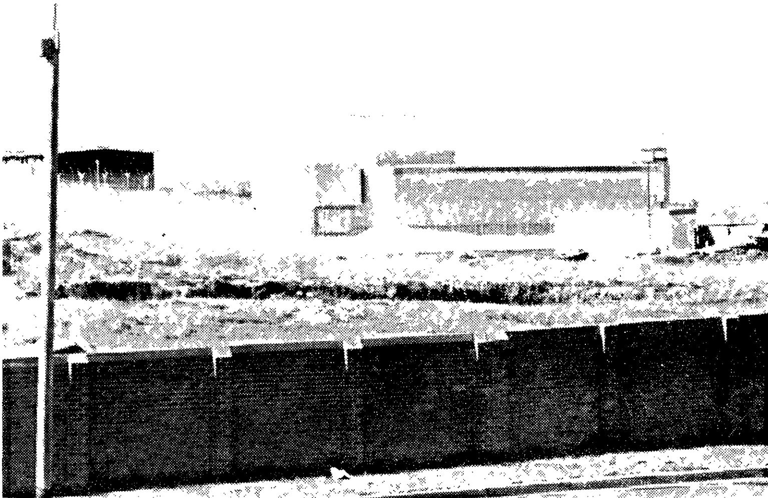


The New Maximum Security "Hell Cells" at Long Bay Sydney.

PRISONS···
A Legal Vacuum

by Mr Justice Staples

[1] The second part of a text of a speech given by Mr Justice Staples to the PAG, Alternatives to Imprisonment Conference, held at the University of N.S.W. in May of this year. The sub-headings have been added. (Ed.) See September issue for the first part.

I should like to refer to a number of incidents that have come before the New South Wales courts in 1974.

Equality Under The Law?

On October 15, 1973 a Catholic priest at Long Bay Gaol found a number of prisoners being beaten unmercifully. Unable to stop the violence by representations to officers inside the complex, the priest went into the city and complained to the head office of the department, which then instituted enquiries. These enquiries revealed that some prisoners were indeed suffering badly from injuries, and that by the actual course of events only prison officers could have inflicted the wounds. The wounds and injuries had not been inflicted by other prisoners or suffered in a fight with officers. Clear suspicion of the identity of the officers concerned in the

violence was quickly established. It was a clear case of assault occasioning actually bodily harm, which is an indictable offence.

The law does not grant exemption to prison officers from prosecution under this head of crime, no licence is granted to any person to inflict actual bodily harm upon a prisoner except in the case of a whipping ordered by a court and carried out under proper supervision.

Even so, to this day no person has been charged in this particular case, as we shall see. One would have expected that if you or I were believed on reasonable grounds to be guilty of an indictable crime founded on assault, we would be brought promptly before a court and charged with the offence.Our law makes the procedure in such cases a simple one. Our Justices Act prescribes that "an information may be laid before a justice in any case where any person has committed or is suspected to have committed any ". . . indictable offence" and that "any such information may be by parol and without oath". Thus, the procedure for bringing an alleged wrongdoer before the court is simple in the extreme. Upon the laying of the information, a summons is issued, and where it is supported by oath, a warrant in the first instance shall be issued.

The Public Service Board, which took control of the enquiries at the outset, decided to keep the alleged crime within the club. They decided to hold an enquiry under the Public Service Act, imposing enormous strains upon the language of the Act in so doing. The object of the exercise, which was clear then and has been confirmed by events since, was to keep the matter out of the ordinary courts of the land, to prevent the jurisdiction of courts from reaching within the walls of the gaol.

The Denial of Effective Representative

People who take an interest in the administration of our prisons will know that one of the outstanding figures in Sydney offering some voice of concern at the situation in our gaols is a solicitor by the name of Jack Grahame, a man held in the highest regard by the members of our profession. He was interviewed on television about the proposed enquiry and was seen by a sister of one of the injured prisoners who thereupon retained him on behalf of her brother to represent them at the enquiry.

The enquiry commenced before the Deputy Chief Stipendiary Magistrate and Grahame sought leave to appear on behalf of the prisoner. At this point he was appearing without fee for the prisoner. He had asked that the Crown give legal aid to assist in the representation of the prisoner, but the Under-Secretary of Justice had personally rung Grahame and informed him that the injured prisoner

had no sufficient interest in the outcome of the enquiry to warrant the Crown extending to him any form of legal assistance. It was Grahame's intention on the opening day to request that the magistrate refer the interest of the prisoner to the Law Society and the Bar Council requesting those bodies to arrange representation for the prisoner. It was not convenient or desirable for Grahame himself to act in the matter. But he never got the chance to make the submission. For the Public Service Board opposed his appearance in any form whatsoever. A file was produced, allegedly a police department file, on behalf of the Board, which purported to show that Grahame had had a dealing with a prisoner some 18 months before while the latter was an escapee from custody. He had come to Grahame for help. and Grahame had advised him to give himself up, but before doing so to tell his story to a Sydney television station, which the prisoner did and thereafter surrendered. The publicity that attended this case embarrassed the Board more particularly when on the trial of the prisoner for escaping, the Crown case was dismissed for want of any evidence that the prisoner ever was in lawful custody. So the Board argued that Grahame was not a fit and proper person to appear in any enquiry conducted under the authority of the Public Service Act (notwithstanding that he was a practicising solicitor without a blemish on his professional record) for he had collaborated with an escapee, aiding and abetting him.

The presiding magistrate upheld the submission and excluded Grahame from the enquiry. This decision called into question two fundamental ideas. Firstly, there are no degrees of right to represent a person if one is a solicitor. One is either on the roll or one is not. Grahame was on the roll, and until he is struck off after a proper proceeding in the Supreme Court, no magistrate is entitled to question the right of any person to retain his services. Secondly, courts have no right to select the advocates that may appear before them. When judges start picking and choosing amongst the lawyers they will permit to appear before them, the independence of the legal profession ceases. The laws are then administed in courts of favourites. In my submission, the presiding magistrate should have stopped the outrageous insinuations made by the Board against Grahame and reminded the Board that if a man is a solicitor, he is not half a solicitor. He is either in or out. The Supreme Court had not put him out, so the magistrate was bound to let him in, but no — the magistrate acceded to the submission of the bureaucracy and put the advocate out.

Once Grahame was out, a splendid thing happened to the public purse. It opened widely. Next day the Department of Justice offered to meet the fees of a lawyer selected by the department and asked if he would represent the prisoner. The offer was accepted and the prisoner represented. If this was not a course of manipulation of

the law, from the moment it was determined not to submit the prison officers to the ordinary criminal law until a different lawyer was chosen by the board for the prisoner, how can we characterise the behaviour of the Public Service Board in choosing to put the violence before its own tribunal rather than the ordinary courts.

The upshot of the enquiry was in the words of the magistrate's report, a recommendation "that disciplinary action be taken against the officers I have identified as having used unnecessary force on the four named prisoners". In other words, there was a finding of assault. In my view, the magistrate himself should have issued process against the officers under the Justices Act to bring them before an ordinary court for their conduct as he had assessed it. The report which was dated 28 February, 1974, did not make such an adventurous recommendation, it merely confined itself to a call for disciplinary action. So far the Board has done nothing, and there is good reason to believe that nothing ever will be done to ensure prison officials are equal under the law with ordinary citizens where there is suspicion of a criminal offence.

The Destruction of Bathurst

I come now to the destruction of Bathurst gaol on 3 February, 1974. The official position is that Bathurst burned without reason, or rather simply because it was populated with dangerous, cunning criminals, the control of whom calls for ever more oppression at the hands of the good, just and law-abiding officials who, through no fault of their own, lost a favourite gaol. This thesis is thoroughly arguable, but Bathurst concerns many more facets of public administration than the mere competence of the particular prison officials in charge on the day of the fire.

Bathurst, in my submission, reveals a short-fall in the work of the courts and police in ensuring that ordinary citizens enjoy a fair and equal place in the scheme of things. Both the courts and the police have proved themselves inadequate to carry out the roles assigned to them by the expectations of a liberal society. Moreover, the press and parliament, with the noble exceptions of the "National Times" and Mr George Petersen M.L.A., have failed miserably to address the slightest attention to the shortcomings in law enforcement and even-handed justice occurring in the Courts which have had Bathurst business before them.

Space does not permit a systematic demonstration of the ground on which I stand my criticism. But I wish to select a few incidents for your consideration.

The riot which occurred on a Sunday afternoon, was unplanned and unexpected. Such an extreme event however, did not occur without a long history of dissatisfaction and resentment on the part of the prisoners. The previous three months had seen a number of sit-down strikes and protests about life in the gaol. The incident most recently festering in the minds of the prisoners arose out of a sit-down strike by a number of prisoners on 15 January 1974. It lasted only a few minutes, and was brought to an end by a promise on the part of officials that if it was promptly ended, there would be no reprisals against those taking part. The promise was not kept. On the contrary, the prisoners concerned, some 37, were next day charged with disobeying a lawful order, and open incitement to mutiny. A visiting Magistrate sentenced the prisoners to three days confined to cells.

Secret Trials

Ordinary citizens who break the law and who are charged appear in courts which do business in public. But prisoners in N.S.W. goals are nearly always sentenced in closed courts not accessible to the public, they are never represented, and there is never an appeal to a higher court. Yet the charges that are laid rest mainly on a statute of the parliament which makes no provision whatsoever for such a crippled form of criminal procedure. The Prisons Act contemplates that

charges will be mainly heard summarily in the prison where the offence is alleged to have occurred, but not necessarily, for the venue is ultimately in the control of the visiting Justice. There is no prescription that he shall hold his courts in secret away from public scrutiny. The Act does not so prescribe, but the Commissioner of Corrective Services has made a rule about the matter. He requires that "the visiting justice shall permit no publicity to be given to cases adjudicated upon within the prison". This rule is itself a secret rule and has been promulgated without the usual endorsement of the Governor in-Council as attends a regulation made by force of statute and which may be disallowed by either House of Parliament in the ordinary course of delegated legislation. I shall illustrate the secrecy of the rule in another context.

When has it ever been otherwise than that men have resented punishments imposed in secret courts without representation to the accused and without right of appeal? Certainly it was resented in Bathurst on and after their convictions for the peaceful sit-down ended on false promises of no reprisals.

The ambition of the Commissioner of Corrective Services to foreshorten the public role of the courts is pointed up by the clear prescription in the Justices Act directed to all magistrates, including visiting justices, in section 67:

> "S.67. The room or place in which a justice or justices sits to hear and determine any information or complaint shall be deemed to be an open and public court, to which all persons may have access so far as the same can conveniently contain them."

Even so, notwithstanding the clear words of the Statute which creates and defines the office of the Justice of the Peace, Justices when they visit gaols, sit in secret courts.

The Events of February 3rd

On the afternoon of 3 February, a prisoner threw a molotov cock-

'Parker, sir. Wants to complain about the food again . . .

tail over the heads of some of the prisoners as they sat watching an afternoon picture show. It was not designed to explode, or failed to do so and inflicted only minor burn marks on the floor when it fell. Everyone abandoned the theatre for fear of fire, and the prisoners without resistance or disobedience and in full cooperation with the warders returned to their respective exercise yards. Three of the warders then selected a prisoner named Kennedy, a young man of 19, who had only been in the gaol a few days, and took him to his cell and there subjected him to a most violent assault, such that his screams could be heard all over the gaol. The excuse that is now given for selecting Kennedy from the exercise yards was that he was the one who threw the bomb, but Kennedy says that he was beaten in punishment for having struck an officer with a chair as he was running from the theatre to escape the fire. Kennedy admits hitting the officer with the chair. He denies that he threw the bomb. In this he is undoubtedly telling the truth. It is known who threw the missile. His name is well-known to the police and the prison department. He has never been charged and has indeed been released from gaol. It is essential for the official version of events that the fiction be maintained that Kennedy threw the bomb, because it was undoubtedly the assault on Kennedy that provoked the riot. The officers who took him to his cell will admit to no more than that they gave him a light push through his cell door.

When the officers reappeared near the exercise yards after leaving Kennedy's cell, a storm of protest broke out from amongst the prisoners against the officers. The prisoners claim that the officers challenged them to show their manly courage in more ways than words of protest. However, it was, soon after the three officers came into view, prisoners leaped over the fencing of their exercise yards, and upon this it appears that every officer present fled the gaol, leaving the prisoners in sole control and occupation of the premises.

Two points can be made about the afternoon's events. No prisoner attempted to escape and there was no violence done to any officer in the several hours which passed before the gaol was again under the control of the officers. In those several hours the gaol suffered vast destruction by fire. Some dozen prisoners were wounded by gun fire poured from the prison walls. At about 6 p.m. the prisoners, now surrendered and disarmed, were marched into compounds known as special back yards by the officers, and there they were kept confined until about 1.00 a.m. on the morning of the succeeding day, Monday 4 February.

Organised Mass Violence

What occurred at 1.00 a.m. is what must trouble any fair minded citizen deeply. For an organised act of mass violence occurred against the prisoners which reminds one of the worst excesses of

retribution for collective guilt one normally associates with the occupation of an enemy power in war time. The evidence that it occurred is overwhelming. It is spelled out in numerous interviews between prisoners and police recorded after the event, in statements by prisoners to their lawyers and in court when answering charges of the riotous destruction of the gaol, and it is confirmed by the observations of the Superintendent of Bathurst Hospital who was called to the gaol in the early morning to attend to the wounded and injured men.

The Cover-up

Not a single prison officer has been charged for this lawless destruction of flesh and bone. It is the official position that it never happened. Indeed, the Minister in charge of prisons told Parliament that he had not even heard of the allegation until some eight months after the event, and this notwithstanding the innumerable detailed accounts recorded by police, of whom the Minister was also in charge, and the detailed medical reports of the medical superintendant, Dr Doust.

It might be argued that summary retribution of this character is a proper means of maintaining the power of the authorities over inmates of gaols, and — the prisoners having had their day, so the warders should have theirs. But if this is so, then it was in my submission not right that the prisoners should then be charged with the crime of riotous destruction of the gaol, with a breach, as it were, of law and order, if the warders were not also to be charged, and further it was not right that the prisoners should be subjected to the utterly cruel deprivations that was their lot for the next six months, applied and inflicted way outside ordinary gaol routine and long before they were ordered to be punished by a court for the destruction. That suggestion I make upon the simple premise that prisoners are not, normally, outlaws.

The failure of the police officers who were given cause in their investigations of the riot and more particularly in their interviews with prisoners to charge the prison officers concerned was and remains in my submission criminally culpable. There can be no doubt that there was ground for a suspicion that an indictable offence of criminal assault had occurred, as required for an infor- at mation under the Justices Act. To fail to lay the information is to involve the law of misprision of felony.

Archbold, 35 ed. para 4166 says:

> "Misprision of felony consists in concealing or procuring the concealment of a felony known to have been committed. . . . The

only ingredients of the offence are (i) knowledge that a felony has been committed and (ii) concealment of such knowledge.

Active concealment need not be proved. A person is bound by Law to disclose to proper authority all material facts relative to a felony of the commission of which he has definite knowledge, such as the name of the felon, if he knows; the place where it was committed, etc.

If he fails to do so, when there is a reasonable opportunity available to him to do so, he is guilty of misprision of felony.

The duty can be performed by reporting to the police, or a magistrate, or any else in lawful authority."

As to knowledge, Lord Denning, in Sykes v Director of Public Prosecutions, 1963 W.L.R. 371 said:

> "There must be evidence that a reasonable man in his place with such facts before him as the accused had, would have known that a felony had been committed. From such evidence the jury may infer that the accused himself had knowledge of it."

These rules are founded on the premiss that persons in authority — magistrates and police officers alike — will automatically, and without fear or favour, affection or ill-will, summon to court persons alleged to be guilty of serious offences.

A little even-handedness in law enforcement so that all wrong-doers are equally subject to the sanctions of the law would go a long way to relieving the disquiet that I and a good many other of my colleagues in the legal profession feel about the Bathurst affair.

Further Impediments to Effective Representation: Taking Instructions Through a Wall

Let me refer to other matters that arose after the prisoners were charged and appeared in committal proceedings before a stipendiary magistrate to test whether there was evidence to warrant their trial on indictment for the destruction of the gaol.

Kennedy was sent to Long Bay after the riot. A lawyer went to the gaol to visit him for the purpose of preparing his defence. The authorities refused to permit the lawyer and his client to confer in the direct and immediate presence of one another. They insisted that the conference should take place with the two separated by a glass wall, with the sound of their voices passing through a metal grill. Not even a hand-shake was permitted to the two people meeting on such a grim occasion for the first time in preparation of a case in answer to a charge carrying ten years further gaol for Kennedy.

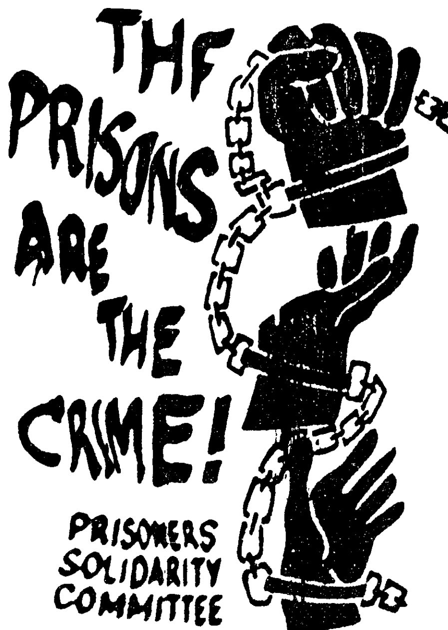
A case was brought in the Supreme Court on behalf of Kennedy challenging the interposition of the glass wall between himself and his lawyer on the occasion of legal conference. It was argued that the presence of the wall was not dictated by any statutory provision and represented an unwarranted invasion of the relationship between lawyer and client, which above all must be founded on intimacy and confidence. The Law Society of New South Wales and the N.S.W. Bar Association both sought leave to intervene in the case on behalf of the right of access claimed by the prisoner to his lawyer. They were not granted leave, the court ruling that no adequate interest in the outcome lay in the applicants.

I find this decision given by a judge astonishing. It is said that a right to counsel is one of the very firmest bases for liberty in free society. It would be, one would think, the kind of right that lawyers and judges in particular would wish to see emphasised, underlined and particularised in the fullest and most generous degree. And furthermore, one would think that the right to counsel should be made in every sense to be a meaningful right, with no qualifications on the intimacy of contact and consultation that may be called for or requested, in the interest of a man's case being wholly put as he would want it put by the lawyer of his choice in whom his confidence is complete. How strangers can commence such a relationship, which public policy expressed in the right to counsel puts great store upon, when a glass wall is thrust between them is not easy to see. That the legal profession should query the obstacle is to be expected, but what was not expected was that a judge should uphold the objections of the Crown to the presence in the litigation of the two professional bodies which generally have free and unimpeded standing in the courts when the interests of the legal profession are affected. They were excluded.

The court then proceeded to rule that the presence of the wall was perfectly in order. Naturally there were reasons given, but they were founded wholly on the construction of delegated legislation, and rested mainly on inferences that could be drawn that the wall was intended to give effect to a rule prohibiting physical contact between a prisoner and his visitor. Beyond a handshake, the prisoner did not claim physical contact, only the removal of an irksome and unnatural barrier. He was denied both, for no good and obvious reason, other than the sanctity of the policies and restrictions of some subordinate and ungenerous legislator.

Poverty As a Barrier to Appeal

The matter was taken on appeal to the Court of Appeal. The Crown was appalled by the prospect of losing the wall. It made an interlocutory application to stop the appeal being heard. It argued three



grounds of interest in this context. It claimed that the appeal was academic, because the prisoner was now allowed to see his lawyer without the glass wall and further, that if the prisoner lost his appeal, he would be too poor to pay the costs of the Crown. His allowance from the prison amounted to only nine dollars, and he had no other assets. Finally, the Crown argued that to hear the prisoner would be to open the doors of the court to a flood of cases for aggrieved prisoners.

It was shown that the prisoner had not applied for legal aid in mounting his appeal. The Court of Appeal thereupon refused to hear the appeal until the prisoner lodged $500 security against the costs of the Crown. The success of the Crown in achieving a temporary relief from the appeal was rewarded with an order against the prisoner for costs in its favour to be added to the costs he had incurred in his failure at first instance. The prisoner with nine dollars assets now stood in his cell with liabilities in the order of $3000, all at the instance of the guardians of a fair and equal society.

Legal aid, or a want of it, now threatens to become a barrier across the portals of the law in embarrassing cases. There is no

reported use of the power to order security for costs in an appeal in New South Wales before this case. The prisoner was bringing an appeal under a provision of the Supreme Court Act. It was his right to appeal. The absence of legal aid was used as means of keeping him out. It would be more honest to abolish the right of appeal in the case of poor people and reserve it for the rich. Short of that, the Crown should never be heard to take the point of poverty, in a free and equal society, against any citizen whatsoever.

Crown Privilege — Watergate Style

Kennedy figured in another incident of public importance. Part of his defence in the committal proceedings was that he had been assaulted by prison officers named by him. To prove the assault he subpoenaed statements made by those officers concerning himself in the possession of the Commissioner of Corrective Service, and also the latter's prison rules.

Now, you would think that the Minister of Justice and the Minister in charge of Police and of Prisons would be the first to uphold the law, to protect the peace, and to resist any attempts to cover up crime. That he may not always see his duty in that light is an inference that can be drawn from the following incident. For the Minister claimed crown privilege to resist producing the evidence required by the defendant for his defence. The Minister sent a certificate to the court resisting the subpoena in the following terms, inter alia:

> "These reports were made by the respective officers at the express request of the Commissioner upon the Commissioner's express undertaking to these officers that they would not be used against them in any way nor disclosed in any criminal court proceedings and that they would be kept solely for the use of the Commissioner and the Minister . . . The efficient and proper functioning of the Department of Corrective Services requires that the officers thereof must be able to rely absolutely and unequivocally on the undertakings and assurances of the Commissioner that reports made to him will not be disclosed . . . It would cause harm to Department of Corrective Services and the due administration thereof if the undertakings of its Commissioner to the subordinate officers thereof were not kept . . ."

This is precisely the claim of confidentiality and executive privilege made by President Nixon that was struct down by the Supreme Court of the United States in the Watergate affair. The Court said:

> ". . . In support of his claim for absolute privilege, the President's counsel urges two grounds, one of which is common to all governments and one of which is peculiar to our

system of separation of powers.

The first ground is the need for protection of communications between high government officials and those who advise and assist them in the performance of their manifold duties; the importance of this confidentiality is too plain to require further discussion . . .

The second ground asserted by the President's counsel in support of the claim of absolute privilege rests on the doctrine of the separation of powers . . .

However, neither the doctrine of separation of powers, nor the need for confidentiality of high level communications, without more can sustain an absolute privilege of immunity from judicial process under all circumstances . .

Absent a claim of need to protect military, diplomatic or sensitive national security secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of Presidential communications is significantly diminished by production of such material for in camera inspection . . .

We have elected to employ an adversary system of criminal justice, in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive.

To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence . . .

> Without access to specific facts a criminal prosecution may be totally frustrated . . . The claim based only on the generalised interest of confidentiality . . . cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice."

Nothing in these principles attracted the draftsmen of the Minister's claim to privilege. All that the Minister produced in answer to Kennedy's subpoena was a copy of the rules made secretly, as I noted earlier, by the Commissioner of Corrective Services, and those were produced to the court on the strict condition laid down by the Minister's counsel, that they were not to be shown to the prisoners, notwithstanding that prisoners could be convicted and punished for disobedience of those very rules. It is incredible, but true, and not the kind of thing that goes on where equality under

the law is an instinctive and un-assailable value of those who govern. Watergate appears to have been great entertainment among N.S.W. Crown law officers, but very little instructive.

Court Sanctions Extra-Legal Punishments: Solitary Necessary For Security Of The State

I referred earlier to the fact that in all sorts of ways cruel and extra-legal punishments were inflicted upon the prisoners for some six months after the fire. It was alleged by the prisoners that they were not allowed toilet paper, not allowed to wash, were given half rations, were refused work, refused contact with lawyers, deprieved of mail, deprived of exercise, and above all they were confined for long hours in solitary confinement on each and every day of the week. The prisoners claimed that the hours of lock-up were 19 hours per day solitary in their cells, far more than was the normal routine of the gaol prescribed by the regulations. Even when out of the cells, they were locked in a cage with only one other companion. This routine went on without change or diminution of hardship and loneliness for months on end.

When their cases under the charges of riot came before the court, the presiding magistrates were told by the legal representatives of their clients' predicament, and it was urged that the conditions were not only unlawful but were affecting the ability of the legal representatives to get proper instructions on the defence cases. It was not possible to get the prisoners to concentrate on their legal problems while they were obsessed with the oppressive conditions under which they were living and from which they wanted release as the first order of the day. All they demanded was a normal gaol routine.

There is no doubt in my mind that those conditions were deliberately imposed by the prison authorities in an effort to induce the prisoners to plead guilty to the charges against them, for the authorities had good reason to fear the result of a public investigation into the conditions in the Bathurst gaol which had preceded the riot and of a public revelation of the retributive violence visited with tear gas and baton upon the prisoners long after they had surrendered.

Now, you would think that a penal system that has been flourishing in and around Sydney on a daily basis since 1788 would have had to cope with a few desperadoes before today and that some of its ancient rules in the Prison Regulations would have been apt to cope with most latter-day crises. But not so. These men, it was contended by the gaolers, were a novel and unexampled case of the depths of human vice. Special precautions not contemplated when the regulations were drafted and put before Parliament for disallowance were needed to maintain law and order in Long Bay against the men of Bathurst.

The case was argued on 2 August 1974. It was the kind of issue which called for a prompt decision. The men were crying out for relief. They had been suffering the isolation since the beginning of February. The issue was simply one on the merits. No human being should be locked up for 19 hours per day without respite for six months, certainly not without clear dictate of law, and preferably clearly determined by the Parliament legislating directly. There can be no doubt that when the regulations were laid before Parliament, they would have been disallowed if they had provided in terms for such a regime as was actually being imposed.

The court was quite insensitive to the human suffering that was before it. No decision was given for a full month and no explanation was given for the delay. Moreover, the decision was against the prisoners. The judge accepted the submission that the prisoners were specially dangerous men (they were young men, in their early twenties), and held that if prison officials felt in their wisdom that they should depart from the clear spirit of the Act and regulations, then that was merely a discharge of their overall obligation to keep every prisoner in their charge in secure custody.

The judges decision was purely academic. For by the time he got around to delivering his seal of approval to official oppression, the officials themselves had abandoned the position they had defended so desperately in the court and put an end to the prisoners' complaints. For during that long month while the prisoners waited for the relief from the higher court which they had first sought without avail in the lower court, their patience snapped and they went on strike in the court itself. They refused to cooperate any further in the proceedings. They refused to leave their cells at court to return after the adjournement. They announced that they would have to be carried bodily out of the court and taken limp and helpless back to Long Bay that night, and then next morning carried limp, helpless, disinterested and uncooperative back to court next day. There was no violence, no threat of violence, but total non-cooperation any longer without relief.

The prison authorities surrendered overnight. The six months ordeal was over. Next day, they were granted a normal regime of hours, food, work, exercise and companionship. Ten days later, in the judgment referred to, the Supreme Court found that nothing less than what had already been abandoned was necessary for the security of the State. It was not law but power which ultimately curbed the excesses of arbitrary rule. The court can blame no one but itself. Once again, a court showed more interest in upholding the law, that is, authority, than it did in justice and liberty, and history passed it by.

Conclusion

At this point I close my notes of aspects of equality under the law. I began on a pessimistic note and I end wondering whether I have given cause to any one to doubt whether our expectations that freedom and justice will be defended surely in the courts, are solidly based in experience. I do not regard the examples I have cited as being unfair to our legal system as a whole. They show a deal of intolerance and zeal on behalf of officials meeting precious little resistance in the courts. It is what courts do in a crisis that counts, what they do when their loyalties to received values of our system is brought sorely into question by those who have power and prestige. That is what truly tests the mettle of the courts as citadels of equality, and of compassion for the weak, the poor and the oppressed who have fallen across the path of men who stride confidently through the upper reaches of society.

It should be the task of courts to contain power, not to concretise it.

RELEASED AGAIN

by Dave Stanford

I will be leaving soon,
As I have many times before.
But this time I shall go knowing
That I have learnt a little more.

My mind has been opened
To this repetitious strife,
And in my years of rehabilitation,
I have learnt about my life.

In crowded yards and closed shops,
There is no scope for responsibility.
Where can I find self-esteem or confidence,
Or any reason for maturity?

How can one have pride at work
For so small a pay?
And where is the incentive
And the will to learn another way?

Tomorrow I shall leave,
And all that I can see
Are the fruits of my labour —
A sense of INSECURITY.