



THE Reformer

Montreal Conference
8 - 12 August

THE INTERNATIONAL SOCIETY FOR THE REFORM OF CRIMINAL LAW

Feb. 2004

SOCIETY CONFERENCE OPENED BY INTERNATIONAL CRIMINAL COURT VICE-PRESIDENT AND DUTCH ATTORNEY GENERAL



I - r: Prof. Justice J. Nijboer, Mme. Justice A. Kuenyehia, Hon. J.P. Donner, D.J. Bugg QC

Opening Remarks by Mme. Justice Akua Kuenyehia,
*First Vice-President, International Criminal Court,
The Hague, Netherlands*

This is a very timely conference. The convergence between different systems of criminal justice can be seen in a number of fields. Criminal law practitioners and members of the public are increasingly aware of other criminal justice systems and of the different answers that these systems provide.

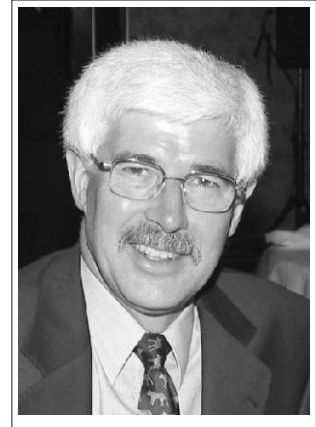
The world is, as we are constantly reminded, getting very small. There have been increasingly sophisticated comparative analyses of different

judicial systems. I feel this program where you will be discussing some of these comparative developments is a significant step. There has also been a push for the harmonization of the principles of criminal law. Many basic principles of human rights for example are now protected by regional or international treaties. These formal developments are matched by greater cooperation between different professional associations epitomized by the work of the International Society for the Reform of Criminal Law.

Another important engine for the convergence of international criminal law have been the international criminal tribunals. These organizations have

“Opening Remarks” cont’d on Page 4

Message From The President



Michael Hill QC concluded his 'Message from the President' (*Reformer*, March 2003) thus "The Hague will also be my last Conference as President of the Society. I have given notice of the decision to the management committee and the whole Board.....".

Sadly Michael, who knew he had cancer when he published that 'Message', died in the week before the Conference. Michael had invested much of his time and energy in to the Conference agenda and its planning. (He was to speak or publish papers on 5 separate occasions at the Conference). He would have been more than satisfied with the result. He cautioned us, in his message, to not expect instant solutions and those who attended The Hague would agree that the comparatives left us better informed but aware that the cultures of both systems do not readily lend themselves to easy solutions. This issue of *The Reformer* will cover the conference and I will conclude my comments on it by thanking the Organising Committee, particularly Hans Nijboer, Livia Jakobs, and Henk Marquart Scholz, and Don and Kathy Sorochan for their contributions to this successful Conference.

In August we will meet in Montréal, Canada. Planning is well in hand and you should have received the advance copy of the programme. I urge you to make plans now to travel to Montréal in August. If that is not possible, please encourage others in your jurisdiction to attend. The theme of the Conference, "**Keeping Justice Systems Just and Accountable :A Principled Approach in Challenging Times**" will incorporate components of interest to all criminal justice professionals.

You will see that the membership renewal letter outlines our implementation of 'organisational' membership which is aimed at encouraging more members of groups or organisations to participate in the activities of the Society. The purpose of organisational membership, which I outlined to the Board at our meeting in The Hague, is detailed in the Treasurer's membership renewal letter on 20th December. If you wish to take out membership for a group or organisation (e.g. a Court, Law School, Legal Aid Office or Law Firm) then one primary membership fee of CA\$300.00 is payable. Membership may be in the name of the group or organisation, or a designated person. All subsequent members in that organisation or group may subscribe as a Group Member for the reduced fee of CA\$80.00 per person. Group members will have all the

privileges of full membership in the Society including discounted rates at Society Conferences. There will however be reduced entitlements to copies of the *Criminal law Forum*, which Don Sorochan details in his letter. I encourage you to consider this new membership facility, it will provide an opportunity for more people to participate as members and create better continuity of representation of organisations and groups. The Society is the only remaining international organisation which represents all professionals in the Criminal Justice System.

The Young Lawyer programme continues to develop and I will be writing to the Young lawyer representatives about the 2004 project. I want the Young Lawyers groups to examine the Legal Aid services in their jurisdictions to develop an international comparative for our consideration. The debate about the provision of funding for adequate representation of people before Criminal courts and the administration of Legal Aid in all jurisdictions is one to which the Society should contribute, and an excellent starting point will be a contribution from the Young Lawyers of the Society.

I have also suggested to the Board that the Society should consider holding Regional Symposia in an attempt to extend the work of the Society and make the product of the Conference and other Society research available to members from regions not able to attend the Conferences. I would welcome your input or comments on this proposal. Obviously the principal activity of the Society will continue to be the Annual Conference, but there is scope for this expansion of activity if we have support at a regional level.

In conclusion, I wish to acknowledge the significant contribution of Michael Hill QC to the establishment and development of the Society. Michael's work was acknowledged at the Conference and the Society will make a lasting memorial to Michael later this year. To Kitty and the family, I once again convey our sympathy and the positive reflection of so many happy and productive hours spent with Michael in the work of the Society.

I look forward to seeing many of you in Montréal.

Damian Bugg QC

The International Society for the Reform of Criminal Law wishes to express its gratitude for the generous support for The Hague Conference from the following :

Royal Dutch Academy of Arts and Sciences

Ministry of Justice of Netherlands

Dutch Bar Association

Council of Procurators-General of Netherlands

Council for the Judiciary of Netherlands

Nijhoff Publishers

The Society extends its thanks to the following lawyers and law students who acted as Rapporteurs at the Plenary Sessions during the conference :

Martine Hallers, Netherlands, Carolien Noorduyn, Netherlands, Frank Geelhoed, Netherlands, Erika Schulten, Netherlands, Ard Schoep, Netherlands, Cornée Royackers, Netherlands, Lucy Robb, Australia, and Caroline Buisman, Netherlands

The Secretariat of the Society is grateful to the following people who provided assistance prior to and during the Conference: C. Joubert, E. Jakobs, J. Bugg, J. Cowdery, S. Gainer, J. Finch, S. Conroy, D. Hawthorne, J. Pothier, D. Stewart, A. Demerdijan, and others whom we may have overlooked for this listing. Special appreciation to Maria Dool of Leiden for leading the Accompanying Persons tours.

The Society also wishes to thank Kathleen Macdonald of the I.C.C.L.R., Vancouver for her invaluable assistance with this conference, and with many other conferences over the past 10 years. She has served as a valuable member of the teams planning and executing the conferences.

“Opening Remarks” cont’d from Page 1

provided a fascinating opportunity for practitioners from many disparate legal systems to work together and observe first hand the different practices and conventions of their colleagues.

Those of us working at the ICC will develop the first permanent international culture of criminal justice by drawing on the best from all the different systems of the world and from other international tribunals. The ICC will also launch another stage of harmonization of the standards of international criminal law through the mechanisms of complementarity. Complementarity means that the ICC will not intervene in a situation unless the appropriately involved jurisdictions are unwilling or unable to try cases themselves. In order for a system of complementarity to function, every state that has ratified the ICC statute must introduce legislation prohibiting the crimes of genocide, crimes against humanity and war crimes. This will mean that the international criminal court and the courts of various nations with very diverse judicial cultures will be applying the same laws that prohibit these terrible crimes. This will create a network of national and international courts and I hope will generate powerful judicial synergies.

The process of convergence needs to be conducted thoughtfully and with care. That is why the discussions that you will have throughout this week are both important and timely. If we learn from each other, then all systems of criminal justice, both national and international, must benefit. It is my greatest pleasure to declare this conference formally open.

Opening Remarks by mr Jan Pieter H. Donner,
Minister of Justice of Netherlands

Reform of criminal law is one of the perennial projects of human society. Throughout the ages, society has been faced with the dilemma between the need to use violence in preventing and repressing crimes against life, liberty and property, and the need to moderate the use of violence in order to limit its disrupting effect on civil peace.

In all ages the use of force and violence to punish crimes has prompted people to look for better and more civilized alternatives. Almost all the great

legislators in human history have contributed to the development of criminal law Moses, Hammurabi, Solomon, Justinian and Napoleon. We've come a long way. It hasn't been an easy journey but it is a measure of the progress that has been made that the norm “an eye for an eye and a tooth for a tooth” which was originally intended to moderate and contain the violence of private revenge is now considered a monument of primitive harshness.

The twentieth century has seen a growing divergence of criminal and penal law as governments were



I - r: H. Marquart Scholtz, Hon. J.P. Donner

applying new scientific notions to national problems according to their own political and ideological choices, a development that has been slowed in the last half century by the acceptance of minimum standards and the emergence of international fundamental rights. But only in the last quarter of a century has this process of nationalization of the criminal law been reversed under the influence of the increasing intensity of international contacts, the growth of international markets and the emergence of international criminality. Nowadays, judicial cooperation, the development of bilateral or multilateral relations and agreements and the implementation of international agreements in the field of criminal law takes up a major part of the time and attention of national governments.

Both the international character of your Society and the theme of your conference illustrate the increasing importance of the international dimension in criminal law and the growing need for international discussion of the problems of criminal justice in our national societies. Terrorism, international criminality and the almost limitless possibilities to evade jurisdiction by crossing national borders constitute an increasing problem for national law enforcement.

Bridging the gaps between national authorities and divergent national legislation is indeed one of the major questions that requires our attention. Yet it is not the only question that is relevant when speaking of convergence. All over the world, criminal justice systems are confronted with double jeopardy of ultra-extension and of diminishing results. On the one hand, criminal law is used as a means of social control in an ever growing number of situations, yet on the other hand, we see that despite ever increasing efforts of enforcement and more severe punishment, criminality is almost everywhere on the increase. In practice, governments are confronted with growing numbers of criminals that prove to be resistant to reform and improvement. In view of this double jeopardy of the criminal law systems, the question of alternatives both for the use of criminal law as a means of social control equally deserves attention when speaking of convergence.

Improved international cooperation in fighting criminality and greater cohesion between national criminal law systems seems, however, to be the most apparent and immediate benefit of convergence. Yet, I doubt that it will prove to be adequate or sufficient because the function of criminal law is different from that in legislation in other areas of society. Where the law regulates social life and people's behaviour, harmonization or unification of law is a means to create greater uniformity in social life and thereby to improve international economic or social integration. Criminal law, however, is not primarily directed at regulating social life. It establishes, of course, certain norms of behaviour but criminals wouldn't be criminals if they would be willing to observe these norms. Criminal law, therefore, is primarily directed at regulating the actions and decisions of government agencies in fighting criminality. It identifies the crimes and empowers, regulates and delimits the investigation, prosecution and punishment of these crimes by the police, prosecutors and judges.

Social, political and cultural factors make national criminal justice systems have, of necessity, a distinct identity. Eliminating differences between national systems could, therefore, result in making each less adaptive to the conditions under which each has to operate and thereby diminish their effectiveness. Respecting the essential particularities of national systems while diminishing the effective differences is an obstacle to effective cooperation and is therefore a special aspect in this field of international cooperation.

Convergence, harmonization or even uniformity of criminal law is not an end as such. The real question is

how cooperation can be improved and to what extent this requires a greater approximation of criminal law and procedure. The bulk of criminality will probably remain of local and national character. Therefore the effectiveness of criminal law within the national context should not be subordinated to demands of the pursuit of harmonization if it is not justified by the need to improve cooperation and to create effective links between different systems.

Borders which no longer constitute an obstacle for criminals and criminality will always be an absolute barrier to judicial and jurisdictional powers. This implies that where cooperation no longer provides an effective and adequate answer to the problems of international criminality more fundamental changes will have to be considered because the gaps created by the limits of national jurisdiction can only be effectively bridged by the integration of executive or judicial agencies or even the integration of jurisdiction.

In this context, I would like to draw your attention to a proposal that the Dutch government introduced in the so-called European Convention. We proposed to introduce in the treaty a legal basis that would enable the Council of Ministers to decide, by unanimity of course, on the establishment of certain integrated authorities, functions or jurisdictions for certain crimes. So far, this proposal has not yet been adopted but I hope that a discussion of the merits of the proposal will continue.

Reform of the criminal law is a never ending project because society is continuously changing. Each time has its own questions and problems that have to be solved. There is no panacea. Convergence in certain respects is necessary. In other respects it can help. But it is only part of the answer. It does not solve the jurisdictional problem and it does not ensure that national criminal justice systems cooperate effectively. We are only at the start of a new development. It all starts, however, with a common perception of the problems and an exchange of ideas on how to deal with them. That is the purpose, and great benefit, of conferences such as this one. I wish you a fruitful and creative debate.

THE FOLLOWING ARE SUMMARIES OF PLENARIES 3 - 6 OF THE 17TH INTERNATIONAL CONFERENCE

PLENARY 3: DEFENCE AND DEFENCES

Chair: Dr. Chantal Joubert

Summary prepared by Carolien Noorduyn, Netherlands

Prof. Ken Gallant, University of Arkansas at Little Rock, USA, held a general introduction on the disadvantages of the defence and the defence counsel in relation to the prosecution. He mentioned the differences in this respect between countries that have held on to a common law system and countries based on a continental system. He described the phenomenon of the way various countries, after the Second World War, started to adapt laws that contain individual protection rights of the defendant in order to balance the rights between defence and prosecution. In many statutes is found a certain minimum level of a human rights guarantee of the accused, however this is not sufficient to fully compensate the drawback of the defence. Prof. Gallant pointed out that the international tribunals have actually followed the same pattern. In the very beginning not much attention was paid to substantive human rights of defendants, whereas nowadays more and more laws that protect the individual rights of the accused are implemented in the statutes of the international tribunals. However, in Prof. Gallant's opinion too many disadvantages and difficulties still exist in order to carry an equivalent defence. For instance the ICC; the ICC-statute provides for defence counsel in the context of a hybrid civil law-common law system of criminal procedure. It is strong in many areas and will provide substantial rights to those who are investigated and prosecuted by the ICC. The statute as it stands, however, does not give the defence adequate authority to investigate the facts of cases in the territory of concerned states. Nor does it explicitly provide a right to adequate funding of defence investigation services for those accused who are unable to afford an adequate investigation. According to Prof. Gallant the court would be strengthened substantially by the addition of a Bureau of Defence Counsel. He finished his speech by stressing the importance of the protection of the individual rights of the accused and suggested the establishment of an international defence-bond.

Nico Jörg, Advocate General, Dutch Court of Cassation, The Hague, Netherlands, started his speech by mentioning that for both the adversarial and the inquisitorial systems it is fundamental that the truth should be established in what is regarded as a fair, and therefore socially legitimate way. The systems differ in their fundamental assumption as to the best way of going

about things. After the brief introduction Judge Jörg discussed various aspects (the dossier, the investigating judge, disclosure, defences, right to silence) with regard to the position of the defence (defendant) in a system with an inquisitorial style and also in a system that uses the adversarial model. The inquisitorial style corresponds with a positive image of the state and a maximalist view of its functions whereas in the adversarial model the presentation of the case is completely left to the parties and the judge solely fulfils the role of an umpire. According to Judge Jörg it is of the utmost importance that if we compare each others systems we should warn each other not to neglect the underlying assumption, mechanisms, procedures and attitudes. The tendency of convergence of the different systems may be regarded as a positive phenomenon but one should be careful that such convergence will not be at the expense of the crucial mechanisms that make the systems work. In the opinion of Judge Jörg the ICTY practice shows that some degree of convergence is feasible and can work positively. He hopes that we may observe that the ICTY and the ICC combine the best arrangements of both systems and that they inspire the traditional systems to reform, which is the name and the goal of our organization.

Greg Melick, Barrister, Sydney, Australia, briefly discussed some features of the common law system in Australia, inter alia the absence of an absolute right to silence. He highlighted a fundamental difference between the two systems in that in the common law system there is not a search for the truth but a system whereby the State is put to proof. To properly understand this one must understand how the system developed, which he then outlined. Mr. Melick is not in favour of merging the adversarial and the inquisitorial systems completely, he believes that a solution would be to retain the adversarial investigative system at least until the court sessions start. After that the systems could be converged but more safeguards and guarantees should be created in order to ameliorate the position of the defence.

In the discussion, the following principles and topics were stressed: - one should keep in mind that it remains of a greater importance not to declare an innocent person guilty than to set a guilty person free;- it would be a challenge for international tribunals without having their own police and investigating forces to do a complete investigation for both the prosecution and the defence;- the problem of the relationship between the defendant and the defence council and the different rights they both have during the judicial procedures.

PLENARY 4: ROLE AND FUNCTION OF THE COURT, NATIONAL AND INTERNATIONAL

Chair: Prof. E. Myjer

Summary prepared by Frank Geelhoed, Netherlands

The first keynote speaker, Judge A. Orie, judge in the ICTY, presented a number of issues that arise when a judicial system is being organised and designed. These issues, or dilemmas are connected with the question: how does the organisation of the court system fit into the organisation of the state? Four dilemmas were presented: should there be lay-participation? If so, should it be on every level of the judiciary or only in the lower levels of the court system? Should it be in the form of a jury-system or should there be lay-judges? And how to recruit or train those lay-judges? Should professional judges be elected or appointed? Whereas election is not a safeguard for the competence of the elected judge in appointing judges - political, religious, race or gender aspects might play a role; how many judges should there be in a court; should that number be based on the seriousness of the charge against the defendant, or the maximum penalty that can be imposed? Should there be special courts that have jurisdiction only for specific cases? For instance, terrorist acts or economic crimes or courts for specific offenders only, such as juveniles or military.

The second keynote speaker, Prof. Justice J. Nijboer, professor at Leiden University and judge in

the Court of Appeal of Amsterdam, reflected on the theme of this plenary from a continental point of view. He made several observations on the history of the continental judicial systems and their mutual background, but also on the many differences between the systems as they have developed over the years. Furthermore he noted the increasing importance of supranational law, mainly the influence of the European Convention on Human Rights and the decisions of the Court in Strasbourg. Finally, he referred to several tendencies in northwest Europe, in particular the tendency to create by-passes, to simplify procedures for bulk-cases; the differentiation in courts and their tasks; the articulation of independency of courts and the increasing awareness of the need to respond to the community, rather than just to the superior court.

“Whereas election is not a safeguard for the competence of the elected judge in appointing judges - political, religious, race or gender aspects might play a role”

The third speaker, Daryl Mundis, lawyer at the office of the Prosecutor at the ICTY, dealt with the subject from a common-law perspective, mainly focusing on the judicial system as it exists in the USA, meanwhile acknowledging that there are many differences between various common-law judicial systems. He made several remarks about the federal and state-courts systems that function next to each other, and gave many examples of the way the dilemmas concerning recruitment and promotion of judges, the training and supervision and independence of judges are dealt with in the US-systems. Finally he spoke about the pros and cons of the use of a jury.

PLENARY 5: THE TRIAL AND THE VERDICT

Chair: Prof. Dr. Daniel D. Ntanda Nsereko
Summary prepared by Erika Schulten,
Netherlands

The first speaker, the Honourable Justice Greg James, Supreme Court of New South Wales, described the model of a common law trial. He indicated that there is no such thing as *the* system; common law systems vary even in different American States. He referred to the book of Lord Devlin, who wrote a book on Trials in the 1950s. The central point was that the indictment is a precise charge, while the evidence has to be produced in court in front of a jury of twelve fellow citizens. The jury had charge of the accused, not the judge. While the jury had to focus on the facts, the judge had to concentrate on the law. Since the 1950s the common law system has experienced a great change. The right of appeal now includes even review on fact. The situation is becoming more complex for jurors and judges nowadays due to the technology-based society we live in. Convergence with civil trial procedures may save the common law trial from being reformed out of character because of its costs.

The Hon. Adolphus Karibi-Whyte, Supreme Court of Nigeria, retired, concentrated his speech on the common law system in Nigeria. He stressed that the prosecution had to be fair during the investigation, bring the evidence before the court and must not press for a conviction; if the evidence is insufficient the prosecution has a duty to press for an acquittal. The court has to focus on the truth. Although the court is entitled to find or has to provide counsel for the accused, to find a good defence is fairly difficult. Mr. Karibi-Whyte expressed his opinion that there are many gaps between the common law countries themselves. In Nigeria not even the three systems, customary law, Islamic principles and common law principles, mix. There is no convergence between the three.

Mr. Stéphane Bourgon, defence counsel at the ICTY, stated that neither common law nor civil law is adequate to cope with international criminal law. To ground his statement he discussed the development of the ICTY. At first the trials at the ICTY were modelled upon a common law system; the judges were referees

and the parties controlled the proceedings. Gradually, continental issues invaded the system. Mr. Bourgon illustrated this by several examples. For instance, it is possible for the judge to ask for witnesses, when neither the prosecution nor the defence had called them. Beforehand, a judge could not call a (sometimes key-) witness, while the prosecution and the defence did not call the witness, because they were afraid the testimony might hurt their case. Another continental influence is that judges in some circumstances can look at the evidence, before the evidence is produced in trial. The reason why the ICTY is moving toward a more mixed system is threefold: time; proceedings with 250 witnesses simply cost too much time and money; consequently the proceedings are very expensive; and parties are abusing the system. The abuse of the system can be illustrated by looking at the interlocutory appeal. The number of appeals increased rapidly, which lead to the conclusion that only appeals that challenge the jurisdiction are admissible. A strange phenomena is that the judge who gives the verdict, has to give permission for a interlocutory appeal. Mr. Bourgon concluded his speech by saying that the ICTY can be considered as a laboratory and the ICC has learned a lot from the experiences of the ICTY.

The fourth speaker, Mr. John Wesley Hall Jr., gave an insight on the US judicial system on Guantanamo Bay and stated that this system is a violation of several human right treaties. In his view the United States government is making a mockery of its own system. The judicial system for proceedings on Guantanamo Bay violates all rules. For instance:

- The normal rules of evidence do not apply.
- The jurors are handpicked military officers.
- An acquittal is not definite.
- There is no appeal.
- A lawyer has to sign an agreement which jeopardizes the attorney-client privilege.

Mr. Hall stressed that the precedent that is set by the United States could easily backfire, since other countries may take the system as an example. Subsequently, US citizens may be submitted to such a system.

PLENARY 6: ALTERNATIVES OF SANCTIONS

Chair: Justice W. Davids
Summary prepared by Cornée Royakkers,
Netherlands

The first speaker, Wendy van Tongeren, Senior Crown Counsel, British Columbia, Canada, described a case in British Columbia where circle sentencing took place in a high profile case. At the trial a juvenile suspect, who was charged with threatening and criminal harassment, was convicted. The crown, defence and victim's family thereupon agreed that a circle sentencing should take place. Circle sentencing is an alternative process to the sentencing hearing. In the circle sentencing there are two circles. The inner circle includes the accused, defence, judge, elders and even the complainant's family. In the outer circle there are observers of the community. The circle sentencing gives the victim and his family the possibility to speak with the convicted person. In the regular court system this would not be possible. In the regular system all words are addressed to the judge. Circle sentencing, more than the regular system, allows members of the community to be involved. Sentencing circles are part of the concept of restorative justice. The circles are based on aboriginal practices and have the purpose to improve relations.

The next speaker, Robert Davidson QC, Barrister, Edmonton, Canada, stated that in Canada people more and more are aware that changes in the criminal justice system are necessary. Mr. Davidson illustrated the example of the prison system. Prisons are breeding-grounds for criminal behaviour, with the result that people leave prison more learned in criminal behaviour than when they entered the system. The important question is: how to deal with convicted persons. Mr. Davidson indicated that the conditional sentence of imprisonment is being explored in the form of house arrest. A conditional sentence is possible where a person is convicted of an offence and the court a) imposes a sentence of imprisonment of less than two years; and b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose

and principles of sentencing. In the case of a conditional sentence, the convicted person stays in the community and can be obliged either to stay at home for 24 hours a day or serve the community for a number of hours. The conditional sentence is both punitive and rehabilitative and was not intended to be imposed on offenders of all crimes, especially not serious crimes. The Supreme Court of Canada has decided, however, that the conditional sentence can be implemented in all cases. There are people in Canada who oppose this perspective. Mr Davidson concluded that the sanction of conditional sentence is still very controversial.

The third keynote speaker, Richard Mosley QC, Assistant Deputy Minister of Justice, Ottawa, Canada, spoke about the changes in the criminal justice system in Canada. He stressed the fact that it was a lengthy process for the traditional system to accept circle sentencing. It took a long time before the different participants (judge, prosecutor, suspect and his lawyer) had confidence in the new way of dealing with sentencing. He also noted that there is a new Criminal Justice Act for young offenders in Canada. This new Act is based on restoration and provides alternatives to youth custody. Since its implementation in April this year, the act has had a great impact on the number of juvenile delinquents who must serve youth custody. Mr. Mosley remarked that Canada is still exploring new ways of dealing with offenders.

The last speaker, Damian Bugg QC, Commonwealth Director of Public Prosecutions, Australia, spoke on the paper which Professor Mark Findlay, Law School at the University of Sydney, is writing in which he explores the use of a "restorative model" in an International setting. Mr. Bugg suggested that the use of this model must be given serious consideration to overcome delays and achieve resolutions in the fields of gross crimes against humanity. Difficulties to be overcome include: location of the forum, choice of individuals to be tried for serious wrong-doing, and the tensions of combining both a restorative and retributive model under the one organisation.

***The International Centre for Criminal Law Reform
And Criminal Justice Policy***

***Le Centre international pour la réforme du droit criminel
et la politique en matière de justice pénale***

Submitted by Frances Gordon, Executive Director, I.C.C.L.R.

China Programme

The Centre's Criminal Justice Programme was the first, and remains the only, Canadian cooperation programme of this kind in China. For over 8 years the Centre has developed strong relationships with key Chinese governance players in a number of areas including access to justice, legal aid, prosecution reform and the incorporation of international human rights standards into China's criminal law reform process. The corrections component fosters the respect for human rights standards in Chinese prisons. The Centre continues its China Program with new funding for two Programmes from the Canadian International Development Agency (CIDA).

The Centre won a competitive CIDA bid to develop a 4 year bilateral programme of work with the Chinese Supreme People's Procuratorate. The purpose of this initiative is to support China's Judicial Reform Program by strengthening the capacity of the Supreme People's Procuratorate and its prosecutors to more effectively exercise their constitutional obligations while protecting citizens' rights; to implement and enforce due process in the criminal prosecution system, and to perform prosecutorial and professional responsibilities according to the rule of law. The initial inception mission took place in November 2003 soon after the contract with CIDA was signed. Since then a Work Plan has been developed. Implementation of the Plan will commence in the Spring of 2004 with sessions for prosecutors in both Beijing and the western provinces.

The overarching goal of the second China Programme ("Implementing International Standards in the Chinese Reform Process") is to promote and strengthen the rule of law, human rights and good governance in China through the reform of criminal procedure, substantive law and the administration of criminal justice in accordance with international standards.

Increasing Links with the United Nations

Over the past two years, the Centre has enhanced its working relationship with the UN Office of Drug Control and Crime Prevention (formerly the "UN Centre for International Crime Prevention (CICP)"). Responding to a request from the CICP in 2001, the Centre completed a Legislative Guide on the UN Convention Transnational Organised Crime Convention aimed at facilitating the ratification and implementation of the Convention by signatory states. Funded by the Canadian Department of Justice, Solicitor General Canada and the Department of Foreign Affairs, the Guide was completed after consultation with experts, chosen by the UN, representing all regions of the world. The Guide, which was distributed in May 2003 at the UN Crime Commission, is available on the Centre's website and also on CDROM. The UN is currently integrating it into a comprehensive UN document that will also include the three Protocols to the Convention.

The Centre's assistance has been sought by the UN Terrorism Prevention Branch. In particular, the Centre obtained funding from the Canadian Department of Foreign Affairs to work with the Branch examining the linkages between terrorism and organised crime, money laundering, trafficking in firearms, persons, drugs and other illicit commodities. A meeting of experts in Cape Town, South Africa will review the draft report which will then be submitted for consideration by the UN Commission during the 13th Commission on Crime in 2004.

As a result of the UN's enhanced mandate offering technical assistance related to the implementation of the twelve universal anti-terrorism instruments, the Terrorism Prevention Branch approached the Centre to assist it with the preparation of a compendium and synthesis of domestic anti-terrorism legislation, regional instruments and related mutual legal assistance and cooperation guides that will enhance the UN's efforts to provide assistance and to strengthen international cooperation and legal regimes against terrorism. After being presented at the UN Commission on Crime in April 2004, the Compendium will be available to states on the UN's website.

The Centre has entered into an agreement with the UN Global Programme Against Trafficking to finalize a toolkit on trafficking in human beings. The final draft of the toolkit will be presented to the 2004 session of the Commission on Crime in Vienna.

The 50th anniversary of United Nations standard-setting will be celebrated at the 11th UN Congress on Crime Prevention and Criminal Justice to take place in Bangkok, Thailand, April 18-25, 2005. This will be an opportunity to look back over the years at criminal justice reformers and reforms while assessing the efforts of the international criminal justice community in setting and implementing standards. It will also look at what impact these standards have had on domestic and international policy, crime prevention and criminal justice operations.

At the 12th UN Crime Commission in 2003, the Centre was asked to organise a half day workshop at the 11th UN Congress on the subject of "Enhancing Criminal Justice Reform - Including Restorative Justice."

Caribbean Justice and Public Security Sector Study

Over the years, Caribbean states have identified issues with respect to the relative inability of their public security institutions to address the growing problems of crime, violence, drug trafficking and misuse, corruption and gender-based violence in a fair and transparent manner. Caribbean countries face new security challenges relating to the increasingly transnational and de-territorialized nature of organised crime. Over the years, a patchwork of justice reform initiatives has been sponsored by a number of international donors including Canada. Consequently, CIDA has funded the Centre to conduct a study of the justice and security sectors in eight Caribbean countries (Jamaica, Guyana, and six countries of the OECS) in order to plan for an integrated development approach that complements the activities of other countries' aid programs. The Centre's team will conduct the field research and prepare a final report, due April 30, 2004, that will serve as the basis for a CIDA programme framework for Canada's contribution to the justice sectors in the region.

International Criminal Court

Since 1992, the Centre has actively supported global efforts to establish a permanent international criminal court. As part of its ongoing programme to assist with the ratification and implementation of the Rome Statute, the Centre has developed several documents to assist countries to bring their legislation into compliance with the Statute. These include *The Manual for the Ratification and Implementation of the Rome Statute* (translated into 7 languages), *The Checklist of States Obligations under the Rome Statute, Rules of Procedure and Evidence (Relationship with the Rome Statute)* as well as *The Potential Impact of the International Criminal Court on the Correctional Service of Canada*. All of these documents are available on the Centre's website www.icclr.law.ubc.ca

In 2002-2003, the Centre's work on ratification and implementation took it to Gabon, Tanzania, Lesotho, Cambodia, Thailand and Cote d'Ivoire. The Centre collaborated with other local and international organisations including the Coalition for the International Criminal Court (CICC), No Peace without Justice (Italy), Forum Asia, the Asian Network for the ICC, the Cambodian Human Rights and Development Association, the South Africa Human Rights NGO Network as well as the International Committee for the Red Cross. By effectively pooling resources, the Centre and its partners were able to engage not only local government officials and legislators but also civil society, local NGOs, academics, professionals and the media.

In 2003-2004, the Canadian Department of Foreign Affairs and International Trade continued its funding for the ICC programme which allowed the Centre to conduct three country-specific workshops. In July, Alexandre Morin, an ICC expert from Montreal conducted a follow-up workshop in Gabon which produced two draft bills to bring the Gabonese Criminal Code and procedural law into compliance with obligations in the Rome Statute. These drafts are now proceeding through the regular legislative process in Gabon.

Responding to a request from the Samoan Office of the Attorney General, the Centre planned workshops for January 2004. The Samoans have ratified the Rome Statute and have drafted implementing legislation but have not yet tabled it in Parliament. The goal of the workshop was to raise awareness of the ICC among the general public and to assist justice officials in their work ensuring smooth passage of the draft legislation. An impressive team of experts was assembled by Eileen Skinnider, the Centre's ICC Project Director. ISRCL member Professor Roger Clark agreed to contribute his substantial expertise and knowledge of the country gained as a result of his long-standing working relationship with Samoa on the ICC. In addition, Allan Webb and Indira Rosenthal from New Zealand, Jose Guevara Bermudez, the Pacific Region Coordinator for the Coalition for the International Criminal Court (CICC), and Helen Robertson of the Canadian Department of Foreign Affairs were also slated to participate. Unfortunately, a disastrous cyclone in Samoa several weeks prior to the session resulted in its cancellation.

The last ICC workshop for this fiscal year will take place in Jamaica, February 16-19, 2004. This will involve an open public forum as well as sessions with Parliamentarians and justice officials. Mr. Cuthbert Jolly, Acting Deputy Chief Parliamentary Counsel, Ministry of the Attorney General, Trinidad and Tobago and Ms. Delia Chatoor of the International Committee of the Red Cross will participate with Eileen Skinnider at the session in Kingston. As Jamaica has not yet ratified the Rome Statute, the purpose of the sessions will be to discuss the implications of ratification for Jamaica.

The Centre continues its work, in partnership with the Liu Centre for Global Studies at the University of British Columbia, in the preparation of an operational guide for the ICC's victims and witnesses units. The Rome Statute includes provisions for victims and witnesses that are revolutionary in terms of international criminal law. Both the ICTY and the ICTR served as opportunities to experiment with new ways of treating victims and witnesses. However, Rome Statute substantially increases the onus on the Court to provide for victims. Because the victim/witness policies and procedures at the ICC are very much in development, the operational guide will identify legal obligations and, where possible, provide options for the ICC and practitioners. In March 2004, the Centre and the Liu Centre will organise a consultation in The Hague on the draft guide with representatives of the ICC and international victims experts.

Corrections Programme: Botswana Alternatives to Imprisonment Seminar

In November 2003, the Director of the Centre's Corrections Programme, Brian Tkachuk, spearheaded a high level seminar on alternatives to imprisonment in Botswana. The seminar, which was organized as follow-up to a needs assessment of the Botswana Prison Service conducted by Brian Tkachuk and Brian Mason of the British Columbia Ministry of the Solicitor General, involved a lively dialogue on alternatives among senior officials from the prosecution, police, prisons and judicial community, academics, lawyer, human rights officials and representatives of non-governmental agencies. The Minister and Deputy Minister of Labour and Home Affairs participated actively in these discussions. The event was historic in that it was the first such opportunity for participants to discuss alternatives to imprisonment and practical means to improve the criminal justice and corrections systems in Botswana.

Other Activities

The Centre, represented by its Associates, Yvon Dandurand and Vivienne Chin, participated in a workshop organized by Ritsumeikan University Law School (Kyoto) on Organized Crime and Human Security. This is one activity of a continuing program of work that the Centre has been involved in since 1998 with Japanese colleagues. The paper presented at the workshop will soon be posted on the Centre's website.

Eliot Michael Hill QC **May 22, 1935 - August 19, 2003** *

The Society mourns the passing of our beloved President, Michael Hill QC. He was a member of the Society's Board of Directors from the creation of the Society until his death. He was an Honourary Life Member of the Society.

Michael Hill was born on May 22 1935 and grew up at Chingford, Essex, where his father ran a company manufacturing typewriters. Michael was educated at Bancroft's School, Essex, and at Brasenose, Oxford, where he read Law.²

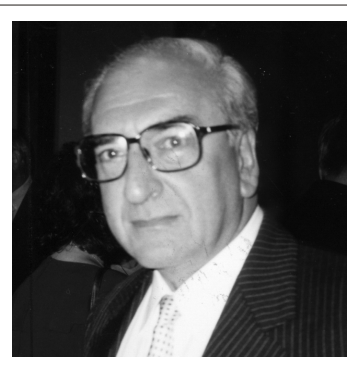
In 1958 he was called to the Bar by Gray's Inn, where he was later to become a Bencher. His pupillage was undertaken with two of the leading advocates of the time, Morris (later Mr Justice) Finer, a leading company barrister, and Basil (Lord) Wigoder. In 1959 he became a tenant in the chambers from which he practised until his death.¹ The head of chambers was Edward Cussen, one of the team of Nuremberg prosecutors who instilled his chambers with a regard for the highest standard of conduct, which Hill was stoutly to maintain as junior Treasury Counsel at the Old Bailey from 1974 to 1977 and as senior Treasury Counsel from 1977 to 1979 and thereafter as silk.¹

Hill was prosecuting counsel to the Crown at the Inner London Sessions from 1969 to 1974, junior Treasury counsel from 1974 to 1977 and senior Treasury counsel from 1977 to 1979. He became a Recorder in 1977.² As Treasury counsel, Hill had prosecuted in many of the most notorious IRA cases, including that of the Guildford Four. During the May Inquiry into that miscarriage of justice, the main burden of explaining the prosecution's conduct of the case fell on his shoulders, and on his amazingly accurate memory.¹

After taking Silk in 1979, Hill gained a reputation as a courageous defence counsel. He appeared in a series of high-profile trials, including, in 1981, what was then Britain's most expensive case, the six-month trial of "Mr. Asia", an international drug trafficker convicted of the murder of an associate whose handless and mutilated corpse was discovered in a quarry in Lancashire. Hill's client, a codefendant, was acquitted.²

Hill later defended in the Cyprus Spy case, in which some young airmen were acquitted of passing secrets to the Russians, and more recently acted for Larry Trachtenberg, the accountant, in the marathon Maxwell trial.²

During the 1970s, he undertook the onerous job of chairman of the Bar Fees Committee. In 1972, with Basil Wigoder, Jeremy Hutchinson and John Hazan, he helped found the Criminal Bar Association, with the aim of promoting the role of the advocate and the reform of the criminal law. Hill served as its first secretary (1973-75), and later as vice-chairman (1979-82) and chairman (1982-86). As chairman, he was a firm defender of



Mark Fenhalls, right, accepts commemorative salver in honour of the late Michael Hill QC on behalf of Michael's family from Society President Damian Bugg QC

the jury system, and in 1983 spoke out against the reintroduction of capital punishment, saying that it might force some barristers to break their code of conduct and refuse to accept a capital murder brief.²

Speaking at the Society's Hague conference shortly after Michael's death, the Society's first President, Vincent Del Buono, Society President, Damian Bugg QC and Society Treasurer, Donald J. Sorochan QC described Michael's role in founding and sustaining the Society. Vince del Buono said:

“Michael, we will miss you terribly. I find it hard to think of the International Society for the Reform of Criminal Law without Michael Hill. From the first time we met together, now 16 years ago, at the Inns of Court in London, Michael was a guiding light of this Society. He believed in our purpose and in this community and worked, often tirelessly, to bring us together.

Michael loved being a barrister. For 45 years, he was a fearless, tireless, and distinguished advocate true leader of the Bar. He led or was in every fight to maintain its independence for, although he prosecuted as often as he defended, he knew that when the cold winds of public disapproval began to howl against an accused, it was often only his advocate who would be left standing at his or her side.

Michael was a dedicated teacher. He was convinced early in his career that only through continuing professional education could his beloved profession maintain the highest possible standards. And with Michael, conviction quickly translated into action.”

Damian Bugg said:

“It is fitting that the conference formalities should finish by acknowledging Michael's life and his contribution to the Society because most of us in the room are aware of it, acknowledge it and miss it.”

Don Sorochan said:

“Michael goes back to the origin of the Society. In 1987 he was there when we had what was supposed to be a stand alone conference and the fellowship that we have had over the years continued to flow from that very day. What we've achieved and the way we've achieved it is to a large degree because of the vision of Michael Hill.”

In his tribute to Michael Hill at the Society conference, his chambers colleague Mark Fenhalls stated:

“I've been struck that it is a remarkable man to inspire such friendship, loyalty emotion, respect from so many people and so many places around the world. He was deeply fond of you all and deeply fond of this Society and what it meant to him, to his jurisdiction and for all of your jurisdictions. It is a remarkable man who can bring together an eminent Australian lawyer and the Chief Justice of Nigeria, whom Michael knew so long ago, in a Society here tonight in The Hague. Many knew him as a head of chambers, a leader, a friend. He was a guide, a mentor and a teacher. He had time for everybody. He would compromise his own life in order to help others.

It is a stunning legacy which I hope that each and every one of us will carry forward in some way. If you can take home some of his energy to your home countries to engender enthusiasm for the Society, to bring more members in, to contribute more that is the greatest memorial you could bring to bear to him. After all, his firmest belief was that we learn from each other and certainly for my part, from what I have seen of this conference and in Charleston last year and Canberra before that, it has begun to open my eyes about what I can learn from all of you around the world.”

In the mid-1990s, inspired by what he had seen on a trip to the Australian Bar, Hill galvanized Gray's Inn into starting courses in advocacy, an innovation quickly adopted by all the other Inns. Hill's own reputation and popularity ensured that he was able to attract advocates of the highest calibre as teachers; he also persuaded senior members of the judiciary to give up evenings and weekends to judge the students. ²

His concern for the welfare of his fellow barristers, especially those just starting out, was meanwhile much in evidence during his time as a remarkably paternal head of chambers, from 1984 to 1996. ²

When the Human Rights Act 1998 incorporated the European Convention on Human Rights into domestic law, it was inevitable that the Bar Council should turn to Hill to draw up, energise and administer a training scheme to ensure that all barristers in criminal practice had been trained in its application. ¹

By nature tough and adversarial, he was equally effective for the prosecution and the defence. With his close attention to detail and mastery of facts, Hill was particularly devastating in cross-examination, when he missed nothing; he never gave up on a point, never took a backward step. "Cross-examination," Hill has stated, "is rather like fishing. You can feel it before you touch it. It is rather like pulling a piece of wool out of a damaged jumper - as you go on pulling it unravels." ²

His remarkable capacity for hard work (he regularly stayed up all night) and thorough preparation earned him enormous respect from clients and fellow barristers. The excitement of adversarial advocacy and the compulsion to overwork were necessities of his life. He was completely dedicated to the Bar and never seemed likely to enjoy retirement. By way of recreation, Hill has been described as an unlikely but enthusiastic horseman, keeping a horse at the livery in Richmond Park for many years. He also enjoyed hunting with the Old Berks, fishing, playing bridge, opera, watching sport and summer holidays in Portugal. ²

But relaxation was not really for him, and he seemed happiest when frenetically busy. Shortly before he became ill, he had led the defence during the eight-month trial of a banker accused of money-laundering in the Cayman Islands; the prosecution case eventually collapsed, and the islands' solicitor general resigned. ²

Michael Hill married, in 1965, Kathleen (Kitty) Hordern; they had a son and two daughters. He was devoted to Kitty, his wife, and their son and two daughters, all of whom sustained him during his demanding career and through his acute illness.

Mark Fenhalls stressed Michael's devotion to Kitty in his tribute:

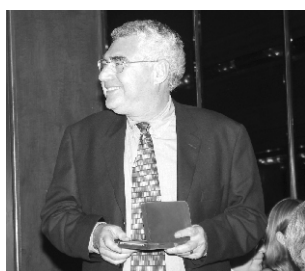
"Kitty would want me to say very little about her. Michael would want me to say that everything he is and was he owes substantially to her. Her enduring support and love has made him what he was able to be. We owe her an extraordinary amount for everything we were able to enjoy from both of them over the years. It would have tickled him pink to think that (at the Society conference) he assembled a couple of hundred of his best friends from around the world for a party, the night before his funeral that is what he has done. He died last week. He's being buried tomorrow. Join tonight and from now on in celebrating a great life. A life that inspired many of us and I hope will continue to inspire us as we seek to carry on the good work [of his life]. Remember the wonderful man he was and his very positive influence with gratitude and celebration."

*Portions of this Obituary (as marked) are quoted from the obituaries published in *The Times* on September 4, 2003 (1) and *The Daily Telegraph* on August 22, 2003 (2).

Society Medals and *John Kable QC Memorial Young Lawyers Award* Presented at the Society's 17th International Conference

Hon. Justice Greg James

Society President, Damian Bugg QC, in presenting the Society Medal to Justice Greg James of Australia noted that Justice James has been with the Society from the start. He has been a great contributor to criminal justice reform in Australia and to the activities of the Society, particularly in assisting in conference organization and in the development of the young lawyers program.



Norman Sepeniuk

Ron Gainer presented the Society Medal to Norm Sepeniuk of Portland, Oregon, USA. In doing so he observed that he has been involved with Norm Sepeniuk in criminal law reform in the United States for over thirty years. Several years ago Norm decided to devote himself to assisting nations in resuscitating their criminal justice processes. He did so in Moldova and other Eastern European countries as well as contributing as a defence counsel before the ICTY in The Hague. In recognition of his contributions to criminal law reform both nationally and internationally, the Society has awarded its medal to Mr. Sepeniuk.

Lord Cameron of Lochbroom

Gordon Nicholson in accepting the Society medal for Lord Kenneth Cameron noted that Lord Cameron first became a member of the Society when he was Lord Advocate of Scotland at the time of the Society's Edinburgh conference. He has retained a firm and continuing interest in the activities of the Society. Since his appointment as a judge in the highest courts of Scotland, he has continued his support by serving as a member of the Society's Board and actively participating in the activities of the Society. The Society recognizes Lord Cameron's contributions to criminal justice reform in Scotland, the United Kingdom and his support of and contributions to the Society by presenting him with the Society Medal. (No photo available of Lord Cameron.)



Livia Jakobs

Society Treasurer, Donald J. Sorochan QC, presented the Society medal to Livia Jakobs of the University of Leiden in the Netherlands. He noted that she has been a stalwart supporter of the Society for a number of years and has worked for months and months in the planning and organization of the Society's conference at The Hague. The medal was presented to Livia's husband, Evert Jan, because Livia had incurred a serious arm fracture on the eve of the conference which necessitated surgery, hospitalization and a period of recuperation which precluded her attendance at the conference. For her contributions to criminal law reform in the Netherlands, internationally and for her enthusiastic contributions to the activities of the Society, the Society is pleased to award her the Society medal.

Livia Jakobs accepts medal from her husband, Evert Jan

John Kable QC Memorial Award to Megan Bastick

Hon. Justice Greg James presented the John Kable QC Memorial Award to Ms. Megan Bastick. Ms. Bastick, an Australian lawyer, is presently a student of international law at Cambridge. She has been a committed human rights activist and practitioner working with the International Red Cross. For the past three years she has run seminars and mock trials and produced publications throughout Australia and the world. She has tirelessly sought to publicize international criminal law and international criminal law reform throughout the world using the electronic media and through her activities in Australia. She also exemplifies one of the great characteristics of a Society that remembers John Kable QC she is Tasmanian. Ms. Lucy Robb of Australia accepted the Award on behalf of Ms. Bastick. (No photo available of Megan Bastick.)



l-r: Justice G. James, L. Robb, D.J. Bugg QC

DAMIAN BUGG QC ELECTED THE SOCIETY'S FOURTH PRESIDENT

The membership of the Society elected Mr. Damian Bugg QC to be the President of the Society at the Annual General Meeting of the Society held at The Hague during the Society's Conference in August. Mr. Bugg was appointed by the Board of the Society to serve as Acting President immediately following the death of Michael Hill QC and had served as a member of the Board of Directors for many years.

Mr. Bugg was born in Tasmania and attended School and University in Hobart, and was admitted to the Bar of the Supreme Court of Tasmania in 1969. He was Senior Litigation Partner in the Hobart law firm Dobson Mitchell and Allport when he was appointed the first Director of Public Prosecutions for Tasmania in July 1986. He took silk in 1994.

While Director of Public Prosecutions for Tasmania, Mr. Bugg prosecuted Port Arthur gunman Martin Bryant, who killed 35 people and wounded 18 more at the Port Arthur Historical Site Massacre in April 1996.

In addition to his activities with the Society, Mr. Bugg has been President of the Bar Association of Tasmania, Chairman of the Legal Assistance Scheme and a Member of the Council of the Law Society of Tasmania. He was a Member of the Council of the Australian Institute of Judicial Administration for 9 years. He has also served on the Council of the University of Tasmania since September 2001.

Mr. Bugg chaired the Electronic Recording Committee which implemented the program of video-recorded Police interviews in Tasmania in 1987. He established and chaired the Forensic Science Services Committee in 1988, has written and spoken about Victims Rights, Pretrial Disclosure, Committals and Procedural Reform. In 1998 Damian was made a Fellow of the University of Tasmania and was appointed Commonwealth Director of Public Prosecutions in August 1999.

NEW BOARD MEMBERS ELECTED AT THE HAGUE

The membership of the Society elected Dr. Kole Abayomi and Rt. Hon. Colin Boyd to the Board of Directors of the Society at the Annual General Meeting of the Society held at The Hague during the Society's Conference in August.

Dr. Kole Abayomi is Deputy Director-General of the Nigerian Law School, head of the Lagos Campus, after serving as Secretary, Council of Legal Education. He had earlier served as Director and Head of Department of the Nigerian Law School in Lagos. He also practices law on a part-time basis. He has been a Lecturer-at-Law at the Nigerian Law School since 1970. He was a member of the Nigerian Enterprises Promotion Board from 1976 to 1979. Dr. Abayomi was a member of the Constitution Drafting Committee of Nigeria in 1976. He was granted his LL.B., University of Durham, England, 1965, his LL.M., Clare College at University of Cambridge, 1967, and his Ph.D., Clare College at University of Cambridge, 1970. He was called to the Bar of Nigeria in 1965.

The Right Honourable Colin Boyd, the Lord Advocate of Scotland, was appointed to this position in March 2000 in succession to The Rt. Hon. the Lord Hardie. Previous to this, He served as Solicitor General for Scotland from 1997. Mr. Boyd was an Advocate Depute from 1993 to 1995 and took Silk in 1995. He is a legal Associate of the Royal Town Planning Institute. He was a solicitor in private practice before being called to the Scottish Bar in 1983. As an Advocate he built up a practice in administrative law. Mr. Boyd graduated BA (Econ) from Manchester University in politics and economics, and LLB from Edinburgh University. He contributed to *The Legal Aspects of Devolution*, 1997.

YOUNG LAWYERS GROUP PRESENT RESEARCH PAPERS AT THE HAGUE CONFERENCE

The Society Young Lawyers Group conducted research projects comparing their respective domestic evidence laws with the evidence law of the International Criminal Court. The papers were presented at a special YLG event at the Society's Conference at The Hague.

The Cayman's YLG, consisting of **Terry Caudeiron (Chairperson), Laurence Aiolfi, Deborah Barker, Kyle Broadhurst, Mitchell Davies, Simon Dickson, and Suzanne Look-Loy**, conducted a study "*Comparison between the ICC RPE/Rome Statute and domestic Cayman Islands' Law*" under the guidance of Michael Hill, QC while he was in The Cayman's for a lengthy fraud trial which concluded months before his death. Regrettably funding was not available to assist any members of the Cayman's YLG to attend the conference but their work was presented during the YLG event and was well-received and appreciated.



Nicola Mahaffy and Dwight Stewart

The Canadian YLG, consisting of **Elizabeth Campbell,**



l-r: Carolina Pecegueiro, Marcus Thomson and Sarah Campbell

Nicola Mahaffy, Dwight Stewart, and Monique Trépanier, were represented at the conference by Nicola Mahaffy and Dwight Stewart who presented their paper "*The Treatment of Victims and Witnesses in The International Criminal Court as compared to the Canadian Criminal System.*"

The English YLG, consisting of **Sarah Campbell and Marcus Thomson**, presented a paper "*The Rule Against*

Hearsay - An English Desire for an International Criminal Court Approach?"

Brazilian YLG member, **Carolina Pecegueiro**, presented a paper discussing the relationship between The Rome Statute of the International Criminal Court (1998) and the Brazilian Federal Constitution and the surrender of an accused Brazilian for proceedings before the International Criminal Court.

The YLG presentations were held at a special event at the International Criminal Tribunal for the Former Yugoslavia (ICTY) hosted by Society Board member **Justice Carmel A. Agius**, a judge of the tribunal. In addition to the YLG presentations, the YLG participants were observers at the trial of Slobodan Milosevic, presided over by **Justice Richard May**. The event also included presentations on the work of the tribunal by three judges of the tribunal who are members of the Society - **Judge Agius, Judge May and Judge Wolfgang Schomburg** - as well as from lawyers who appear as prosecuting and defence counsel before the tribunal. The event was a highlight of the conference for both members of the YLG and conference delegates.

NOTES OF INTEREST TO MEMBERS

Richard Mosley QC, Ottawa, was appointed to the Federal Court of Canada in November 2003. His most recent position was Assistant Deputy Minister of Criminal Law Policy in the Department of Justice. Justice Mosley was Program Chair of the Charleston Conference in December 2002.

Andrew C. Normand, Glasgow, was appointed Sheriff in May 2003, after serving as Crown Agent for Scotland since 1996.

Hon. Justice W. T. Oppal, Vancouver, was appointed to the British Columbia Court of Appeal in June 2003. He had served on the B.C. Supreme Court for many years prior to his latest appointment.

Dana L. Urban QC, Victoria, was recently appointed Commission Counsel & Deputy Commissioner of the B.C. Police Complaints Commission. Until 2003, he was a member of the Major Crimes and Special Prosecutions Unit of the Ministry of Attorney General of B.C.

RETIREMENT

Hon. Justice G. F. Scott, Perth, is retiring from the Supreme Court of Western Australia where he served since 1992. After his call to the Bar of Western Australia in 1967, he was in private practice until 1975. He then joined the Crown Law Department of Western Australia until 1992, serving as Crown Prosecutor from 1985-1990, and as Crown Counsel of Western Australia from 1990-1992. He was appointed Queens Counsel in 1987, and was Senior Counsel at the time of his appointment to the Bench.

IN MEMORIAM

The Hon. Mr. Justice K.M. Lysyk, Vancouver, a long-standing member of the Society, passed away recently. He had served as a judge of the Supreme Court of British Columbia since 1983. He was also a deputy judge of the Supreme Court of the Yukon Territory, a deputy judge of the Supreme Court of the Northwest Territories and a judge of the Court Martial Appeal Court of Canada. He was Dean and Professor of Law at the University of British Columbia from 1976 to 1982. From 1972 to 1976, he was Deputy Attorney General of Saskatchewan. He was also Professor of Law at the University of Toronto from 1970 to 1972 and a member of the Faculty of Law at the University of British Columbia from 1960-1970. Prior to his judicial appointment he was a member of the bars of Saskatchewan, British Columbia and the Yukon, and he was appointed Queen's Counsel (Saskatchewan) in 1973.

THE Reformer

Editor: Donald J. Sorochan, Q.C.
The Reformer is published by ISRCL
Secretariat

The International Society for the Reform of Criminal Law,
1000 - 840 Howe Street, Vancouver, B.C., V6Z 2M1 CANADA
Tel: (604) 643-1214 Fax: (604) 643-1200
e-mail: secretariat@isrcl.org web site: www.isrcl.org

THE INTERNATIONAL SOCIETY FOR THE REFORM OF CRIMINAL LAW IS AN INTERNATIONAL NON-GOVERNMENTAL ASSOCIATION OF JUDGES, LEGISLATORS, LAWYERS, ACADEMICS, AND GOVERNMENTAL OFFICIALS WHO HAVE COME TOGETHER TO WORK ACTIVELY ON THE ADMINISTRATION OF CRIMINAL JUSTICE BOTH IN THEIR OWN JURISDICTION AND INTERNATIONALLY.

Society's 18th International Conference to be Held in Montréal, Québec, Canada

The Society's 2004 Conference, the theme of which is *“Keeping Justice Systems Just and Accountable: a Principled Approach in Challenging Times”* will be held in Montréal, Québec from **8 - 12 August, 2004**.

The conference **Chair** is **Hon. Justice Michel Proulx**, a distinguished judge of the Court of Appeal of Québec and a renowned Canadian criminal law jurist.

The premise of the conference is that the achievement of justice is the ideal of the criminal law, which is the instrument by which citizens seek redress for wrongs that are committed against the social welfare that the law seeks to promote and protect. While it is evident that there can be law without justice, the premise of this conference is that justice is primarily attainable through good law - law which is based on principle and aimed at achieving justice and avoiding injustice.

Justice is invoked to justify the use of state power to punish the guilty while at the same time prohibiting the violation of the fundamental rights of all, including the guilty. It is not surprising, then, that the concept of justice is invoked at all levels of the criminal justice system to achieve widely varying results. This conference will examine current challenges to national criminal justice systems and the developing international criminal justice system, and how to keep these systems just and fair by adherence to established principles, norms and standards, including constitutional requirements.

When considering this theme in the context of the responses of the State to offenders, the conference will discuss the principles of sentencing and their application to attain justice for the state, victims and offenders. These objectives will also be considered in the application of corrections and conditional release programs and mechanisms to address miscarriages of justice. The specific problems of doing justice to youth or children who are offenders, who require the protection of the state, who are victims of crime or are witnesses in criminal proceedings will also be addressed. The conference will also consider restorative justice programs and special programs for aboriginal and indigenous offenders.

Justice and the Rule of Law require that there be independence for the judiciary, bar, police and decision making tribunals in the corrections system, but also require that there be accountability. The ethics, standards and mechanisms of accountability of these components of the criminal justice system will also be considered by the conference.

Attaining justice at the international level will be considered both in the context of bringing offenders to justice before international criminal tribunals and the International Criminal Court and achieving societal justice through national reconciliation processes.

The threat of terrorism, the responses of states to that threat and the implication of those responses to the liberty of the citizenry and the justice system will also be considered.

Finally, several aspects of access to justice will be considered including the challenge of providing counsel through legal aid and public defender programs, appropriate mechanisms to facilitate and ensure speedy access to justice, and the imposition of sanctions by tribunals outside the justice system.

The conference program and registration forms may be obtained by request from the Secretariat or from the Society's website < www.isrcl.org >.

The conference venue is the **Hotel Omni Mont-Royal**. Located on historic Sherbrooke Street in the heart of the downtown Golden Square Mile, this Canadian rated Five-Star and AAA Four-Diamond hotel is located near Mount Royal, the universities, fashionable boutiques, galleries, museums and fine dining.