organistions. Senator Shirley Walters (Lib-Tas) took part.

The AFADD discussion paper urged the need for public discussion about drug policies generally in Australia. In particular it drew attention to the need for:

- more consistent application of Federal Government policies to discourage alcohol and tobacco use;
- a further inquiry into patterns of heroin addiction.

However, the tentative recommendation which attracted most public attention was a proposal that Australian law on marijuana should be changed. With the sole dissenting voice of Senator Walters, the workshop group expressed the view that possession and use of home grown marijuana should no longer be criminally punishable. It urged that other production should be prohibited, and health warnings and age limits imposed. A feasibility study was recommended to consider government control of marketing of marijuana, possibly by the CSIRO, in order to ensure that use of the drug was not promoted. The discussion paper specifically recommends laws on driving under the influence of marijuana and against advertising or promoting its use.

The AFADD discussion paper posed for community response the issue of whether the present criminal laws against the use of marijuana were effective and whether the price being paid by Australian society was 'worth it'. Amongst considerations mentioned in the paper were:

- The large-scale farming of marijuana is servicing an established large market. Surveys indicate a high proportion of young Australians especially are becoming involved in criminal conduct because of anti-marijuana laws, with consequent alienation from law-abiding behaviour or cynicism about the criminal process;
- The absence of complaining victims has given rise to many opportunities for corruption of public officials;
- The growing evidence of the involvement of criminal syndicates in marijuana marketing to service the large demand provides pressure on young people to become involved with peddlers of hard drugs;
- The diffusion of anti-drug efforts into concentration on marijuana, rather than on more harmful drugs of addiction is proved by police and court statistics;

- The need to try to enforce the marijuana laws has led to increasing demands for, and legislation granting, enhanced police powers, such as telephone taps, with consequent erosion of traditional civil liberties;
- The requirement to enforce a law disregarded by large numbers in society (some estimates put Australian users at a million) puts unreasonable stress upon law enforcement officials;
- A large number of people, especially young people now have criminal records for minor marijuana offences, which prevent or inhibit their employment, especially in the public sector, a serious disability in a time of unemployment; and
- Convicted offenders point to double standards, because of Australia's high dependence on, and social approval of, drugs other than marijuana.

On the other hand, the discussion paper calls attention to the uncertainties about the effect of long-term use of marijuana. The issue is posed whether, against the risk of a marginal increase in the use of yet another drug in Australian society, this is a price that should be paid in order to deal with the problems and dangers for the Rule of Law listed above.

going to pot. The reaction to the discussion paper was mixed. Serious debate was diminished because of the premature release of the paper by one media interest seeking a 'scoop'. The Federal Attorney-General, Senator Durack, said that the Federal Government would oppose any new move to legalise marijuana. He said that the Government's view, and his own view, was completely opposed to it. The Federal Minister for Health, Mr. Michael Mackellar, was reported as saying that changes in the law should not be made without widespread public debate. The Anglican Dean of Sydney, the Very Reverend Lance Shilton, declared 'I am very disappointed that such a responsible group of people could come out with such a recommendation'. The Assistant Anglican Bishop of Sydney, Bishop John Reid, declared that to decriminalise marijuana would be to 'give it some measure of acceptance'. On the other hand, a former Prime Minister, Sir John Gorton, observed:

> I don't think these recommendations could be implemented immediately, but it's bound to happen. I couldn't say when.

Shadow Attorney-General Senator Evans suggested that police should concentrate on cracking down on the trade in hard core drugs such as heroin. Senator Shirley Walters, whilst supporting other proposals in the paper, dissociated herself from the proposals on marijuana. The Sydney *Daily Mirror* concluded (5 March 1982) that caution was needed:

> This is an issue that is one of conscience and one of moral and social consequences. It must not be allowed to be pushed through hurriedly and made legal overnight. The decision-makers must heed the committee's call to wait for reaction from the community before the drug is made available to the public.

The *West Australian* (6 March 1982) said the paper had 'come as a bombshell':

> But this is no trendy pop lobby talking. The very composition of the committee, which includes widely respected experts from the fields of law, criminology and medicine, demands that its findings be taken seriously. . . . There are sound arguments for decriminalising marijuana. One of the most compelling is that it would deliver a blow to the criminal element that is steadily strengthening its hold on the marijuana market. . . . Decriminalisation would also end the distasteful practice of conferring criminal status on those using the drug. It is at least questionable that people should be saddled with a criminal record, and at times gaol, for what is basically a victimless crime. . . . But to confer legality on the drug would be too big a step whilst so little is known about the medical and social effets of widespread use.

The same conclusion was reached by the Melbourne *Herald* (8 March 1982):

> The argument on whether the possession, use and growth of marijuana should be made legal is partly a conflict between generations. Some young people cannot see the logic in treating pot smoking as a crime while alcohol, tobacco and tranquilisers are considered, if not harmless, at least acceptable. . . . But too little is yet known of the effects of marijuana in many areas. . . . True it is that alcohol and tobacco have much to answer

> for in terms of human misery. The point is: do we need now to add another problem to those we already have?

It was in the *Australian* (6-7 March 1982) that the plea was made for a sensible debate. Under the banner 'No Room for Hysteria in the Cannabis Debate' the editor put it this way:

> Any proposal for a major change in laws to which people have become accustomed provokes resistance. When the subject of those laws is as emotive as drug taking the reaction to proposed reform frequently borders on the hysterical. . . . The (AFADD) report does not suggest that the use of marijuana is desirable or that its consequences are insignificant. AFADD has concluded that the use of marijuana is so widespread despite existing legal prohibitions that there is need for a better means of regulating what has become a fact of life. . . . Its proposals are responsible and well reasoned and deserve the careful study of Federal and State Governments. There are no doubt many arguments that can be put forward against the recommendations. If these arguments are presented as reasonably and unhysterically as those of the Authority, we shall at last have a sensible debate on a matter which should concern all of us.

Copies of the AFADD discussion paper can be obtained from the Australian Foundation on Alcohol and Drug Dependence, PO Box 477, Canberra City, ACT, 2601.

criminal investigation debate

> How invincible is justice if it be well spoken
> Marcus Tullius Cicero, *circa* 40BC

angry seminar. On 6 February 1982 in Melbourne, a seminar on the Criminal Investigation Bill (see [1982] *Reform* 14) saw a vigorous debate about the merits, defects and room for improvement in this important reforming measure. The Bill is based broadly on the second report of the ALRC, *Criminal Investigation*. It has been introduced into Federal Parliament by the Commonwealth Attorney-General, Senator Peter Durack QC. In the run-up for the Melbourne seminar, Senator Durack said the seminar 'would provide an opportunity for public discussion and examination of the legislation before it came before the Parliament for debate in the coming session'.

The seminar was opened by the Minister for Employment and Youth Affairs, Mr. N.A. Brown QC, deputising for the Attorney-General. Mr. Brown, himself an experienced barrister, outlined the principal reforms effected by the Bill and paid tribute to the 'major contribution' made by the ALRC to this 'very important project'. Referring to the ALRC Chairman, he said:

> His Honour once deplored the fact that Criminal Investigation appeared to be the graveyard of law reform reports. At least the graveyard this morning seems a very lively place and this Bill a very robust and healthy infant.

Lively the seminar certainly was. At some times it required all the skills of Sir Maurice Byers QC, Solicitor-General, and Mr. D. Mackay, President of the Law Council of Australia (joint Chairmen) to keep it on the rails. The seminar was organised by the Law Council of Australia, the Australian Institute of Criminology and the Commonwealth Attorney-General's Department.

The first speaker, Chief Inspector Kel Glare of the Victoria Police, launched into the attack. In addition to specifying particular complaints about the 'biases and prejudices' evidenced in the Bill, he claimed that provisions in it were 'highly insulting' to policemen, notably an instruction to police in clause 7 'to comply with the provisions of this Act in exercising powers and performing duties as a police officer':

> On behalf of all law enforcement officers and law-abiding citizens everywhere, I ask that this Bill be consigned to its proper place — straight into the nearest garbage can. If legislators honestly believe their police are not to be trusted, then let them be courageous enough to stand up and say so. Do not be so insulting as to try to disguise that mistrust under the guise of 'safeguards'. The vast majority of police obey the law the vast majority of the time.

Senator Gareth Evans, Shadow Federal Attorney-General, pointed out that many of the criticisms voiced by Chief Inspector Glare, himself a lawyer, were directed at the law currently governing police. In many respects, the Federal Bill simply restated the present law and was not novel.

> You know as well as I do that the present law allows no