

HON. MEMBERS: No!

*Mr. SPEAKER: Order!

*The DEPUTY MINISTER: This section provides that the M.V.A. Fund now has the power to do these things.

*Mr. S. J. M. STEYN: The hon. the Deputy Minister must do his homework first.

*The DEPUTY MINISTER: Mr. Speaker, I just want to say that, although the fund is now empowered to settle and handle claims, the domestic agreement provides that the companies will handle all claims on behalf of the fund. That is the purpose for which these companies are getting this 20 per cent commission. However, since the fund bears the responsibility, it must be provided in the Act that the fund may conduct investigations, although in terms of the agreement this is done by the companies on behalf of the fund.

*Mr. S. J. M. STEYN: You were wrong a moment ago when you said that . . .

*Mr. SPEAKER: Order!

*The DEPUTY MINISTER: Mr. Speaker, the hon. member for Middelburg raised the question of Bantu drivers. I just want to point out that this is a provincial matter in which we cannot involve ourselves. However, I believe that there is in fact a ray of hope in this new amending legislation as far as the roadworthiness of motor cars is concerned. It is precisely the large number of Bantu motor cars which presents us with the greatest problems as far as the accident rate is concerned.

I want to conclude by pointing out that the hon. member for Port Natal wants to compare the consortium with, firstly, the provincial administration, the municipalities and the Port Office, as regards the collection of licence fees. Secondly, he wants to compare it with greengrocers who act as agents for other people. I cannot see where he reads that in the Act and, therefore, how he can make such a speech.

Motion put and agreed to.

Bill read a Second Time.

LEGAL AID BILL

(Second Reading)

*The MINISTER OF JUSTICE: Mr. Speaker, I move—

That the Bill be now read a Second Time.

I am sure that this Bill will be welcomed by everyone. Hon. members will remember that during the discussion of my Vote last year, I gave an indication that legislation in connection

with legal aid might be necessary. In the meantime there have been further negotiations in regard to this matter. There have been discussions between my Department, representatives of the Association of Law Societies, the General Council of the Bar of South Africa, etc., and this Bill is a result of those discussions, but a little more about this later on.

One can in all probability write volumes on the subject of legal aid rendered in this country and overseas. Consequently I do not intend giving a comprehensive survey of the system of legal aid as it has been functioning or is functioning in other countries or locally, because these systems differ from country to country as regards the form of control, the type of cases to which it is applicable, etc. In spite of that, however, all forms of legal aid probably have one thing in common, and that is to make legal aid available to indigent persons without their having to pay anything for such aid, with the possible exception of actual expenditure incurred.

As regards legal aid in South Africa, legal aid bureaux existed in the larger centres of the country from time to time, and these bureaux made it their object to render legal aid to indigent persons. In the main these bureaux were administered by the law societies of the various provinces by means of subsidies provided by the State for that purpose. One of the shortcomings of the legal aid bureaux we had up to now, was the fact that a considerable section of the country's population could not be reached because of the limited number of bureaux. A few years ago a new legal aid scheme was elaborated in consultation with the Council of the Bar, the Association of Law Societies and other interested parties. At present this scheme is still in operation, although it is not functioning in all centres. Of course, one of the major shortcomings of the present scheme is that legal practitioners have to work free of charge.

Because there was, and still is, a constant need for an effective legal aid scheme, the Association of Law Societies elaborated a legal aid scheme, which in the opinion of the Association would serve its purpose, and submitted that to me for my consideration. In view of the fact that this proposed scheme would have involved a too large organization, it was not acceptable. With the co-operation of my Department attempts were then made to work out a scheme on a simplified basis. The Bill at present before this House is a result of those attempts. Here I have to mention, of course, that the legal profession held definite viewpoints in connection with some aspects. Some concessions were made, whereas other aspects will have to be smoothed out in practice during the operation of the scheme. The various legal professions nevertheless undertook to make every attempt to obtain the co-operation of their members as regards the implementation of the proposed legal aid scheme, and their co-operation naturally is essential for making a success of the scheme.

Naturally the particulars of the scheme are not spelled out in detail in this Bill. From the nature of the case it is not possible to embody full instructions in a Bill of this nature. What is more, to do so would simply impose unnecessary restrictions. Here we are making an attempt to regulate by legislation a scheme which has been functioning according to administrative methods up to now, and which has not produced the expected results. Therefore it should be given the opportunity to evolve fully without hampering restrictions having been imposed which would ultimately prove to have been more to the disadvantage than to the advantage of the scheme. Clause 8 and subclauses (9) to (11) of clause 9 ensure sufficient official control over the scheme.

Clause 2 of the Bill makes provision for the establishment of the proposed Legal Aid Board. Clause 3 is an important one, because it sets out the objects and general powers of the Board in broad outline. This provision ought to enable the Board to work out an effective legal aid scheme and, in co-operation with the legal profession, a basis on which legal practitioners may be compensated for their services in legal aid cases. The provisions of this clause are wide so that legal aid may be rendered in criminal as well as in civil cases.

In connection with the question of imposing conditions on which legal aid will be rendered, there are two aspects I should like to mention in this regard. The first is in connection with *pro deo* defence in capital cases. As hon. members know, the good and established practice of the court appointing an advocate, in consultation with the Council of the Bar concerned, to act on behalf of an accused in capital cases, i.e. cases in which the death penalty may be imposed, if the accused himself has not appointed his own legal representative, has been followed for many years. This is usually done in cases where the accused cannot afford the services of a legal representative. As far as this scheme is concerned, it is not at all the intention to interfere with this. In other words, it will continue to exist. Furthermore, there is of course the basic difference as regards the object of the two schemes. *Pro deo* defence is not only for indigent persons but for everyone whose life is being threatened. If a millionaire has not briefed his own advocate we would supply even him with a *pro deo* defence. The State is therefore going to continue with this *pro deo* scheme, and the legal aid scheme envisaged by this Bill will consequently not affect the existing arrangement as regards capital cases.

The second aspect I want to mention is that the principle of this Bill indeed is, subject to what I have just said, to render assistance to indigent litigants and accused persons. This naturally presupposes a means test, *inter alia*, which will have to be applied and which may differ from area to area. In any event, somebody will have to determine whether an applicant qualifies. Now we know from experience that most of the recidivists are layabouts and

work-dodgers. As a matter of fact, crime actually is their profession. Possibly all of them will qualify in terms of the means test. The question is whether people like that should also be assisted. If legal aid is to give rise to the State having to guarantee to the skolly element who loaf about, snatch handbags, steal purses, and remove money from people's pockets, the additional security of being defended free of charge by legal practitioners provided by the authorities when they appear in court, I can say even at this early stage that the writing is on the wall. I want to put it very clearly that I shall never be a party to subsidizing crime. Therefore the Legal Aid Board, according to its own good judgment, will have to identify the cases which ought to qualify for legal aid, and this means that the question of providing aid will have to be dealt with selectively.

Clause 4 lays down the constitution of the Board. The constitution is such that the various fields of the administration of justice have representation on the Board. Because we are in fact dealing with a social service here, the inclusion of the Secretary for Social Welfare in the Board is self-evident. As specialized knowledge with regard to any other field may prove to be necessary for the effective functioning of the Board, provision is being made for the appointment of a member by the Minister. The rest of the clause deals with the appointment of alternates to act in the stead of any members, the length of the term of office of members and their remuneration. Clauses 5, 6, 7 and 8 relate to procedural instructions.

Clause 9 is important as it lays down how the Board is to acquire and utilize its funds in order to achieve its objectives. The provisions of this clause are self-explanatory and consequently require no further elucidation.

With this, Sir, I think I have said enough about the broad principles of this Bill.

Mr. M. L. MITCHELL: Mr. Speaker, let me relieve the hon. the Minister's mind at once by indicating that we will not oppose the Second Reading of this Bill. The only surprise there is at this stage, is the time it has taken this Government to produce something in the way of legislation in this field. This matter has been talked about for years and years; it has been necessary for even more years. We are delighted that at last something, inadequate though it may prove to be, has at least been brought to this House.

I would not like to describe this Bill as "the passing of the buck", as they say in the vernacular, because as originally framed and conceived by the Department, this legislation provided in fact for the sort of framework which exists in the only country with a similar sort of legal system, namely Britain. Understandably, there was difficulty as to what matters should fall within the right of the accused to have legal aid, and so on. So, Sir, this is perhaps the sensible way to deal with the matter, namely, to pass the decision as to what people

should have legal aid, to a board comprised of practitioners, a Judge and representatives of the various departments concerned, for example the Department of Social Welfare and Pensions, the Department of Bantu Administration, the Department of Justice itself, the State Attorney and the Attorney-General.

We look forward to the board being formed. We look forward to this board formulating those matters in respect of which legal aid may be obtained by the citizen who may be involved in a civil dispute, which is an expensive matter for him to indulge in. Probably many people do not indulge in litigation when they should indulge in litigation, because they cannot afford it. This is quite apart from persons accused in a criminal court.

Mr. S. F. WATERSON: You are not speaking professionally now, are you?

Mr. M. L. MITCHELL: No, Sir. I am looking forward to this Bill working so that I could then find myself in a position that I could not and should not, in terms of the rules of this House, speak about this Bill at all, because of my professional interest.

I think that legal aid in our modern society is as important in many respects as medical aid. People have their rights in law, but they do not generally know what those rights are, and generally they cannot afford to find out what they are. I say that with full appreciation of the fact that there are, as the hon. the Minister has conceded, many thousands of people who obtain legal advice, who get, in fact, legal representation in court without the payment of a penny on their part, because they fall within the category of our *in forma pauperis* rules or *pro deo* rules, or whatever it may be.

There are on the other hand thousands of people who fall outside that pecuniary requirement. You have to be a pauper to get this advice. The fact that at the moment you are just less than a pauper or just more than a pauper will determine whether in fact you will receive advice as to what your rights are under our laws. This is, therefore, the most welcome and most necessary advance that has taken place recently in the ordered ways of our society.

This is an experiment. We support the Second Reading of this Bill without waiving any of our rights to deal with this legislation from a different point of view at a later stage. This is quite obviously an experiment and if it fails we will make other suggestions. I think divorces are one of the things that legal practitioners spend most of their time dealing with. I think they spend a lot of their time dealing with matrimonial matters. I think that every hon. member in this House who is a legal practitioner will agree that we spend more of our time dealing with *in forma pauperis* divorces and other *in forma pauperis* matrimonial matters concerning custody and the myriad other matters that follow from the break-up of a marital union, than anything

else. One wonders whether this should not be regarded as a luxury item rather than as a kind of penny theatre where you pay your penny and you "takes your choice". This is what has happened. I wonder what proportion of the matrimonial matters that come before our Supreme Courts are to-day in fact *in forma pauperis* or ought to be *in forma pauperis*, and what proportion in fact concerns normal divorces and other matrimonial matters which are paid for in the usual way. [Interjections.] My hon. friend asks whether divorces are normal. I can only say that divorces are a fact of life and a part of life. Divorces are certainly something in respect of which "Yer pays your penny and yer take yer choice" should not be the rule of thumb for going to court.

When we discussed this matter some time ago we had hoped that we would adopt some system similar to the system which has been adopted in Great Britain. Such a system could have been adapted to our own particular circumstances. We feel that that system has proved successful. We appreciate that there are certain circumstances which are peculiar to South Africa. We cannot of course adopt the system precisely as it operates in Great Britain but I do believe that if we could have a similar system in South Africa it would be of great benefit to everyone.

The thing that is required to make that system, or any other system work, is money. Unfortunately the hon. the Minister did not wax lyrical in this regard at all. I do not know how much money the hon. the Minister expects will be provided for in the Estimates for this purpose, or whether it is going to be put on this year's Estimates. We know that the necessary money is the teeth of the system. It is all very well having this Bill before the House but it cannot work unless there is enough money to make it work. I wonder whether the hon. the Minister will tell us in his reply what amount of money he anticipates will be placed on the Estimates for this purpose.

Mr. A. HOPEWELL: As a start.

Mr. M. L. MITCHELL: Yes, initially such an amount could only serve to get the system off the ground. We have heard an amount of R200,000 mentioned, but this is just a rumour in the bazaars as we have not heard officially that this amount will be voted. Such an amount might be sufficient to staff this organization. We have also heard mention of an amount of R50,000, in which case this Bill is a waste of time. If this system is to work, we must talk in terms of millions of rand and not in terms of R50,000 or R200,000.

Mr. J. T. KRUGER: You are getting closer to the actual amount.

Mr. M. L. MITCHELL: I hope the hon. the Minister will give us some indication as to what he thinks it will in fact cost to get this

system off the ground and how much he thinks it will cost to keep the system going once that has been done.

The hon. the Minister mentioned *pro deo* defence. As the hon. the Minister rightly said a legal practitioner will appear *pro deo* for someone no matter who that person is. If a man is charged with a capital offence and he has to appear in our Supreme Court he has a right to *pro deo* defence. The State provides such defence. There are occasions when people reject this *pro deo* defence, perhaps because when they look at the person who has been appointed to defend them they do not feel quite as confident as they would have felt if alone. The hon. the Minister is of course quite right when he says that even millionaires are entitled to *pro deo* defence. But as a practitioner you do not of course become a millionaire doing this kind of work at the fees provided by the State. But that is another matter altogether. It is a matter in which I have a direct interest and in terms of the rules I should really not speak about it. It is, nevertheless, a matter to which I feel the hon. the Minister should give his attention.

I want to come now to something in the hon. the Minister's speech which troubles me. We have here a perfectly acceptable Bill which was drafted after consultation with the legal profession. Then the hon. the Minister let slip that one little thing which was unfortunate because I might have misunderstood him. Perhaps he will explain just what he meant. The hon. the Minister said that this Bill was not going to be used to subsidize skollies.

The MINISTER OF JUSTICE: Yes. It is not going to be used to subsidize crime.

Mr. M. L. MITCHELL: But what is a skollie? Who determines who is entitled to legal aid and who is not? Here we have the basis of the whole matter. That is why I am so pleased that this matter will be dealt with by a board which will be evenly balanced because its members will be persons employed by the Government, legal practitioners, and a Judge who will be able to determine which way the scale will tip. The problem as to who determines who will receive legal aid and in what circumstances is very basic to the whole question of legal aid. According to the *pro deo* system in the Supreme Courts, if you are arraigned on a capital offence, no matter what offence and no matter who you are, no matter whether you are a skollie or not, you have the advantage of the State paying for counsel to appear for you. The hon. the Minister has indicated that he is not going to subsidize skollies.

The MINISTER OF JUSTICE: I am not going to subsidize crime.

Mr. M. L. MITCHELL: The hon. the Minister is not going to subsidize crime. How does one then distinguish between the person to whom we give State aid in the form of

pro deo defence because he is charged with a capital offence and the person who is charged with a non-capital offence? In the one case we give this aid to everyone but we are going to pre-judge the issue in the other case. How does one determine whether one is in fact doing this. I remember that there was once a controversy as a result of a misunderstanding of what someone in the Department of Justice had said about this matter. This person asked why in respect of legal aid the State should pay to have its left hand undo what its right hand had done. What did he mean by this? What does that mean? Is this not really what the hon. the Minister is saying?

The MINISTER OF JUSTICE: No.

Mr. M. L. MITCHELL: I am delighted to hear it because last time this was raised we did not get an answer from the hon. the Minister because the time had expired. What is legal aid for in fact? Why do we provide it? We provide it because it is necessary and right under our system of justice that every person who is accused of some offence, or everyone who appears before the courts in order to determine whether he has a right—and *prima facie* has one—should have the benefit of the services of an expert, of a lawyer, of a person who is trained in the ways of determining his right, in a criminal or a civil court. And only that court can determine whether he has that right or not. Surely that is why we do it, and in the ideal situation everyone who appears before a court should have a legal representative.

There is no judicial officer, whether in the Supreme Court, whether in the regional courts or whether in the magistrates' courts who will not say at once that he would prefer to have an accused or a litigant represented by counsel. Not only does it save time but one gets to the root of the matter, to the heart of the matter, and one can deal with the matter properly in accordance with the rules which we have been developing over hundreds of years. Sir, surely that is the principle of legal aid: I think the hon. the Minister will accept that; that is the basis upon which we look at this matter. The ideal situation is that everyone should be defended.

The MINISTER OF JUSTICE: That is not practical.

Mr. M. L. MITCHELL: I agree that in this country it is absolutely impracticable. One cannot afford to provide counsel for everyone who appears in our criminal courts if you consider that there were, if my memory serves me correctly, something like a million charges under the pass laws in a recent year. Obviously you cannot have it in every circumstance because you cannot afford it, but the principle is nevertheless that in those cases where it is practicable there should, if possible, be legal representation. We regard a man's life as being a matter of importance. If

a man is on trial for his life it is important, and we have recognized this for years and years and we have said that he shall have legal aid.

The MINISTER OF JUSTICE: Because his life is at stake.

Mr. M. L. MITCHELL: Yes, because his life is at stake, because he is charged with either treason or murder or rape or robbery with aggravating circumstances or housebreaking with aggravating circumstances or kidnapping or one of the other capital offences. The list is getting longer and longer every year. A person charged with one of these crimes is given legal aid, but the life of a man who is charged under the Immorality Act is also at stake. Very few people charged with murder in our courts are hanged.

The MINISTER OF JUSTICE: I do not tie the hands of the board.

Mr. M. L. MITCHELL: No, I agree, but what I want to point out is that this principle should apply to someone charged under the Immorality Act and to white people who are tried before the regional magistrates, for example, whose lives are also at stake. Take the case of someone who has been defamed. These are matters which can affect a man's life just as much as being charged with murder.

An HON. MEMBER: Murder would be preferable.

Mr. M. L. MITCHELL: Sir, I hope I did not misunderstand the hon. the Minister when he said that he was not going to subsidize crime. What does the hon. the Minister mean by that? We are not going to subsidize crime but we subsidize crime where the man's life is at stake. We will subsidize crime where a man's life is at stake but not to determine what his rights are. I hope the hon. the Minister will explain this, because this is somewhat at variance with the provisions of the Bill, and the Minister's last remark that that is why he has a board because *they* (the Board) will determine it. Are they going to be told that they must determine the matter in the sense that they should not subsidize crime or are they not going to be told this?

The MINISTER OF JUSTICE: No.

Mr. M. L. MITCHELL: Then that is fine. Perhaps the hon. the Minister will explain just what he means and how he hopes the board is going to operate.

Mr. Speaker, we offer no objection to this Bill. It is a very good experiment. It is a start. We hope it is going to work but we will not hesitate to come back, and one wants to make one's mark at this stage by saying that our support for this measure is not necessarily support for everything that may happen hereafter. We hope that the board will pursue its

functions, and we hope that this Government will give the board enough money to make the system work, and we hope that we will develop here a system of legal aid which will become as much a part of our social system as the system of medical aid that we are developing.

*Mr. W. W. B. HAVEMANN: Mr. Speaker, I am grateful the hon. member for Durban (North) does not have to say grace at my table. He pronounced the benediction but he refused to say "Amen". We have now been given a Bill for which the legal profession has been yearning for years. He himself said that we had been yearning for this for years, but, if I may change the idiom, he did not look this gift horse in the mouth, but he looked this gift Act in the preamble. We want to concede the point that there will be certain members of the legal profession who would have liked to have seen this Bill in a different form, but I am grateful to-night to have this opportunity of thanking the hon. the Minister. As an ex-member of a board of a law society in the Republic who shared in the preparatory work for this Bill, I am very grateful we have come this far. Throughout the years there have been negotiations, negotiations on a high level, and in the right spirit, and now we have this Bill. Sir, I know that the hon. member for Durban (North) is also pleased about this Bill but he pronounced a kind of reserved benediction. He said this was an experiment.

Sir, one cannot greet a new system such as this with that kind of disposition, because by doing so we shall be moving a motion of no-confidence in our own profession in anticipation.

*Mr. L. LE GRANGE: Typical of the United Party.

*Mr. W. W. B. HAVEMANN: I am convinced the legal profession in South Africa will not make an experiment of this system but the beginning of a special contribution to the administration of justice in the Republic. I have the fullest confidence in my colleagues in the profession. In my opinion the hon. member, in asking for some details, anticipated the work of this board to be established in terms of this Bill to a certain extent as though he wanted to tell them exactly what they would have to do and when they would have to do so.

My hon. colleague was somewhat concerned about the skollies. To-night he had the interest of the skollies at heart. Surely the hon. the Minister made it quite clear . . .

*An HON. MEMBER: The Minister used the word.

*Mr. W. W. B. HAVEMANN: Sir, if the hon. member had been paying attention to the debate and had not woken up only at this stage, he would have some knowledge of what was happening in this House. Yes, the word

was used, also by the hon. member for Durban (North) who took the matter further, but the Minister had given him the assurance . . .

*Mr. G. P. C. BEZUIDENHOUT: A skolly is a skolly.

*Mr. L. LE GRANGE: Why is the Opposition so touchy?

*Mr. W. W. B. HAVEMANN: The hon. the Minister gave the assurance on two occasions that *pro deo* aid would still be given. In other words, any skolly who will be on trial for his life will still be given legal aid as has been the case up to now. What better assurance do we want than this? As regards the question of subsidizing crime, surely that is a question in regard to which we have to exercise our common sense. It goes without saying that this legal aid which will be rendered through the services of the legal profession, voluntarily and with funds provided by this House, will have to be utilized in the spirit in which this machinery for legal aid has been requested by the profession. We must remember that the taxpayers will want to know whether their money has been properly utilized in the administration of justice for the promotion of justice, in other words, in a responsible way.

As I have said, I am grateful for this Bill. I am not going to say that this is an ideal solution. Is it ever possible for us to say that we are dealing with the ideal in a matter such as this? But we are making a very good beginning and therefore I want to thank the hon. the Minister for the introduction of this Bill, because in our legal profession, and particularly amongst the law societies of the four provinces, there has been a need for a system on which we could render community service on a proper legal basis. The experience throughout the years has been that free legal aid has always been given, and is still being given, to indigent persons on an *ad hoc* basis, in the discretion of the legal practitioner, and that we have come up against problems of professional etiquette in respect of rendering such assistance. Consequently we welcome the position that we shall now have a proper and legally well-ordered system according to which we shall be able to render this community service, which we have always been rendering, but which we shall now be able to channel along the lines of a proper system.

*Mr. M. L. MITCHELL: Say "thank you".

*Mr. W. W. B. HAVEMANN: I have expressed my gratitude and I have added an "Amen". I trust the hon. member for Durban (North) will complete his prayer during the Third Reading. Sir, as far as this system of legal aid is concerned, I would say there is a requirement which consists of three parts. The first part which goes to make up this requirement is the benevolent co-operation of and a high professional sense of responsibility on the

part of the legal profession. I think we may give the Minister the assurance, as far as this aspect is concerned, that this already exists. The second part is that there has to be the legal machinery through which to express that benevolence and that sense of responsibility; the machinery has now been created. The third part is that there must be the necessary funds which will be sufficient to carry the system and to put it into operation. This is a matter which the hon. the Minister need not discuss in detail now; he may do so if he wishes, but at the moment we are dealing with the principle of the Bill and this Legal Aid Board will, from the nature of the case, have to set the tests and lay down the norms as regards the way in which it is going to render this assistance. Sir, I want to thank the hon. the Minister for creating this opportunity for the legal profession to render the service it has been yearning to render and which it has been rendering throughout the years; for having created the opportunity for the legal profession to render this community service and service to the nation on a proper and legally well-ordered basis. We thank the hon. the Minister for the Bill and we are also grateful for having received at least a blessing from that side and I trust that in due course we shall also hear the "Amen".

Mr. L. G. MURRAY: I do not want to be quite as effusive as the hon. member for Odendaalsrus and say thanks and thanks and thanks, but I do want to say that if one looks at this measure before us I think we can accept that it is the first stage—I do not think it is more than that—of attempting to rationalize what has been the voluntary service rendered by the State in so far as prosecutions are concerned in the provision of defence counsel and by the legal profession generally as far as the conduct of legal matters is concerned. I wonder whether the hon. the Minister could not enlighten the House further as to what he feels will be done to deal with certain problems which I anticipate will immediately arise when this Bill is passed. He has indicated that he does not want to tie the hands of the Board and he wants to give the Board a free right of action in regard to the powers entrusted to it in terms of this Bill. But, first of all, there is a reference to indigent persons. Is it his intention that this is a matter which should be investigated by the Board and that the Board as such should produce some definition or some criteria whereby a person can be judged as to whether he is indigent or not? The Minister will be aware of the present *in forma pauperis* tests so far as the Supreme Court is concerned, which are adequate in certain types of litigation but certainly are not adequate when it comes to other matters where some assistance is required. Is it his intention that the determination of what is an indigent person should be a matter which the Board should go into under some regulation? I find that there is nothing in the Bill which empowers the Board to determine that. The objects of

the Board are to render and make available legal aid to indigent persons, but who are to be the indigent persons, and how are they to be determined?

The second point that arises is the question of the practical implementation. I think the hon. members of this House who belong to the legal profession will know of the tremendous problems that have been faced in sifting the applications for assistance. Large numbers of people are involved in litigation whether civil or criminal, and they immediately regard themselves as worthy of some assistance, and they would offer themselves as indigent and therefore entitled to assistance under this type of scheme. We have attempted in the major cities, as the hon. the Minister is aware, through the Bar and Side Bar Associations, to run some sort of voluntary roster whereby these people are dealt with. Is it contemplated that the existing organization, the existing staff available in the magistrate's courts and elsewhere, might act as sifting agencies in the first instance, or is it contemplated that a whole new department will be established with a staff to deal with persons who come for assistance? The hon. the Minister shakes his head. It is a problem which worries me and other members, and I presume it has worried the Minister as well, as to how this problem is to be dealt with. It was quite a different matter when, by way of some voluntary arrangement such as we had in Cape Town, and no doubt elsewhere, some kindly person interviewed the applicants and sent them on to the next attorney or counsel on the roster and said: Have a chat with these people and see whether they can help you. That was done on the basis of a voluntary act and there was no question of fees, but what was possible was done for that particular person. But now when a fee is involved, or the possibility of a fee is involved, where must the sifting be done?

THE MINISTER OF JUSTICE: The Board appoints its agents.

Mr. L. G. MURRAY: In clause 8 the reference is to officers or agents. It is intended that those should be persons independent from the existing court, or is the Minister leaving that with a question mark behind it as far as the Board is concerned? I welcome it if that is so, but I think we need clarity on it. If the Minister's intention is that the Board in the first place shall determine who are indigent and the Board shall determine the type of cases in which there should be legal aid and the Board will establish its own agencies or agents to handle the sifting of applicants, those are the three points which are important. If that is the intention we will know how to deal with the Bill when it comes to the Committee Stage. I ask for enlightenment on those particular aspects.

***Mr. J. T. KRUGER:** Although I am fully aware of the fact that the law societies have done a tremendous amount of work to pro-

duce this Bill in the form it is before us to-night, and although I am not taking any credit whatsoever for the fact that this Bill is now being piloted through Parliament, you will allow me, Sir, to remind you in all modesty of the plea I addressed in a maiden speech on 24th August, 1966, to the then Minister of Justice for the establishment of a better legal aid system than we had at that time. It is purely for that reason that I have risen to thank the present Minister of Justice and to congratulate him on this legal aid system we shall now be getting.

The underlying principle of any legal aid system is the fact that in our legal system we should not like to have the position that a person cannot put his case to our courts because of a lack of funds, and a good legal aid system always is a feature of the legal system of a mature state. But there is another aspect as far as this Bill is concerned. Our legal system is held in very high esteem abroad, but I just want to bring it to the attention of this House that when I told one of the ambassadors that a Bill like this was going to come before this House, he immediately asked me for a copy of the Bill because, he said, he wanted to report on the Bill to his Government as he was of the opinion that this was a particularly important Bill as far as our image abroad was concerned. I can give you the assurance, Sir, that this legal aid system which we are debating to-night will most definitely contribute to strengthening South Africa's image abroad and to giving our legal system an ever higher esteem in the outside world.

Then I should like to thank other members of the legal profession, excluding myself, for the hard work they have been doing throughout the years, and the social service they have been rendering in respect of legal aid. When one has regard to the fact that 538 *in forma pauperis* cases came before the Transvaal Provincial Division in a single year, cases which were handled practically free of charge by attorneys and advocates, and that 508 *pro deo* cases came before the same Division in that same year, cases which were handled by attorneys and advocates for negligible fees, and when one has regard to the fact that there are seven such Divisions, one can form a picture of the social service which has been rendered virtually free of charge by the legal profession. We are always being accused that legal practitioners make a great deal of money, but I think it is only right that these facts should also be brought to the attention of the country.

I am very grateful for the fact that the *pro deo* aspect as such will not disappear on the introduction of this legal aid system. The *pro deo* system has been developed for capital crimes and this is a special kind of legal aid which should continue to exist. As far as criminal cases are concerned, I want to agree wholeheartedly with the hon. the Minister as regards his statement that we are not here to subsidize crime and criminals. Our experience has been that in the courts the presiding officer

is there pre-eminently for considering the interests of an accused. You will find, Sir, that in cases where an accused is undefended, the magistrate or the Judge will do everything in his power at all times to explain such an accused's rights to him and to ensure that justice will be done to him. Consequently as far as criminal cases are concerned, I want to suggest that the new board which is to be established will in the the main regard it as an important factor when a magistrage, a prosecutor or a Judge refers a case for legal aid. Those cases, I should suggest, would pre-eminently be the ones in which legal aid should be given. As far as civil cases are concerned, one would accept that the new board would not hold the view that aid should be given without exception in civil cases to people who cannot pay. In our administration of justice it is a fundamental principle that litigation should not be encouraged and it is very important that only those cases of indigent persons which really have any substance should come before the courts. In other words, the test which the board will apply is, in my modest opinion, whether the case has any chance of succeeding, whether it is a good case, and only if it is a good case, will legal aid be given.

With these few words I just want to congratulate the Minister once more on this Bill and I want to tell him that we in the legal profession welcome this Bill most heartily.

*The MINISTER OF JUSTICE: I thank hon. members on both sides of this House for the extent to which they have welcomed this measure. I do not regard what was said by the hon. member for Durban (North) as being completely qualified. I think he was merely looking for guidance with regard to what might cause trouble in his opinion. However, right at the outset I want to say that some misunderstanding apparently arose when I referred to skollies. I did not simply speak of skollies; I spoke of the skolly who loafed about, snatched handbags, stole purses and removed money from the pockets of other people. This is the type of skolly I referred to, and I hope that is clear now. I repeat that I am not prepared to make legal aid available to that type of skolly.

Then I should like to inform the hon. member for Green Point as follows. He asked whether the board would have to identify. The answer is yes. As a matter of fact, in my Second Reading speech I used the following words, "Therefore the Legal Aid Board, according to its own good judgment, will have to identify the cases which ought to qualify for legal aid". That is the answer. After we had groped about a great deal about this question of legal aid, we came to the conclusion that it was simply impossible to write into this Bill which persons should receive aid and which should not. We then hit on the idea of rather creating a board consisting of members of the profession and on which all Government authorities which are concerned in the matter will have representation and to leave it to

these people to decide at their meetings and according to the funds at their disposal which people they can help and what aid they can give. Here we are not concerned with paying for all litigation; we are concerned with legal aid and that board will have to decide on and will have to identify the type of litigation it is prepared to pay for.

We now come to the question of funds. I take it that what the profession naturally would like to see is that a very large sum of money be voted immediately. We are allowing ourselves to get carried away; as an hon. member said, "We are getting off the ground". We should bear the fact in mind that this board first has to be constituted, that the various law societies have to make their nominations, that the Council of the Bar has to make its nomination and that a suitable Judge has to be found. In addition there will have to be negotiations with the various departments and therefore it will take a little time before we shall be able to get these people going. They will have to meet and they will first have to decide what they are going to do. They will have to decide whether they are going to assist the skolly who snatches handbags or whether they are not going to assist him. This, in my opinion, is the first matter on which they will have to decide. Secondly, I take it that the representative of the Council of the Bar will suggest whether something ought to be done in connection with divorce cases. The representatives of the various law societies will report on the cases they deal with in the courts and in respect of which they feel assistance ought to be rendered. In this way this board will apply its own tests. Hon. members want to know in anticipation what sum of money will be made available. I may as well tell hon. members now, because provision will be made for this in the Estimates. As a start, and in respect of the first year, before we know precisely what will be required or what we shall be prepared to consider, it has been felt that if an amount of R50,000 were made available it ought to be sufficient. Now hon. members should not say straightaway that this is too little. This amount of R50,000 will only have to cover cases for approximately six months and this period will be at the beginning of the scheme when decisions will still have to be taken as to what kind of cases ought to receive assistance. This board will have to appoint its agents throughout the country. If the board wants to be careful and wise it should make use of the services of Government departments as much as possible. That is what I would have done; I do not know whether the board will do so. However, I am not going to tie their hands.

They are going to receive this amount of R50,000 and if they want to spend it in a certain way, they may do so. This Bill provides that this board has to submit an annual report on its activities to the Minister, and I shall table the said report in this House and in the Senate. What this scheme amounts to in broad outline is that we are going to assemble a number of sensible people, give them a sum

7 June 1968

D T A
(Legal Aid)

more readily available to the general public just as food or any other agricultural product is available to them so that there will be no stigma attached to the product of the vineyard either.

I think much can be said in favour of this argument, because many of the undesirable things which are linked with the sale of the product of the vine are due to the fact that sales are taking place by way of a licence, something which necessarily causes it not to be generally available. We also have the conditions the hon. the Minister referred to this morning, namely the fact that people congregate at drinking places in certain townships and urban areas. I can well imagine that if further progress is made with what was said, and anticipated in the report of the Malan Commission in connection with grocers' wine licences, we shall not have people congregating there any longer, because natural wine will then not be something one has to look for only at certain points, but it will be available in the same way as food is available and when and where one needs it. I want to admit straight away that one cannot advance to this point immediately and rapidly from the point where we are finding ourselves at present. [Time expired.]

Mr. T. G. HUGHES: Unfortunately our time for the discussion of this Vote is limited, so that we have to get as much as we can into the ten minutes we are allowed. I will not reply to the hon. member for Stellenbosch now. I intend dealing with different subjects, but other hon. members will also talk on the points he has now raised.

The first point I want to raise is in regard to legal aid. I do so because I see the Department of Foreign Affairs has issued a publication "South Africa and the Rule of Law". It was issued in April of this year for distribution abroad, and it contains an item on legal aid. Now the House will know that I have raised this question of legal aid on several occasions in the past under this Vote, because I feel it is quite wrong that only the very poor, the paupers, and the very rich should be able to go to court. There is no argument about it that the ordinary middle-income group man simply cannot afford to go to court. I am not going to repeat arguments I used in the past, or make comparisons with other schemes in other countries, but the publication I referred to says that an amendment of the present general legal aid scheme is now being considered which may result in the establishment of a legal aid fund subsidized by the State and from which practitioners will be remunerated for the services rendered. This scheme has been under consideration by the Government for some time, even before the present Minister took over, and I want to ask him when they are going to do something about it. At present, except in peculiar cases which I will mention just now, as a rule the only legal aid which is given is given by prac-

tioners at the Side Bar, mainly, and also at the Bar occasionally, for nothing. As far as I know, it only operates more or less effectively in Cape Town and Johannesburg. As far as I know, it does not operate effectively anywhere else. The Minister can correct me, but from the inquiries I have made I think that is the position. One of the disadvantages of the present scheme is of course that anyone wanting legal aid has to go to the magistrate or an assistant magistrate, who operates the scheme, being *ex officio* chairman of the board. It is unnecessary for me to tell this House and the Minister that prisoners do not like going to the magistrate to set out their case. They are afraid, quite unjustly, but it is an official and they are afraid that the police or the court will get the information they divulge, and the present system is not a satisfactory one. I want the Minister to tell us what he is doing about it, because great play is made in this publication of legal aid and in every country it is becoming an increasingly important question. In this article it is stated that they get assistance in criminal cases. But I do not know of any criminal cases where they really get much assistance. In civil cases they get it in regard to divorces, but otherwise what assistance is given to the middle income groups, or even to the pauper, in civil cases? In this article it is stated that if you do not qualify under the means test—and it is a very low means test—the legal aid officer will refer it to an attorney who is on the roster and whose turn it is to assist. Now, why should the attorney be compelled to give this assistance for nothing? As far as criminal cases are concerned, it has always been the practice that *pro Deo* assistance is given to anybody who is charged with a capital offence and there the barrister and the attorney—usually just the barrister, but sometimes also the attorney—are paid by the State for the services they give in *pro Deo* cases, but this payment is very little. There is great reluctance to take on these *pro Deo* cases because they can last for a long time. Often they are very important cases and they last a long time, and these people are compelled to do the work over that period. This article goes on to deal with the defence of persons accused of committing offences with a political background. Obviously this was necessary in an article which was being sent abroad, because of the Government's attitude to Defence and Aid and other bodies which provided defence for persons charged with criminal offences. We had the notorious case at Humansdorp where the accused was eventually acquitted in the Appeal Court, but the case lasted for at least a month and it was held in an outlying place and the attorney and the barrister had to go there. But in this article it says, after dealing with the reasons why Defence and Aid was banned, that in new cases and in part-heard cases where the accused was not represented, an advocate or an attorney could be employed to defend the accused if he wished to accept such service.

and in such cases the lawyer would be remunerated by the State. I want to ask the Minister to tell us how this assistance is given and to whom it is given. I can understand it if it is a capital offence, but if it is not a capital offence will the Minister please tell us when the State pays for the services of the attorney and the barrister? I am sorry I cannot go into this matter any further because I do not have the time.

Then I want to mention another matter which is causing much concern to the public. Sir, recently we saw a report about remarks made by a Judge in the Cape court about a prisoner who was convicted of robbery. The Judge pointed out that this particular person had been convicted and sentenced on several occasions. I think he said, if my memory serves me correctly, that on seven occasions he had been declared a habitual criminal, and yet this man was released from gaol and then finally committed robbery. Robbery can, of course, be a capital offence. This is probably an exceptional case, but too often we see that serious offences, usually associated with violence, are committed by persons who have been convicted before and who have received long sentences, including the indeterminate sentence, and then we find that as soon as they are at large again they commit offences. The public wants to know how it is that these people are released from gaol so easily. The police have an arduous task in tracing these criminals, finally making arrests and often under dangerous circumstances. Then we find that the man goes to gaol and the next thing that happens is that he is either released or that he escapes from gaol. I think there are far too many escapes from prisons. It is no good telling us that this happens in other countries as well. We know that people escape from prisons in other countries too, but we find far too often that prisoners escape or that the prison board releases them, and then the police have to start all over again. I want to know from the hon. the Minister whether he has consultations with the prison board. No reasons are given as to why prisoners are released or why their sentences are remitted. Does the hon. the Minister from time to time meet the prison board and discuss with them the principles on which they act? I can assure him that there is a great deal of concern about what is happening. There is an impression abroad too, of course, that we do not have sufficient gaols and that prisoners are being released to relieve the pressure in the existing gaols. I would like the hon. the Minister to tell us whether that is true. If it is true, then we should see to it at once that we get more gaols.

Then I want to raise another matter, and that is the question of the granting of off-sales licences. The position to-day is that when hotels are classified, they are given off-sales privileges. I raised this matter with the previous Minister of Justice, the present Prime

Minister, and I was assured by him at the time that they would only be allowed to move the licence away from the hotel in exceptional cases where they do not come into competition with vested interests. I brought a case to the Minister's attention where a hotel was given off-sales privileges in an area far away from the hotel in competition with three other licensees who had been there, in the one case since 1928, in another case since 1946 and in the third case for many, many years. [Time expired.]

*Dr. R. McLACHLAN: I should like to move on to a different field. I should like to bring a matter to the attention of the hon. the Minister in connection with our children's courts. As we know, all cases in the children's courts are dealt with by a commissioner of child welfare. These persons inevitably are ordinary magistrates who have been designated to do this particular work. What the Children's Act envisaged with the appointment of commissioners was to constitute the children's courts in a special way; to allocate a special position to social welfare officers; to give special recognition to the social workers who investigate the circumstances of children in need of care and to ensure the confidential nature of court proceedings. Everything is aimed at the protection of the child, and consequently commissioners of child welfare are expected to be people of special ability, people who take a special interest in and who have a special knowledge of the factors revolving round the special needs of children or the circumstances under which children are brought before the children's court.

I want to say that our Children's Act is generally accepted to be a particularly fine Act, and because this is so, it is our experience that our commissioners of child welfare have made an enormous contribution to child welfare. I am convinced that if time permitted we would have been able this afternoon to mention a long series of names of commissioners of child welfare who have made history over the years with the role they have played in developing our Children's Act and child welfare in general. Because this is so, the few shortcomings which do exist strike one forcibly.

At present the position in our larger centres is, particularly in the urban areas, where a great many cases are dealt with by the children's court, that a magistrate is designated to devote his exclusive attention to this kind of work; this work occupies all his time. In the smaller industrial centres and in the urban towns there are not sufficient cases to justify designating a person to do this work on a full time basis. Consequently we find, as a result of the tremendous change-over which normally takes place amongst the officials, that a magistrate hardly becomes conversant with the operation of the Children's Act or with the entire spirit of the Children's Act, before he is transferred to another court. The newcomer

*The MINISTER: The Act requires that fingerprints be taken of persons who have been found guilty. It is a statutory requirement. Unless we change the Act, this provision must be complied with. After he received care, and after his fingers had healed properly, they were able to take proper fingerprints. Subsequently he was released. Then, of course, these questions were asked, and we replied to them. The *Cape Times* kicked up a big fuss about the matter.

Mrs. H. SUZMAN: And quite right, too.

*The MINISTER: Yes, the hon. member for Houghton will always agree with that. I want to assure the hon. member that I at least do not feel guilty about what happened to this child. The child was properly cared for and fed. He was not detained like a prisoner.

Mrs. H. SUZMAN: Do you know where the child is now?

*The MINISTER: Of course it has been quite some time since he was released from prison. I cannot say whether he has been declared a child in need of care, or whether he has been placed in care. [Interjections.]

*The DEPUTY-CHAIRMAN: Order! Hon. members must not mar the spirit of this debate by making personal remarks.

*The MINISTER: The hon. member for Bloemfontein (West) spoke about heart transplants. He asked when it is possible to determine that death had set in. I am afraid I am not qualified to express any opinion on that and to say that it should be laid down by way of legislation. It is an interesting subject, but it is not something in regard to which I am qualified to express any opinions.

The hon. member for Port Natal spoke about the registration of fire-arms. I want to say that I realize that what he touched upon is a very important subject. I said last year that we were drawing up a Central Register. What has happened in the meantime is that a resolution has been adopted to the effect that this particular law must in future be administered by the Department of Police, and not by the Department of Prisons. The Department of Police is at present drafting a new law, instead of merely amending the old Fire-arms Act, which will make provision for this Central Register. I have ascertained from them that they have made a great deal of progress with it. However, they are not yet in a position to submit the necessary legislation. I do not believe I can tell the hon. member anything more in this regard. As I have said, it is an important subject. The fact of the matter is that it has become apparent that people are very careless with their fire-arms. I can just assure the hon. member that while the Department of Justice was administering this matter we did not permit a man to purchase a second fire-

arm if he had lost his first one, or had allowed it to be misplaced, and there was any suspicion that he had been negligent. This was the policy, and I take it that this will also be the policy in future.

Mr. T. G. HUGHES: Mr. Chairman, may I ask the hon. the Minister a question? I understood the hon. the Minister to say that the registration of fire-arms falls under the Department of Prisons. I should like to know whether that is correct. He said that the registration would be handed over to the Department of Police.

*The MINISTER: At the moment the Department of Justice is administering the registration of fire-arms. It has already been decided that the Department of Police will in future undertake this registration. They are at present busy drafting a Bill in this regard. I am sorry; it was a slip of the tongue.

The hon. member for Stellenbosch spoke about grocers' wine licences. It is true that we have up to now imposed restrictions on the allocation of grocers' wine licences. Originally two were issued as an experiment. Last year we granted nine, to place the experiment on a broader basis. This year I announced that with a view to the special circumstances I thought it would be unfair to offer the hotels further competition. At the same time the hon. member said that he welcomed the statement I made this morning. I said that we were trying to eliminate the unsavoury conditions which had arisen as a result of the sale of liquor within white areas to other Coloured groups. I just want to inform the hon. member what would happen in regard to these grocers' wine licences, as I see the matter at present. As I see the matter, and as experience has shown, the chain stores will be best qualified for this purpose. They are going to use the sale of wine as an attraction. They are going to sell it cheaply. In fact I have figures here which indicate that they are at present selling it at 1 cent above cost price. Consequently, there is going to be a tremendous rush. Actually therefore the hon. member expressed two opposing ideas. If it is to be sold normally in the trade, then everything will be fine. However, I fear that the people who will make use of this will be able to do this. They will be the large chain stores, and they will use it as an attraction. That has already been our experience. One of the first two licences was issued to a chain store in Springs. There was such a rush, and the store kept the prices so low, that K.W.V., by whom this criticism is being expressed to-day, went to the former Minister and asked him to do something about it. The expansion of wine licences and the implementation of price control is becoming an absolutely impossible task for any Minister. In addition we must still try to keep the brown and the black people away from them. However, I am not setting the matter aside. The principal reason why I have not promulgated

it this year, is that we are expecting all the hotels to be classified this year. That is my principal reason. We do not know how many additional distribution points there will still be, from which only wine and malt will be distributed. It seems to me that this year is a very inopportune time for allocating a large number of wine licences to grocers. The other reasons I have mentioned are simply additional reasons.

The hon. member for Transkei first raised the question of legal aid. This question has been raised from time to time, and it is also correct that we are giving attention to the matter all the time. We have made a great deal of progress with it. Of course the position at present is still that we are paying for *pro Deo* appearances. I can only say that subject to the approval of the Treasury, the *pro Deo* remuneration will be considerably increased. We are paying for all accused who are being charged with political offences, if they need defence. We approach the Bar Council of the Division concerned to appoint someone and we pay in full for his services.

*Mr. T. G. HUGHES: Not upon full re-approaches the Bar Council?

*The MINISTER: The magistrate in the first instance. He approaches the Bar Council and he asks the chairman or the secretary of the Bar Council to appoint someone. He then appoints a suitable person.

Mr. T. G. HUGHES: Is there any question of a means test?

*The MINISTER: No, there are definitely no such considerations. I come now to the ordinary legal aid for the man who, as the hon. member said, is not a very poor nor a very rich man. In this regard we are in continual contact with the Association of Law Societies. We have had proposals and counter-proposals in this regard. The Association has submitted to us an entire legal aid scheme. They have for example proposed that there should be a countrywide legal aid board. In addition they proposed provincial legal aid boards, district legal aid boards and a national director of legal aid. What they proposed would have required a tremendous organization. As we worked it out, it would have been larger than some of the smaller government departments. We asked them what the proposed scheme would cost, but they were unable to give us any indication of the costs. We could not accept the scheme. After further discussions a smaller scheme was decided upon. But we were also unable to reach unanimity on this smaller scheme in respect of the operation of the scheme, because we must have the co-operation of the legal profession. In the same way as the medical practitioner is sometimes prepared to work for virtually nothing, and in the same way as the attorney is in many cases to-day obliged to act without re-

muneration, we will have to ask the legal profession not to insist upon full remuneration.

*Mr. T. G. HUGHES: Not upon full remuneration, but upon a certain measure of remuneration.

*The MINISTER: Yes, remuneration on some basis or other. The snag is still to decide precisely how we should do this. We shall have to lay down a means test. It cannot be done for any Tom, Dick and Harry. The accused who appeared repeatedly, and the ordinary skolly, who appears before the court day after day, cannot receive legal aid. At least, I am not prepared to grant legal aid in that case. I shall gladly grant legal aid to a man who honestly deserves it and the only test ought to be that the magistrate should determine whether he needs legal aid and secondly, whether he falls within the means test. Of course, if he is of that type which turns up repeatedly there, he will have to be disqualified. But I can inform the Committee that I have Cabinet approval in principle for an amount in respect of legal aid being included in the Estimates next year. It is now a question of finding methods of doing this, and the best alternative would be to come forward with a Bill, setting out the way in which this will be applied.

*Mr. T. G. HUGHES: In civil cases as well?

*The MINISTER: Yes, it will be for civil cases as well.

*Mr. W. V. RAW: And the means test must be on a proper scale.

The MINISTER: Yes, there will have to be a means test, but these are details which I am still considering. As I have said, I have in principle received approval for an amount which will be included in the Estimates, but I shall still have to consider the details.

The hon. member, as well as the hon. member for North Rand referred to the question of people released on parole who returned repeatedly. I have statistics here which I can furnish, but we are in a bit of a hurry to deal with this Vote. This matter arose out of a report which appeared in the *Cape Argus* of 13th February, 1968. I am reading only sections of it—

Judge hits at Prisons Board: The Judge-President of the Cape, Mr. Justice Beyers, criticized the Prisons Board yesterday afternoon for releasing prisoners sentenced to the indeterminate sentence too soon. He said: The other day I had to sentence a man who had been declared an habitual criminal no less than seven times before. I was asked to declare him for an eighth time. It makes a farce of this court, and usually it ends up with someone losing his life somewhere along the line. How anybody in his sound and sober senses can believe that such a

Legal Aid

Mr. L. Mitchell

21/5/71

Cols. 7263-4

H. Muller

21/5/71

Cols. 7319-21

The last point I want to deal with at this stage is the question of legal aid. The board, which was established under the Legal Aid Act, has now made its recommendations. Its recommendations are that in respect of certain offences and in respect of civil matters, legal aid may be available under certain conditions. I do not agree with some of the conditions. But I want to say that legal aid, as a principle, should be a social necessity like medical aid. Medical aid is considered to be a necessary social right, because it affects persons' lives and their health. Indeed, every person should have the right to prosecute his rights, to receive redress for wrongs done to him, and to receive justice according to the law in every court of the land. Usually he cannot get it without the assistance of a lawyer. I do not have to indicate why this is so. There are for instance the myriad laws, the various presumptions, the procedures and the pleading itself in court, which all require that a person should have a lawyer if he wishes to have redress. Up to now there has not been anything. Therefore, the measure is to be welcomed in that regard. But we will not be able to properly exercise the right the legislation is intended to give, unless the Government decides that this system will work in respect of all people. Who pays the piper calls the tune. This is very true. A paltry R50 000 is voted this year in this regard. It is true that there are a few other fifties lying around from the time when nothing was done.

The MINISTER OF JUSTICE:
R250 000.

Mr. M. L. MITCHELL: Call it R250 000, I do not mind. But does the hon. the Minister think that that amount will get us anywhere in relation to this? It is insufficient. We will need a few millions to make this scheme work. Civil cases are just as important if not more important, as criminal cases, where a person is charged with an offence. In regard to those matters, the attorneys are under this scheme to get paid what they normally would have received. The amount that is involved in normal litigation today is such that an amount of R50 000 or R250 000 per year will be hopelessly inadequate if one wants to give this benefit and this right to all the people.

Mr. J. A. F. NEL: What amount do you suggest?

Mr. M. L. MITCHELL: I am not in a position, like the hon. the Minister, to work the amount out, but I can tell that hon. member that it is a matter of millions rather than a matter of thousands or tens of thousands or hundreds of thousands. As I have said, the attorneys will be paid a reasonable amount as it is laid down, but the General Council of the Bar has gone so far as to offer its services in this respect, at absolutely nominal fees.

The MINISTER OF JUSTICE: I think it is at half the normal fee.

Mr. M. L. MITCHELL: Half! My goodness, can the hon. the Minister tell me where to find an advocate who will go to the Supreme Court or anywhere else, for R40 per day? They will now receive R20. In undefended actions they will receive R10; in drafting pleadings in all cases they will receive R8; in pleadings in matrimonial matters they will receive R5. These are not half of the normal fees. Good heavens, the hon. the Minister is out of touch! It must be a long time since the hon. the Minister practised and briefed an advocate. Yet it is provided in the regulations that an attorney may not brief an advocate, except with the permission of the Director-General. I should have thought that in every case you should try to encourage them to brief advocates, having regard to the scale of fees upon which the advocates have agreed. Let me say that this scale of fees has not been forced onto the advocates; they have agreed to it in order to make this work. Because of the principle at stake, they have agreed to do this. I should like to know from the hon. the Minister whether he feels that the amount that has been voted will be adequate. [Time expired.]

*Mr. J. T. KRUGER: Mr. Chairman, the hon. member for Durban North performed a more elaborate egg dance here this afternoon than he did last year. He put questions to the hon. the Minister of Justice in regard to certain detentions in terms of the Terrorism Act. The hon. member for Durban North knows that the detentions to which he refers were detentions which were carried out on the instructions of Police officers. Since this is the case, the correct place to have raised those arguments would have been under the Police Vote. Simply because the hon. the Minister of Justice is mentioned in the Terrorism

Court. As I have said, this conviction brings into focus the whole question of the private detective. I wonder whether the time has not come for the Department of Justice to take cognizance of this type of profession and to regulate it in some way or another. Perhaps the department could ensure, firstly, before the public has to come to grips with this new inroad into the field of advice and attention to the affairs of our community, that some standard should be laid down. Perhaps a licence could be issued, just as it is in the case of other professions, or perhaps some code of ethics could be established in order to ensure that this incursion into the detecting profession is properly regulated. This is not unusual in other countries of the world. In fact, it can play a very useful and important part in our whole social system. But on the other hand I think the public must be protected from persons who have no right at all to foist themselves on the public and do this type of work. As it does correlate with the work of the Minister's own department, I do think that some notice should be taken of this matter. I am quite prepared to hand to the Minister the information I have, together with the necessary cuttings and a little story which I found in another newspaper, which also deals with this issue and which, I think, is very important from the point of view of the Department of Justice.

Having dealt with that matter, I want to deal also with the question of legal aid. Some hon. member opposite was very inquisitive as to how much money should be set aside. I am told authoritatively that this system will require the expenditure of at least R1 million to R1½ million per annum throughout the country if it is to be put into operation properly. The suggestion was made that an assurance had been given by the hon. the Minister that with time he would catch up and officers would be appointed and, if further money was required from time to time, that money would be provided. I am perfectly happy with that thought, except in this respect. Legal aid has been carried on on a voluntary basis in the big cities of this country for some time. It has been very helpful

to the community, and I think it has played a very important part. A number of people under the multifarious laws of today, which guide our destiny, have had to seek some form of advice and assistance when facing the courts. If it were not for legal aid, I think many unfortunate persons might not have been able to present their cases as satisfactorily as they could do with proper legal advisers. I think in the practice of law in the various courts of our country, this whole principle of legal aid is not only well known, but has been accepted as an avenue through which persons have been able to seek voluntary assistance, where they have not been able to pay for such assistance, of the profession, both of the Bar and the Side Bar. But I do not think it needs all the time that seems to be inferred for the department to establish this system properly and satisfactorily. It has had a couple of years now in which to proceed with the administration of this particular department under the Act, and I think that the Minister errs, if I may say so, in providing such a niggardly sum for this particular purpose. If it is a question of staff, one can well understand it, and one should then have made use of the present organizations which have been established. Quite recently I read that at the annual general meeting of the Legal Aid Organization in Johannesburg the chairman, who I think is a member of the Johannesburg Bar, made it perfectly clear that, despite the fact that the Act has now been passed and is in the course of being applied, it will still be necessary for this particular voluntary body to continue operations in order to fill the gaps until the system is properly established throughout the rest of the country. It is my disappointment, and that of this side of the House, and it is the disappointment of the legal profession generally throughout the country, firstly that it has taken so long, and secondly that the provision in the Budget seems to indicate that there is not an enthusiastic approach. I think the Minister owes an explanation to the House and to the country and perhaps he should give us some much more concrete information which will satisfy us that the operation of

3

the Act will continue on a much more accelerated basis. This is not said in any sense of carping spirit. It is said because of a sense of urgency, because I fully believe, and the members of the profession fully believe, that it is important that the sooner the full scope of this Act is operating in the country, the better. I think it will be, from the social point of view, a very important contribution to the social welfare life of our country. Therefore I suggest to the hon. the Minister that in giving us some idea of what he intends to do, perhaps he might further indicate whether he does intend to ensure that very much more money will be supplied than is provided for. I am not sure whether the provision of this money falls under column 2. I regret that I did not check that, but if it does, of course, the hon. the Minister's hands are bound. If it does not, the hon. the Minister is in a position where he can, with the assistance of Treasury, accelerate the operation of this Act. I hope that the hon. the Minister will do that.

Finally I would like to support those who have pleaded with the hon. the Minister for an acceleration of the processes of justice in our courts. One finds that in the bigger courts particularly the question of delay is costing endless thousands of rand to the public of the country. When I say "endless thousands of rand", I am not exaggerating. Any practising attorney will know that. I had an opportunity during my forced recess from the House of some few years to see a little more of the life of the courts than I had done for some years before. Of course, I learnt much. I observed what takes place there. I saw the endless postponements and the difficulties with which the Bench is faced. It may possibly again be a question of staff. [Time expired.]

*Mr. D. J. L. NEL: I find it a great pleasure to follow on the hon. member for Jeppe after he has made one of his less frequent constructive speeches. His observations in connection with private detectives were very interesting. At present the only protection which the citizen has is that which is incorporated in the private law of

South Africa. This matter should perhaps be examined in some more detail in the future.

His remarks in connection with legal aid were interesting as well. In this regard I think we can on this occasion pay tribute to and thank all the advocates and attorneys who, over the years, have provided free legal aid services to deserving cases. I know that in the case of the Johannesburg Bar and the Pretoria Bar, of which I am a member, it is done on a roster basis. From time to time every advocate gets the opportunity of acting free of charge, and does so as well. It is also true to the traditions of the Bar that he is not paid for all his services. In the past it has always been the case that certain services have been rendered to the public free of charge. Now that we have a legal aid system, which is highly necessary, we are looking forward to the extension of this system.

I do not want to contradict the hon. member for Jeppe in what he said with reference to delays occurring in the courts. However, it has been the experience that the delays which do occur in the courts are very often exaggerated and are not really so bad. But when a practitioner has to deal with this matter in practice, we do find that in serious cases delays very often run to several months. The department is most definitely trying to make these delays as short as possible. Everything is being done to deal with court cases as quickly and as efficiently as possible. However, it is not wrong for us to request the department to intensify these attempts which are being made to endeavour to deal with court cases more and more expeditiously.

I also want to react to an aspect of the speech made by the hon. member for Houghton, who referred to the release of prisoners and particularly asked for the release of certain political prisoners. In passing, we must immediately take exception to the use of the term "political prisoners". There is no such thing as political prisoners. No person in South Africa is sent to gaol because of his political convictions. No person is at present serving a prison sentence as a result of his political convictions. But they are serving a prison sentence and have been convicted because they acted in a way which was directed against the

The hon. member then proceeded to make out an entire case in regard to the question of legal aid. In the first place the hon. member said that legal aid was like medical aid. But surely that is not true. The hon. member is exaggerating when he says that. Legal aid is necessary and medical aid is necessary, but there is a big difference between the two. The difference lies in the fact that one has a very large measure of control over factors determining the necessity for legal aid. One does not have that control in the case of medical aid. One does not have that control when a person becomes ill and there is no control over the physical condition a person may find himself in. One does in fact have control over whether it is necessary for one to request legal aid. The hon. member also said that the amount of R250 000 which had thus far been voted was nothing, and that millions would be needed. The hon. member for Jeppes went even further and said that at least R1½ million would be required for that purpose.

*Mr. H. MILLER: That is correct.

*The MINISTER: That is pure guesswork. How does the hon. member calculate that R1½ million?

*Mr. J. J. M. STEPHENS How do you calculate the R250 000?

*The MINISTER: R250 000 was decided on because nothing was allocated during the first two years. R200 000 was voted the first year. It only started this year, and the amount has been increased by a further R50 000. We shall now see what happens. The Legal Aid Board must draw up an annual report for me. The board must inform me of the progress being made with its scheme. These amounts will therefore be made available, depending upon the circumstances. But I maintain that R250 000 for the first year, while we are engaged in an experiment in this regard, is quite adequate. It was pure guesswork on the part of the hon. member when he mentioned the amount of R1½ million.

*Mr. H. MILLER: No.

*The MINISTER: Yes, it was pure guesswork. The hon. member had no justification for that.

*Mr. H. MILLER: That is what I was told by legal experts.

*The MINISTER: Is the hon. member not himself a legal expert? Both hon. members complained about the terrible delays in getting the legal aid scheme under way. Do hon. members not realize that this House, itself was unable to come up with a plan? We had no plan, unless we were to give everyone free legal aid. What we did, with the support of that side of the House, was to establish a Legal Aid Board consisting of sensible people, under the chairmanship of a judge with advocates and attorneys to assist him. We said to them: Go and work out a scheme. And that is what they did. Of course, this took time. I have the whole long story here, but I do not want to bother this House with it now. The scheme was eventually put into operation last month. I must mention that we received very fine co-operation from the advocates. The hon. member said that the small amounts being charged by the advocates were "chicken feed". We had the best co-operation possible from the advocates. They clearly realized that it was their task and duty as well to make their contribution in regard to legal aid.

Mrs. H. SUZMAN: Just as the doctors do.

*The MINISTER: Yes, just as the doctors do. That is what the position should

be. Where we did experience delays was with the side bar. There we were unable to reach an agreement, although many discussions were held. The delay was such that the chairman of the Legal Aid Board subsequently decided to put this scheme into operation and simply to pay attorneys whatever they charged, subject to revision or assessment. Since then a committee has been appointed to reach an agreement in respect of the attorneys. Sir, no blame may therefore be attached to the Legal Aid Board in regard to its functions up to the present, or the amount it has at its disposal, and I am pleased to be able to say that that Board has at last begun to function.

Collection Number: A3393

Collection Name: Bob Hepple Papers

PUBLISHER:

Publisher: **Historical Papers Research Archive, University of the Witwatersrand**

Location: **Johannesburg**

©2015

LEGAL NOTICES:

Copyright Notice: All materials on the Historical Papers website are protected by South African copyright law and may not be reproduced, distributed, transmitted, displayed, or otherwise published in any format, without the prior written permission of the copyright owner.

Disclaimer and Terms of Use: Provided that you maintain all copyright and other notices contained therein, you may download material (one machine readable copy and one print copy per page) for your personal and/or educational non-commercial use only.

People using these records relating to the archives of Historical Papers, The Library, University of the Witwatersrand, Johannesburg, are reminded that such records sometimes contain material which is uncorroborated, inaccurate, distorted or untrue. While these digital records are true facsimiles of paper documents and the information contained herein is obtained from sources believed to be accurate and reliable, Historical Papers, University of the Witwatersrand has not independently verified their content. Consequently, the University is not responsible for any errors or omissions and excludes any and all liability for any errors in or omissions from the information on the website or any related information on third party websites accessible from this website.

This document forms part of a collection held at the Historical Papers Research Archive, University of the Witwatersrand, Johannesburg, South Africa.