> privileges which competition and numbers must erode. All the Law Reform Commission is really doing is looking for a solution to the new economic climate of the legal profession so as to prevent the erosion of legal standards without supporting the old clubs. Whether it is possible for this to take place is doubtful.

taciturn enigma. Writing in the *Bulletin* (27 April 1982) the 'Officious by-stander', himself a Sydney barrister, suggests that the 'future market for wigs looks bright'. The NSWLRC's report on the legal profession, he declares, appears to have sunk without trace in the columns of the Press. Comparing the more conciliatory approach of the Law Society to some of the reform recommendations and the 'fairly taciturn' approach of NSW Bar Council President McHugh, the writer jests:

> the somewhat enigmatic McHugh presumably proposes to deal with the Government at a private level, relying on his excellent connections with the Labor Government in New South Wales.

The need for a more vigorous public posture by the Bar is said to be rumbling in the ranks in Phillip Street, Sydney. But at the other end of the spectrum of opinion, views have been expressed that the NSWLRC proposals do not go far enough or that they might not be implemented by the Government. On behalf of the feminist legal action group, Kim Ross wrote to the *Sydney Morning Herald* (10 April 1982) welcoming some proposals but adding criticisms on:

- the suggestion that public members on the regulatory body should not have voting rights;
- the retention of court dress;
- restrictions on solicitors representing clients in court.

On behalf of the Australian Legal Worker's Group, Mr. John Basten (*SMH* 12 April 1982) expressed fear that the New South Wales State Government would 'take the easy course' and provide only token public representation on the new regulatory bodies of the legal profession. Much more important, according to the ALWG, is the proposed establishment of a nine member Public Council on Legal Services most of whose members would be non-lawyers:

> The Public Council is, in effect, a continuation of the Law Reform Commission inquiry itself which, by its very process, has stimulated reforms ahead of the final reports. Now the Commission will be turning to other matters, as it should. The Public Council, with a strong component of public members, can act as a kind of ombudsman, reviewing the progress of reforms within the profession and advising the government. Without it, the reports would be in danger of coming to very little.

A last word? Richard Ackland in *The National Times* (18 April 1982) reported that prompt legislation to follow up the NSWLRC reports was rumoured:

> Overall the thrust of the Commission's reports seems to be most concerned about making this powerful, cloistered and venerable profession aware of and accountable to its consumers, the public.

lawyers and change

> The art of progress is to preserve order amid change and to preserve change amid order.
>
> Alfred North Whitehead

victorian lawyers. With the advent of the new Labor government in Victoria under Mr. John Cain, the NSWLRC recommendations on the legal profession probably take on a greater significance for the lawyers of that State than previously. Commenting on the change of State Government, virtually coinciding with the delivery of the NSW reports, John Slee, legal correspondent for the *Sydney Morning Herald,* observed:

> Significantly, the new Labor Premier of Victoria, Mr. Cain, a former member of the ALRC, said on Tuesday his government would examine the New South Wales reports closely to see whether their recommendations should be applied in Victoria.

According to a report in the Melbourne *Age* (7 April 1982) Mr. Cain said that in the light of the New South Wales inquiry Victoria did not want to be 'reinventing the wheel' by holding its own investigation. 'But what we will be doing is closely examining the recommendations at the earliest opportunity'. Mr. Julian Disney, a member of the NSWLRC, said that most of the issues dealt with in

the reports of the Commission also arose in Victoria. In the course of the inquiry he had looked at the operation of the legal profession in Victoria as well as in other parts of Australia and overseas. 'I have seen no evidence to indicate that the need for greater public accountability is less in Victoria than in New South Wales. In particular the creation of a body such as a Public Council would be a most valuable step', he said. Commenting on the possible export of the New South Wales ideas across the Murray River, the Chairman of the Victorian Bar Council, Mr. Brian Shaw QC (also a past ALRC member) told the *Age* that the bodies proposed by the NSWLRC would be 'just another bureaucracy'. Mr. Shaw rejected the notion of public representation on the Bar Council of Victoria:

> Why should the public be involved in when the Bar dinner is held and how a Barrister should be accommodated and all the one million and one domestic issues which the Bar Council considers?

Meanwhile, the first newsletter of the Society of Labor Lawyers in Victoria (March 1982), commenting at that stage on the NSWLRC discussion papers, lamented the failure of the papers to generate much reaction in Victoria. It commented:

> One cannot but agree that some of the [restrictive] practices do impede the efficiency of the profession but where to start on reforming the profession is a difficult problem. In the longer term, the Commission is clearly looking to change being forced on the profession from above by its proposal on the general regulation of the profession.

Interestingly, this insight reflects the comment of the *Australian Financial Review*. So does the final conclusion of the Society of Labor Lawyers in Victoria:

> The suggestions . . . present a challenge because in general they seek to make the profession more accessible, efficient and accountable to the public. They suggest that the existing governing structures of the profession have failed. Lawyers will ignore the recommendations at their peril.

lawyers' moves. A few other developments concerning the legal profession in the last quarter can be mentioned.

- A second report of a research project on lawyers in the Victorian community has now been published by the Victoria Law Foundation. Titled *Victoria's Lawyers* the work by Margaret Hetherton supplements the 1978 report of the Victoria Law Foundation on its survey of the legal profession. Amongst other things, the volume provides for the first time in Australia a detailed account of the position of women lawyers in the legal profession (see below p.106). The book identifies various specialities into which lawyers are increasingly being drawn, including property, personal injury, commercial taxation or workers compensation fields. The distinctive work, social backgrounds and outlooks of lawyers in these specialities and their implications for legal professionals in the wider community, are discussed in detail in this new book.

- In late April 1982 the Attorney-General for Western Australia, Mr. Ian Medcalf QC, sounded a note of caution concerning the relationship between legal aid bodies and law reform. Drawing on many years of experience as a legal practitioner, Mr. Medcalf was speaking at a ceremony to mark the fourth anniverary of the Legal Aid Commission of Western Australia. (See *The West Australian,* 24 April 1982.) Mr. Medcalf said that the client's interest must not be submerged 'in any social design or plan for law reform or ulterior considerations — no matter how well-intentioned'. As reported, the Director of the Legal Aid Commission, Mr. L.W. Roberts-Smith, said that he agreed that lawyers should not try to use their clients to effect law reform when 'what they do is not in the best interest of the client'. However, he pointed out that if the client wishes to take action, consistent with seeking a reform in the law or highlighting a deficiency, this would be perfectly acceptable. NSWLRC Chairman Professor Ronald Sackville has often urged that legal aid bodies should occasionally undertake test cases, designed to produce

changes in the law. The ALRC inquiry into reform of the law on standing and class actions also raises the issue adverted to by Mr. Medcalf in Perth. Just as *Reform* was going to press came the news of Mr. Justice Mason's judgment in the High Court of Australia, rejecting an application by the Tasmanian Wilderness Society (for an injunction) to restrain Federal loan funds going to Tasmania for the flooding of the Fanklin River. His Honour's observations on standing will be closely studied by the ALRC, amongst others.

nz changes. In New Zealand a number of developments have occurred in the legal profession that should be noted. On the submission of the New Zealand Law Society, the government recently amended the Queen's Counsel regulations so that it is no longer mandatory for QCs to appear with a junior in the superior courts. The past president of the New Zealand Law Society, Mr. Tom Eichelbaum, himself a QC, supported the change. How far it has led to the change in practice is not yet known. Another change proposed by Mr. Eichelbaum, the establishment of a legal services advisory council with strong lay participation, failed to secure support. The Council of the New Zealand Law Society decided instead to include three lay members on a future planning committee of the Society. In June 1981 the Council resolved that it was in favour of dispensing with wigs and gowns in the New Zealand Court of Appeal. Apparently that Court is divided on the issue. The Law Society has endeavoured to persuade the Court to agree to a trial period in mufti. So far, no news. Finally, a New Zealand Law Foundation has been established. At the launch, the N.Z. Minister of Justice, Mr. Jim McLay, had a few words to say about law reform in New Zealand. He expressed the hope that there would not be the development of 'an alternative law reform system operating independently from the standing Law Reform Committees'. He acknowledged that law reform was not 'the exclusive province of any particular group'. However, he was concerned that funds available for law reform should be spent 'for the best possible advantage'. 'While I can see a law reform resource of the type that appears to be in contemplation [in the Law Foundation] being potentially of considerable value, I would strongly recommend that it works closely with existing research and reform machinery'. The New Zealand Law Society donated $10 000 to the establishment of the foundation and the cheque was handed over by Mr. Eichelbaum to the chairman of the Foundation's Trustees, Mr. L.H. Southwick QC (*Law Talk* 146,1).

twin evils. Returning to the May 1982 speech to law graduates at the University of New South Wales by the Chief Justice of Australia, Sir Harry Gibbs, which was noted above, it is worth adding the passage, given wide publicity on the radio, in which Sir Harry Gibbs referred to some of the challenges before young lawyers in Australia today:

> The main criticisms levelled at the law have always been technicality, cost and delay. The reproach of undue technicality is not one than can fairly be levelled at courts and lawyers in Australia today. The same unfortunately cannot be said of costs and delay, twin evils which go together . . . It is fair to say that most, if not all, courts have made and are making a determined effort to expedite the hearing and determination of cases and have achieved some success in doing so. One problem that tends to frustrate these efforts is that cases, both civil and criminal, seem to be taking longer and longer every year. Trials of a kind which in the experience of many of us on the bench might have been completed within weeks at most, now take months or even years. This phenomenon is not due solely to the increasing complexity of modern life. The profession must take much responsibility for it. It seems easier to deny every allegation than to refine the issues so that only those really in dispute are contested, and easier to put before the court every scrap of available evidence than to decide what is relevant and what is not . . . The members of the profession alone can provide a cure for this malady. No remedy will be found by turning the legal profession into a bureaucracy. The remedy is the determined and conscientious application of forensic skill, which members of the profession themselves alone can furnish.

A partial remedy to supplement professional skill may also be found in technological change. That well-known correspondent from London in the pages of the *Australian Law Journal,* Theo Ruoff has written a new book titled *The Solicitor and the Silicon Chip.* In it, there is explained the way in which computer and word processing procedures can help to reduce costs and promote efficiency in

the lawyer's office. This procedure of computerisation and its impact on the law was also discussed by Mr. Justice Kirby at a Housing Cost Conference held in Adelaide on 17 April 1982. He predicted that there would, in due course, be a fall in legal fees for title transfer conveyancing as a result of:

- computerisation of land titles and relevant land data;
- introduction of greater competition between lawyers;
- introduction of advertising by lawyers, including of their fees;
- possible introduction of competition of lawyers with land agents, such as already exists in South Australia and Western Australia but not the other states:

> Within 10 — or at the most 20 — years a very great proportion of Australia's land title and related data will be on computer. The tedious, time consuming attendances, scrutiny and correspondence which are presently cited to justify the significant professional costs may, to a very large extent at least, be reduced to the non-professional tapping of a few keyboards and the automatic printout of aggregate data that facilitates expedites and cheapens the process of land conveyancing. This is not a dream world. It is not science fiction. Torrens, as he contemplated the dream of the future city Adelaide, could well have had the glint of a computer in his eye. The grid procedure lends itself to computerisation, by its central registry, its system of registered transfer and its guaranteed title, open to public inspection.

judicial power?

> Nowadays going to the bench does not change your life greatly. Like anyone else, a judge these days spends his weekends watching footy or painting the house.
>
> Mr. Justice Speight, New Zealand High Court, on his retirement 1982

christian virtues. Mr. Justice Speight, whose observations on his retirement are quoted at the head of this piece, retired after 15 years on the bench, aged 60 and with a potential further 12 years of service ahead of him. (In New Zealand judges retire at 72.) Like Mr. Justice Xavier Connor, who recently retired from the Federal Court of Australia and Supreme Court of the ACT, Mr. Justice Speight went early. 'I just feel I have had enough', he told journalists. It remains to be seen whether, like Justice Connor, he takes on further public duties. The prospect of a peaceful retirement for the Australian judge receded when he was called back to service by the new Victorian Government to head up an inquiry into casinos and the reform of the law of gambling in Victoria.

But the retirement of the antipodean judges looks startlingly premature when measured against the announcement of the late May 1982 that Lord Denning, Master of the Rolls in England was quitting official office at the age of 83. Lord Denning had boasted that he knew every Christian virtue save retirement. The circumstances of his announced retirement were typically controversial. A further book, his third since his 80th birthday, titled *What Next in the Law* was withdrawn by the publishers after two black jurors in a Bristol riot threatened to sue the judge for libel. In the book, Lord Denning had suggested that juries should no longer be selected at random because some racial minorities in Britain had 'different morals' that could lead them to defying the law and being more likely to acquit the accused. The Society of Black Lawyers in London acknowledged that Lord Denning had acted honourably in withdrawing and that his was the retirement 'of a legal giant'. According to Crispin Hull, legal correspondent in the *Canberra Times* (1 June 1982), 'Christian morals and seeing red at the sight of unions were Denning's weak points as a judge. His views on these topics were so strong that his judgments sometimes verged on evangelism, a trait in the judiciary neither expected nor welcomed by the community'. Yet Hull acknowledges that Lord Denning was magnificent in his use of the English language, frank in his identification of public policy reasons for developing the law and determined to press on with law reform from the bench because of inadequate attention to reform by succeeding governments.

> Lord Denning's power will live on in the law reports. The cases he has decided will affect not only future litigants, but, because many actions of people and companies are influenced by the state of the law, they will affect all the travellers on the Clapham bus, whether they know it or not.

Before the announcement of Lord Denning's retirement, the Governor General of Australia Sir