REPORTS

The following is an extract from the Annual Report of the Commissioner for Legal Aid and a question and answer that it prompted in State Parliament.

It provides yet another example of the lengths the State Government will go to bring discredit on those few people who are prepared to support prisoners in their struggle.

8. Criminal Legal Aid — The Bathurst Gaol Cases

It was decided before my appointment that legal aid should be provided, without application, to all the 46 Bathurst Gaol prisoners charged with indictable offences arising from the riot there in February, 1974. Representation by private solicitors in the committal proceedings and by counsel instructed by private solicitors in the District Court was offered to the prisoners. With respect, I would have concurred in this decision.

An attempt was made by the Department to assign solicitors in the usual way to the prisoners charged, but quite a large number of letters were received from prisoners — in virtually identical terms — advising that only practitioners approved by the Council for Civil

Liberties would be accepted. The Department contacted the Council and eventually provided the prisoners with solicitors acceptable to them. With respect, and with the benefit of hindsight, I now believe that many of the subsequent difficulties in these cases flowed from that decision. At about the same time a meeting of members of the Bar was called — apparently under the auspices of the Council for Civil Liberties — to solicit offers by barristers to accept assignment to the case. The Department maintained its determination to pay fees at the committal proceedings stage as for representation by solicitors only, not by barristers.

My concern with the case commenced with the proceedings in the District Court. I continued the assignments that had already been made, and invited each solicitor concerned to nominate counsel for the trial if he so desired. I thought it inescapable that I should offer the assignments in this way, even though it was obvious that among some of the practitioners involved there was a determination that each prisoner should be separately represented, and even though that determination appeared unnecessary for the securing of justice and calculated to increase the costs of the matter very considerably.

The first trial in the District Court took up 67 sitting days, and concluded on 23rd May, 1975, with the conviction of four of the accused and the acquittal of five. There is no doubt in my mind that certain practitioners — both in the committal proceedings and in the first trial used the proceedings as an opportunity to press some cause other than the proper presentation of their particular clients' cases. Despite the efforts of each Bench involved, persistent attempts to introduce matter irrelevant to the guilt or innocence of the accused very greatly lengthened the proceedings. Legal aid in the committal proceedings cost $30,970, and in the first trial, $52,189. These figures relate to fees to barristers and solicitors alone, and do not include such matters as the cost of transcripts. The second trial took up only 48 sitting days, and legal aid in that trial is expected to cost about $30,000.

I have included mention of this matter in this report because I think it necessary to urge that the criminal legal aid system not be judged by what has occurred; I would not wish the system to be condemned as inviting procrastination because the purse is inexhaustible. Certainly legal aid can be — has been — used to turn a trial into something that it should not be. But I can ask that the blame be laid not at the door of legal aid as a concept but at that of those who seek to misuse it.

I hasten to point out that my remarks should not be taken as criticism of the conduct of all the practitioners involved in the first Bathurst Gaol trial, or in the committal proceedings.

QUESTIONS WITHOUT NOTICE 9 — 10 — 75

REPORT ON LEGAL AID

Mr Wran: My question without notice is directed to the Attorney-General and Minister of Justice and refers to the tabling yesterday of the report on legal aid by the Commissioner for Legal Aid Services. Can the Attorney-General inform the House why in the report of the Commissioner for Legal Aid Services section 8, which deals with the Bathurst gaol riot trials, was not withheld from the report because of its possible prejudicial effect on matters currently before a court in Sydney? Is the Attorney-General aware that before the Senate Select Committee on Securities and Exchange tabled its report in the Senate the Commonwealth Solicitor-General recommended that certain sections dealing with Queensland Mines Limited be withheld because of legal actions then under way? In view of that precedent of a report to Parliament containing a reference to matters the subject of current legal action, did the Attorney-General seek an opinion from the State Solicitor-General in respect of section 8 of the report by the Commissioner for Legal Aid Services before that document was tabled? If not, why not?

Mr Maddison: The Leader of the Opposition and the House would be aware that by statute the Commissioner for Legal Aid Services is required to table in this House an annual report. The commissioner is appointed by statute and is an independent authority. With regard to the particular section of the commissioner's report to which the Leader of the Opposition has invited attention, I should like to inform honourable members that the commissioner in his report merely points out that there are indeed grave probiems which face this Government and all other governments in the area of legal aid when, as he sees it, the legal aid is not put to proper professional use.

Mr Petersen: That is an outrageous comment and the Minister knows it.

Mr Speaker: Order! I call the honourable member for Illawarra to order.

Mr Maddison: Despite the well-known feelings of the honourable member for Illawarra, I say simply that there is an obligation on members of the legal profession, whether they be solicitors or barristers, to approach a case in which they are involved for which legal aid is provided with the same sense of responsibility and sense of conscience as has always been the traditional approach of lawyers to their clients when they are being paid direct by them. The

Commissioner for Legal Aid Services has simply sounded a warning in his report that the resources of not only this State but also the State in its wide generic sense, are limited and there is a necessity to

[Interruption]

Mr Speaker: Order! I call the honourable member for Illawarra to order for the second time.

Mr Maddison: — that there is a fair and reasonable distribution of legal aid funds available to spread across the needs of the community in pursuing their legal rights or defending their legal rights, as the case may be. I am not aware of the matter raised by the Leader of the Opposition relating to the Senate Select Committee on Securities and Exchange and the withholding of part of the report about Queensland Mines Limited. I saw no occasion to seek the opinion of the Crown Solicitor and I still cannot see any way in which the implication in the question by the Leader of the Opposition can be connection.

Mr Speaker: Order! There is too much discussion.

Mr Maddison: So far as I am concerned, the Commissioner for Legal Aid made his report in good faith; he made it on the basis of the best advice he was able to receive and I tabled it in good faith. I made no apology for having tabled it in the form in which it is couched.

The last word perhaps should come from the Council for Civil Liberties. The following press release puts things in prospective.

PRESS RELEASE: The Committee of the Council for Civil Liberties last night released the following statement:

COMMISSIONER FOR LEGAL AID SERVICES

On Thursday, 9th October, 1975 the Attorney-General and Minister for Justice, Mr Maddison, tabled a report on legal aid by the N.S.W. Commissioner for Legal Aid Services in the N.S.W. Parliament. The Commissioner in paragraph 8 of the report makes certain comments about the Bathurst gaol cases which are equivocal, inaccurate and contain innuendos about certain members of the legal profession which cannot go unanswered.

The statements by the Commissioner (and the explicit approval given to them by Mr Maddison in Parliament on 9th October) have very serious implications indeed for the future of legal aid in N.S.W. What can only be described as a notional blacklisting of certain unnamed legal practitioners of the Supreme Court of New South Wales has taken place. Moreover, the independence of the legal profession which Mr Maddison is otherwise so concerned to maintain,

is under direct attack. It is now suggested that the manner in which legal aid cases are to be handled is to be dictated by a government authority. It is ironic that Mr Maddison, when discussing the matter in the House (rejecting criticism of the report) used the following words:

> "I say simply that there is an obligation on members of the legal profession, whether they be solicitors or barristers, to approach a case in which they are involved for which legal aid is provided with the same sense of responsibility and conscience as has always been the traditional approach of lawyers to their clients when they are being paid direct by them."

Precisely — the interests of the client, however unpopular or embarrassing such clients may be as far as the government in power is concerned, must prevail over the political predilections of the incumbent Commissioner for Legal Aid Services. Any erosion of this principle will spell disaster for legal aid. Similar problems may well arise in the context of the Australian Legal Aid Office and those persons currently scrutinising the Legal Aid Commission Bill would do well to bear this problem in mind.

The report clearly implies that the Council for Civil Liberties (a) sought to control the manner in which legal aid was administered and, (b) in effect, vetted the legal practitioners to whom assignments could be made; (c) incited prisoners to adhere to the above terms; (d) organised a meeting of members of the Bar and (e) deliberately and malevolently extended the length of the trials.

It is imperative in view of these reprehensible allegations that the record be set straight.

'Let us out or we shoot the Governor, or don't shoot the Governor, whichever is the best deal'

What is fact happened is this:

Shortly after the charges were laid some five or six prisoners sought legal advice directly from one legal practitioner of their own choosing. Crown assignments of these matters to that practitioner were organised in the normal course. As to the remaining 40 prisoners no initiative was taken by the Crown as to their legal representation. The Council for Civil Liberties wrote to the Attorney-General asking what steps were to be taken as to representation of these prisoners. The Department of Corrective Services forwarded to the CCL about 30 applications for legal assistance some of which had, in view of the date stamps upon them, clearly been delayed for considerable periods. CCL indicated to the prisoners that it was not financially in a position to give legal aid to them but would try to help. It was suggested that prisoners apply to the Justice Department for legal aid. A number of barristers met and indicated they would act if required. This meeting was not sponsored by the CCL. The Department of Justice availed itself of the services of a number of barristers who had thus declared themselves available.

The Legal Aid Services Commissioner initially assigned approximately 26 matters to one legal practitioner. A majority of prisoners, quite understandably, were not satisfied at this position. Clearly the potential for a conflict of interest in representing so many clients was manifest. The prisoners indicated that they required separate representation of their own initiative. It was they who stipulated that they wanted legal practitioners acceptable to CCL. CCL accordingly gave to the Department of Justice a list of barristers and solicitors who had indicated their willingness to act and assignments were made to some of these legal practitioners. Had it not been for the intervention of the CCL in response to requests by prisoners the Legal Aid Services Commissioner would apparently have been content to see 26 prisoners represented by one solicitor at the committal proceedings.

In any event the ban on payment to counsel for the committal proceedings entailed a substantial voluntary subsidy to the State government by several solicitors, whilst counsel were paid the princely sum of approximately $30 a day. It is simply incorrect to say that lawyers seeking to serve their clients' best interests extended the trial unnecessarily. The position is that the lawyers involved continued to act with dedication in an unusually long criminal trial with an unusually large number of co-defendants at great personal sacrifice to their practices — and with a considerable measure of success, to judge by the verdicts.

The Legal Aid Services Commissioner states that 'certain practitioners' were at fault in the trials. He does not name anyone and he thus

leaves all the legal practitioners involved under a cloud. He should either identify them and substantiate his allegations or withdraw the unjustified smear.

It is not our intention to denigrate government legal aid schemes as such. Clearly, there have been a number of recent improvements in this area. It is, however, a dangerous omen when governments seek to limit the clients to whom aid is granted or the legal practitioners who are requested to act on the basis that the cases concerned may involve the airing of some views which they, as a government, find distasteful or embarrassing.

George Zdenkowski,
Honorary Secretary,
Council for Civil Liberties.

working party on prisons

It is interesting that there has been a notable absence of publicity for the report of the "Working Party on the Prisons Act and Regulations" chaired by Hon. J. H. McLemens. I seem to remember a great fanfare of publicity accompanying its establishment. It is also interesting that it took ten months to print it and was out of print within days of its release. The report as a whole is a dangerous one and contains little relief for prisoners save two items which may have something to do with the above.

> "A substantial contribution to penal reform would be the exclusion from prison, if possible, of people confined for non-payment of fines or sentences of twelve months or less." (In 1970 91% of prisoners served less than 12 months.)

and

> "We recommend ultimately the payment of award wages for prisoners."

Seems the cat wasn't altogether tame.