

CIVIL LIBERTY

COUNCIL FOR CIVIL LIBERTIES

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NEWSLETTER NO. 15

MAY, 1968

GENERAL

Present figures indicate we have now well over one thousand members. Subscriptions became due in October 1967. Six months have now elapsed and we are pleased to say that only just over one hundred members have not yet renewed. Those members will find a renewal slip herewith and we would be grateful to receive your renewal as soon as possible.

The function at Bilpin was an outstanding success except for those who came too late to share in the excellent 62lb. Bar-B-Q pig. A profit of just under \$200.00 was made and all the credit must go to our past Vice-President Mr. R.J.B. St. John, who undertook to cook the pig to perfection and in fact did so and made his attractive future apple orchard available for the party and to Mrs. Olive Slade who procured the pig and got up at 4 o'clock in the morning in order to drive to Bilpin to prepare all the other necessary things to ensure the success of the party.

CONVENTION

The Committee has now decided formally to hold an Australia Wide Convention in respect of Civil Liberties on the long weekend in October and it will take place from Saturday 5th October to Monday 7th October and the Chart Room in the Carlton Rex Hotel has been booked. We feel that this year will be a great time for holding the convention as it will be held in conjunction with Human Rights Year of the United Nations. Circulars have been sent to Council's for Civil Liberties in all other states and it is hoped the representatives will attend and read papers from all parts of our Commonwealth.

Apart from the papers that will be read an entertaining social programme is also planned. It is proposed to commence the convention on the Saturday morning and terminate the day's proceedings with a Wine Tasting in the evening.

At this stage it is thought that a registration fee of about \$5.00 per person should cover the cost of attending the convention, the hire of the convention rooms, morning and afternoon tea and attendance at the Wine Tasting on the first night. The hotel will provide services for drinks and other refreshments at suitable times in the Convention Room. It is also proposed to hold a special Chinese luncheon on the Sunday and a final Buffet Dinner on the Monday night. These functions will be additional to the registration fee as proposed.

It is hoped that many New South Wales members will attend, if not for the reading of all the papers, at least for the social activities.

Confessional Evidence

A surprising suggestion has come from the British Section of the International Commission of Jurists regarding the interrogation of suspects in criminal cases.

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Under the British system of law all accused persons have the privilege of silence and are not obliged to answer questions unless they desire. In New South Wales in many criminal trials a document known as a Record of Interview is tendered by the prosecution which contains a typewritten record of questions and answers allegedly freely and voluntarily given by the accused confessing to the crime and usually signed by the accused as well. Of course the admission in evidence of these documents is usually fatal to the accused and in most cases he wishes to retract them at the trial by alleging persuasion or force on the part of the police to make him sign them. The International Commission of Jurists recommends as reported in the current number of Australian Law Journal "that the privilege of the accused to keep silent before his trial should be abolished but subject to the important safeguard that any confession of guilt should be inadmissible in evidence unless made and recorded before a magistrate. This controlled interrogation before a magistrate would be compulsory and a record of it admissible at any subsequent trial to the exclusion of any other statement oral or written made to the police by a person after becoming a suspect. Existing powers of arrest should be retained. In addition the police should be able to apply to a magistrate for a summons to interrogate a suspect. In the event of a person objecting to interrogation on the grounds that he is not a suspect it should be for the police to prove to the magistrate that reasonable grounds for suspecting him exist. At the interrogation the suspect is invited to make a statement and after he has done so or has declined to do so the police would be entitled to put leading questions. The presiding magistrate should disallow any question which he thinks unfair or improper; the suspect would retain all the normal privileges in regard to the refusal to answer questions, except the privileges against self-incrimination."

This is of course a tremendous step forward (or backward) from the present system and touches very closely on a question of civil liberty.

The practical difficulty must be as to what steps are taken if the suspect still refuses to speak even before the magistrate. One assumes that he could be committed to prison for contempt of court but he might be unwilling to take the risk of being thus committed if the penalty for the offence for which he is suspect is only a small one, but in the event of certain crimes where the penalty could be ten years or more what would then be the answer? Would he then be committed to prison for an indefinite period? This of course would be fundamentally repugnant to the rule of law that a person shall not be imprisoned for lengthy periods without trial and it could also, one assumes, be argued that the threat of prison in order to make him speak is not far removed from the old medieval system of *peine forte et dure*.

It is not unimportant to note that what are known as the New Judges Rules in England regarding the questioning of suspects by the police have not been adopted in this State. These new Rules are generally more disadvantageous to the suspects than the old rules.

An Independent Tribunal needed

The Council for Civil Liberties views with some concern that within the last few weeks two instances have been reported in the Press in which detectives have reduced in rank by being sent back to uniform duties. In one case it was a detective at the C.I.B., in the other a detective associated with the fraud squad.

The Council has long advocated that complaints against the police should be investigated by an independent tribunal and not by the police themselves. These are cases dealing with vital matters of public interest and yet the public are not informed as to which police were concerned; one may well ask whether their misconduct was such as to be within breach of the law and not merely a police regulation.

Many arguments are put up by the police against the formation of such an independent tribunal, the main one being that other bodies such as solicitors, barristers, doctors and the like carry out their own independent and private investigations. This of course is not strictly true as there is full publicity

regarding any professional person whose misconduct causes him to be penalised by the Court but a distinction must be drawn in that persons who complain of misconduct by the professional persons mentioned above have only come into contact with them through their own choice. They have retained them or employed them as professional experts in their own field. The citizen who complains of police misconduct is in most cases only in contact with the police against his own will. It is probable that if a policeman's behaviour is such that it is in itself in breach of the law he will be dealt with in the ordinary courts and full publicity given to the proceedings but if his behaviour falls short of that, it could still be grossly reprehensible behaviour and yet the public never know the result of the inquiries made by the Commissioner and worst of all the person who suffers at the policeman's hands himself never has any knowledge of the final result of his complaint.

An example of this type of matter which can arise recently came to the notice of the Council.

A traffic case was about to proceed in a Court of Petty Sessions but the prosecution maintained that it was unable to proceed with it because of a transport strike whereby the civilian witnesses were unavailable. A police officer gave evidence under oath that he had contacted a witness and that he had informed him that he would be unable to attend the Court. When the case was eventually heard the civilian witness gave evidence that not only would he have easily been able to attend court on that day as he had his own transport, and, in any case, lived quite near the court, but also that no one had ever approached him about attending nor had he been informed that the case had been set down for that day. The defendant was eventually acquitted after spending a considerable sum in legal costs, part of these of course being his Counsel's and solicitor's fees for the abortive day that the matter was adjourned on the evidence of the police officer. The matter was placed before the Commissioner by the defendant's solicitor and it was requested that at least his legal costs for that day could be reimbursed. Not only did the Commissioner write and say that he could not see his way clear to make any offer in this direction but that in respect of the complaint against the police officer concerned he replied that "full inquiries had been made into the matter as a result of which appropriate departmental action would be taken in relation to the Constable". Apart from not getting his money we have no doubt that the defendant would like to have known what the appropriate departmental action was.

Dr. Nikolaidis

The Committee considered the refusal of the Commonwealth Government to grant a visa to enter Australia to Dr. Nikolaidis. This gentleman was an opponent of the present Greek government living in exile who was invited into Australia to address local Greeks as to the present state of affairs in Greece. The government considered there was evidence that he proposed to rally support in Australia amongst local Greeks for the overthrow of the present Greek government. It refused him a visa apparently on the basis that it would be unfriendly to the Greek government to allow him to do anything here by way of calling for its overthrow and also on the basis that Australian Greeks should concentrate on Australian politics and not become embroiled in the politics of their homeland.

The Committee considered that this was a gross interference with the right of Australian Greeks and of other Australians to be interested in the politics of Greece and the right of all Australians to hear matters put forward by Dr. Nikolaidis. It also considered that the Government was exercising its powers over immigration on a basis of political discrimination. Accordingly the Committee protested to both the Prime Minister and Mr. Snedden, the Minister for Immigration. The latter did not reply and the Prime Minister replied formally forwarding the already published statement by Mr. Snedden as to the government's reasons. The Committee does not consider the position satisfactory, but will await any further development if other Greeks should seek to come to Australia to address Australians whether of Greek origin or not on the state of affairs in Greece.

Adam No. 3

Adam is a colourful bearded individual whose name has appeared before in these bulletins. Over a period of some months he found himself in police custody on three occasions in the Darlinghurst and Redfern area, on charges of insulting words or offensive behaviour or some similar blanket charge. Legal assistance was granted to him in each case and in two of them the Magistrate dismissed the charge but on the third one he was convicted at the Redfern Court of Petty Sessions but appealed to the Quarter Sessions Appeal Court where his Honour Judge Harvey Prior upheld the appeal and quashed the conviction.

Although Adam knows his "If You Are Arrested" a little better than he should, it was our view that police discretion was again abused in arresting him. But may we say that despite Adam's continued presence in the district armed with his knowledge of police powers and his booklet there has been no victimisation. In fact, with many complaints received by us regarding the police we have yet to come across one case of victimisation.

The facts in Adam's case Number 3 are unimportant except possibly to Adam but evidence was given by two constables that he had been arrested by them and that there was no Sergeant of Police involved in either the arrest or the charge. They were asked about questions that were put to Adam when charged. He was asked what his other name was. He replied he had not got one, and it was alleged that the non-existent Sergeant then said "Put him down as Richard Adam the hairy big -----" (the Sergeant was then alleged to have used a popular expression describing an important part of the male anatomy). This was denied. It was also suggested to the Police witnesses that when Adam was asked for his date of birth, knowing well his rights, he refused to give it and again the non-existent Sergeant is alleged to have said "Put him down on April Fools Day". Of course this conversation was denied as was the presence of a Sergeant of Police. The Charge Book was called for by Adam's Counsel. Lo and behold! His name was entered as Richard Adam and his date of birth as 1st April. Best of all the officer who had charged him was a Sergeant.

The work of the Council

Your committee would like to ascertain from members their views on the type of work undertaken by the Council. From comments made by members and others there appear to be two schools of thought. One is that we should take on as many different issues touching the question of a citizens civil liberties as possible, the other school of thought is that we should concentrate on cases where the law (not necessarily in the shape of the police) is oppressing the individual in respect of his civil liberties.

Most of the complaints we receive are in respect of the latter school and the results in this field are usually more spectacular one way or another, and thus more publicity is given to them. Most of the matters reported in recent newsletters are in this school. This newsletter is no exception. The results in other fields such as making representations and the forming of sub-committees to work on the social problems affecting civil liberties although very worthwhile and containing a lot of work, do not get the publicity that the other cases do. It is not unimportant to note that the Council has received one or two resignations during the last year from members who feel that the Council has failed them in not taking on particular issues, noticeably the marijuana legislation and fluoridation. On the other hand some of our committee and others feel that in almost every case where a Police Officer charges a person with "offensive behaviour" an issue of civil liberties arises. On that reasoning the Council should offer free legal assistance to every person arrested on this charge. Many persons who have approached us have been arrested on this charge and similar ones under the Public Offences Act or the Vagrancy Act and have received legal assistance, although cases where persons have been charged under "offensive behaviour" for misconduct in a public lavatory have not always received the Council's support. One particular case comes to mind, which is reported later in this bulletin, of a young man arrested for so-called insulting words at 3 p.m. on a week day afternoon in a street in Double Bay.

Although later acquitted of the charge he spent some six hours in custody, locked up in a police cell before his bail was raised. This fact alone must raise an issue of civil liberties.

Members of the committee will be most interested to hear from members on this matter as to whether we should take on a large number of issues or concentrate largely on the major issue of oppression by the law.

Police Discretion

There are occasions when the Council for Civil Liberties finds itself opposing Police methods and frequently where the Police have abused their discretionary powers. Police officers have greater powers of arrest than ordinary citizens and cases are frequently called to our notice of persons who have been arrested for what may be a breach of the law where a reprimand or caution would well have met the case. Likewise persons are frequently arrested when there is no doubt as to their identity and the case could well be met with by summons rather than by arbitrary arrest. The Council gave legal assistance to two persons in recent months where it appeared that there had been a great abuse of discretion on the part of Police Officers, possibly due in each case to a clash of personalities between the arresting police and the victim.

A young gentleman with a beard (bearded persons seem to attract the attention of arresting police more than the clean shaven variety of would-be offenders) was stopped by plain clothes police in a suburban street at Double Bay at 3 o'clock in the afternoon and asked what he was doing there. He told the police that he had been visiting a lady at a flat who had returned from hospital with her new baby. After some discussion he was placed in a police vehicle and taken to Paddington Police Station and charged with insulting words in that he had said to the police "What a stupid useless occupation this police force is anyway". There was no question as to his identity. Nevertheless he was locked up for a period of some six hours. The lawyers retained by the Council for Civil Liberties briefed Counsel and the Magistrate discharged the defendant without calling on him to give evidence. He held that if the alleged words had indeed been spoken (and he made no positive finding that they had) they were not insulting words within the meaning of the Act. Without going into the rights and wrongs of the facts of the case it was a great abuse of power for this man to be arrested and imprisoned for six hours if he indeed did use those words and the Council was glad to be able to offer him legal assistance.

The Council gave legal assistance to a young man who was fined for having bald tyres on his motor vehicle. This may seem a case in which an issue of Civil Liberties might be hard to find. He was in fact driving his motor vehicle along the Hume Highway when stopped by a traffic patrol officer who inspected his vehicle and found that one head light bulb was defective. Instead of punishing him he placed a sticker on the windscreen and directed him to correct the defect and to take the car to a named Police Station to have the sticker removed. This was done within minutes and on arriving at the named Police Station a uniformed Constable came out to inspect the head light. During the course of the inspection the driver alleged that the uniformed police officer continually referred to him as "Dad" in a truculent manner. Whether this happened or not was not the point but some words passed between the parties, resulting in the uniformed constable carrying out another inspection on the vehicle and found what he alleged as a bald tyre and issued an on-the-spot ticket which carried a penalty which if not paid would result in a summons being issued. The parents (who are English migrants) of the lad were somewhat distressed at the allegations made by the son and made a complaint to the local Police Station. After considerable difficulty a police Sergeant came to the parent's home and interviewed the mother. At this stage the matter was brought to the notice of the Council for Civil Liberties because of certain comments that had been made by the police sergeant while interviewing the lad's mother. By an extraordinary stroke of coincidence the lad's mother had been attempting to make a tape recording of the speech of a caged parrot when the police Sergeant arrived and again by the sheerest coincidence the tape recorder was not switched off and the whole of the conversation was recorded on tape.

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Certain representations were made through a Solicitor in respect of the Sergeant's behaviour and also the behaviour of the uniformed constable. But in due course a summons was issued for driving with a bald tyre and the matter proceeded to trial. Legal assistance was granted and Counsel briefed. After a hearing of three days the information was dismissed. The police evidence was that the tyre was completely bald. There was a spare tyre which had good tread. The defendant was in addition to the on-the-spot ticket given seven days to remedy the defect. He was not told to change the tyre. One of the questions which must have faced the Court was - why if the tyre was completely bald would the defendant be permitted to drive on it for a further seven days?

Both these cases illustrate abuse of power. Whatever words were spoken at Double Bay or whatever words were spoken when the vehicle was taken to the Police Station to have the sticker removed, it seems a fair inference to draw that the arrest or the on-the-spot ticket was only issued because of a clash of personalities between the parties and we feel that in each case an issue of civil liberties arose. Citizens should be punished for breaking the law not for being cheeky to the Police.

Habeas Corpus

Most of the Sydney Press recently reported the hearing of habeas corpus case in the Supreme Court.

The Council was originally approached by the applicants for this writ. They did not come within the fairly stringent means test imposed by the Public Solicitor's office and could get no legal aid there. They had paid a sum of money to a solicitor but were unable to raise the necessary additional funds for the Court hearing. It was not felt that an issue of civil liberty was raised in this instance but the Council was able to recommend to them a firm of solicitors who were, in the special circumstances, willing to take on this case on reasonable terms and who likewise instructed a new member of the Bar to appear in the case. The application was successful.

It is gratifying to feel that these people were helped in this way. Cases such as this show urgent need for a legal aid system and it is our understanding that the present Government with the assistance of the Law Society will introduce such a scheme within the next few months.

Aborigines

Some time ago we reported a case of an aborigine reserve in Woodenbong being used by an outsider for crop raising and certain representations were made on behalf of the aborigines by this Council to the Chief Secretary's Department. For those of you who are interested in the question of the land rights of aborigines we draw your attention to pamphlet entitled "The Land Rights for Aborigines" which has been prepared by the Armidale Association for Aborigines. Copies of this pamphlet may be obtained from Mr. A.B. Lloyd at 5 Glenelg Road, Armidale, N.S.W. 2350. We also draw your attention to another booklet selling at 15c prepared by the Australian Council of Churches in 1965 entitled "The Land Rights of Australian Aborigines".

GORDON JOHNSON
HON. SECRETARY