

Legislative Council

Wednesday, 6 March 1985

THE PRESIDENT (Hon. Clive Griffiths) took the Chair at 4.30 p.m., and read prayers.

LEGISLATIVE COUNCIL

Chamber: Television Camera

THE PRESIDENT: I have been approached by Channel 9 seeking approval to obtain up-to-date material for its news library. I have agreed to the request on the same conditions which have applied on previous occasions; that is, that there should be no recording of sound and, subject to no honourable member giving me good reason why we ought not to allow this filming to take place, that it be carried out at the beginning of the next day of sitting of the House.

[Questions without notice postponed.]

STANDING ORDERS COMMITTEE

Report

HON. D. J. WORDSWORTH (South) [4.36 p.m.]: I have the honour to present the report of the Standing Orders Committee relating to motions for disallowance. I move, without notice—

That the report do lie upon the Table and be printed.

Question put and passed.

(See paper No. 478.)

ATTORNEY GENERAL: O'CONNOR CASE

Want of Confidence of the House: Motion

HON. G. E. MASTERS (West—Leader of the Opposition) [4.37 p.m.]: I move—

This House expresses grave concern and a lack of confidence in the Hon J Berinson as Attorney General and in the Government of Western Australia in view of:—

1. The astounding decision to direct the Crown to take no further action in the case against Mr J J O'Connor, Secretary, Transport Workers' Union.
2. The failure to maintain the independence and integrity of the position of Attorney General by allowing political considerations to influence the proper processes of the law.
3. The Premier's publicly expressed words on Tuesday, 25 September 1984, when in referring to the O'Connor case in Parliament he said "There is no scope for the

Government to interfere nor would it seek to interfere under any circumstances", and "I would repeat that there is no role for the Government in that matter. We do not see a role, we do not seek a role, nor will we play a role".

4. The very serious loss of public confidence in the fair application of the law in this State as Mr Berinson's decision clearly demonstrates that a union official is able to avoid criminal charges by threat of industrial trouble.
5. The grave repercussions in the workplace where those union leaders who have a contempt for individual rights and the laws of this land will see the decision as a licence to increase their standover activities with immunity, and
6. The deep concern at the decision expressed by members of the public, the Law Society, employers, academics, the media and others.

I draw the attention of members to the seriousness of the motion and especially to the words "a lack of confidence in the Hon J Berinson as Attorney General and in the Government of Western Australia".

This motion is the most serious charge of censure ever levelled at an Attorney General in the history of the Western Australian Parliament and probably in the history of Australian Parliaments. The charge of taking the law into his own hands and subverting the course of justice for political reasons is the accusation we level at the Attorney General.

On 28 February 1985—we should call it black Thursday—in the Legislative Council of Western Australia we heard a senior Minister of the WA Labor Government making an announcement that rocked the very foundations of the judicial system in WA and probably in Australia. His is a decision without parallel and it has stunned the public and the judiciary. It is a decision which has thrown law and order in the workplace out the window. If the Attorney General or anyone else here has any doubts about that, he is not living in the real world today. It is a decision that amounts to an open invitation to those union leaders who practise standover threats, blackmail and extortion in the workplace to continue with immunity; of that there is no doubt.

The Attorney General made an announcement which shocked business, small business, the self-employed, subcontractors and other workers who supposedly live in a free society and who believed they were entitled to the same rights to make their

decisions to remain independent and, above all, to have the protection of the law. Yet they have seen these rights removed by a corrupt Government and more particularly by an Attorney General who has debased the office of Attorney General.

It is my belief the Attorney General has brought shame on the most important position in Government. The Attorney General is supposed to be the guardian of justice and the sanctity of law, a law which must apply equally to all. That office has been defiled by an Attorney who has proved himself unfit to hold that position of trust—I emphasise the word “trust”.

He is a man who it appears is prepared to bow to the pressure of political, ruthless, unprincipled sections of the community. They are only small sections of the community, but they are there and we know it. He is a man without courage to fulfil his obligations as a Minister of the Crown and a member of a respected profession. That sort of person has no place in any Ministry and I suggest in any Government in Australia. Mr Berinson has shown himself to be prepared to exchange integrity and principle for his own political survival. He has left a feeling of shock and revulsion that will never be erased. To his dying day Mr Berinson will never live down that decision.

I put this proposition: Every time the Opposition brings a complaint to this House concerning industrial standover which is not acted on, every time a Labor Minister fails to respond to a genuine complaint, and a union leader is reported as threatening an employer, employee, or subcontractor; every time there is a need for protection in the workplace and police are asked to help and decide they are not able to do so in the light of the Minister's decision, and no action is taken in these events, Mr Berinson will stand personally condemned for his actions. I hope he can live with it.

The Attorney General is a member of the legal profession and a man sworn to the position as a Minister of the Crown to ensure justice is free from political interference. Everyone in this State knows that the decision the Attorney made was political. Of course it was; no doubt exists in anyone's mind. It is to his everlasting shame that he has been forced into this decision and that he allowed himself to make it.

I say to the Attorney: Do not ever piously pontificate in this House on fairness and justice. As far as we are concerned the Attorney General has lost credibility and standing, and it does not apply only to this House and Parliament but to the community and the public in general. He has shown he is prepared to damage the ethical standards of a

time-honoured and immensely respected profession in the name of political expediency, and at the direct request of his Premier, Mr Brian Burke. Let there be no doubt about that.

The Attorney gave details of advice from the Solicitor General hoping some dignity might be preserved from the publication of that advice and trying to shift a little of the responsibility from his shoulders. I think it is called passing the buck. I ask this question because the matter needs to be clarified: Did Mr Berinson receive the advice of Crown Law officers in this matter? Is this the normal process, and if he did—and I am advised he did—will he table that advice? Was the advice of the Chief Crown Prosecutor made available, and will the Attorney table that advice?

The Attorney General called for a report. As I understand it, in normal circumstances the Attorney General's attention is drawn to these matters with advice. The Chief Crown Prosecutor makes a report; he assesses the matter and makes a recommendation to the Attorney. That is the normal procedure as I understand it.

Hon. J. M. Berinson: You understand wrong.

Hon. G. E. MASTERS: The Attorney will no doubt put me right. Of course there are other people here who know a great deal about what he is doing.

What other example can the Attorney General give of a time when in similar circumstances he called for a report? Mr Berinson drew attention in his statement to certain matters in the advice. He spoke about industrial implications and harmful consequences and the case having no great significance to the well-being of the community. To his credit, he did quote the advice as follows—

... it would be quite harmful to public confidence in the administration of justice if it appeared that a union official could be got off a criminal charge by threats of industrial trouble.

With that advice in mind, he still made his decision. He referred to the need for flexibility in the application of the criminal law. I suggest he look at some of his statements in the past and those of Mr Dans, and I intend to draw attention to some of them later. The decision is of great significance to the community. It harms public confidence in the legal system without any shadow of doubt.

Both Mr Berinson and the Premier are obviously guilty of double standards and of corrupting the course of justice. We are seeing this happen in Parliament with this Government week after week; there is one law for the Labor Party clan and another for the rest of the community. It is not only in this instance, which is probably the

worst example, but also the instances of Hon. Peter Dowding and Hon. Des Dans. The decision by Hon. Joe Berinson in this case is the worst of all. The stench of corruption is now with us and I believe the public do not like it at all. The message is getting through.

Let us look at the events leading up to the Attorney General's decision. Let us look at Mr O'Connor's record. Everyone knows it, but it should be drawn to members' attention. He is known throughout the community as a standover man. He has said to business people I know time and again, "Do as you are told or we will send you broke". He has been guilty of extortion from owner-drivers in insisting that they pay union dues and fees when he has no right to force them to do that, and there is no obligation for people to be members of a union. Nevertheless that money has been extracted. We have seen blackmail of individuals and of owner-drivers who were handling fuel.

I have been personally involved in some of those issues when people handling home fuel deliveries have had the hard word put on them and they are forced to do as they are told or put out of business. That is the sort of person we are dealing with and the sort of person being protected by Mr Berinson. Mr O'Connor has threatened to do things to bring the community to its knees. He is an arrogant bully who has shown utter contempt for the law and the rights of people to go about their own business. That sort of person must be dealt with. He is a man of significant political muscle; that is obvious to everyone concerned. He has demonstrated by the Attorney General's decision that together with his friends he is able to alter the course of justice and apply the law to suit himself.

The events leading up to the prosecution are clear to everyone. For month after month the Opposition brought forward examples of standover in the workplace. We did that day after day and week after week. The Government said, "Prove it". Its Ministers said, "Give us proof". We did so a number of times. This is one of the times when we produced that proof.

This case was brought to the attention of Parliament on 9 May 1984. I would like to quote *Hansard* of Wednesday, 9 May 1984, page 8180 because it is relevant to the debate. On that day Mr Pearce was reported as follows—

I did not get any. I said, "Give me some proof".

Mr Pearce asked that of Richard Court who was bringing these matters to the attention of the House. Mr Court gave some information. He said—

The person owns a truck, operates out of Geraldton, and employs a person, on contract, to drive the truck. That person was sacked because of misconduct.

He outlined the detail of the case. I do not intend to go through it all again. I point out that it went through a process and after all the processes of argument were undertaken there was a court hearing at which the person involved, Mr Leishman, was found not guilty. It does not matter that there is argument about whether he owed a person money. That does not come into it. The court decided; there were means of appeal if those people had wanted to pursue them. Because of his incompetence Mr O'Connor then walked out of the court and said to the owner, "You will not have any work by the end of the week". That was a direct threat after a court decision and it resulted from Mr O'Connor's incompetence.

The owner contacted various people including the Minister for Police and Emergency Services (Mr Carr) on two occasions by telephone, but no help was forthcoming.

What Mr Pearce said in the Parliament is significant to this debate, but I will go through that in detail at a later stage.

The fact is that Mr O'Connor threatened the company and said that he would black ban it; in other words, send it broke. He defied the court and placed himself in a position where he could be charged with extortion.

I refer to the statement made by Mr Pearce on 9 May 1984 which appears on page 8184 of *Hansard*. He said—

It is a very poor political performance by the Liberal party. If the Leader of the Opposition will not go to the police, the police will go to the Leader of the Opposition. I have had discussions with the Minister for Police and Emergency Services and the Minister says that in the morning he will ask the commissioner to send two detectives to the Leader of the Opposition to take from him—

Mr Pearce went on to say a number of things, but that was the most important issue. On page 8185 of *Hansard*, Mr Pearce said the following—

The fact of the matter is the Opposition has no proof of the allegations it has made in the Parliament this evening.

He was interrupted by an interjection at that point, but he continued—

We shall see, because the police will interview the Opposition and the Minister for Police and Emergency Services will be in a position—

He was again interrupted, but he continued—

—to ascertain whether there is proof of law-breaking.

Further on he said—

You are casting a reflection on the police of this State. We know that the police of this State, if given clear evidence of law-breaking, will follow it through to a full conclusion and the matter will be dealt with.

That was a statement made by Mr Pearce, and on page 8186 of *Hansard*, he said—

The truth of this matter will be demonstrated quite swiftly and effectively tomorrow when the Leader of the Opposition is invited to supply the proof that he has, not to the Government, not to any political person, but to the impartial police of this State whose job it is to look at law-breaking and to take appropriate action.

Mr Pearce said that the police should take the appropriate action. It is also important to note the statements made by the then Minister for Industrial Relations in this House on 10 May 1984, and we must be thankful to Hon. Mark Nevill for asking Dorothy Dix question 257. The question he asked was as follows—

Is there any ingredient of truth in the headlines of this morning's *The West Australian* in its reported allegations of union blackmail?

Mr Dans read a prepared statement in answer to that question. I will not read all of it, but in part he said, in reference to a letter supposedly sent to him by Mr Leishman—

The letter refers to a black ban placed on a Mr B. Leishman—

I am just making sure that members are aware that Mr Dans is referring to the same subject. He said—

... I call on the Opposition to substantiate the claims. Provide me with the names and addresses of the persons complaining and I shall personally refer them to my colleague, the Minister for Police and Emergency Services.

Persons who are subjected to intimidation, threats, violence, or interference in contracts have available to them legal action either through their common law or under their rights granted under the laws of this Parliament; that is, the Criminal Code and the Police Act.

Further on he said—

Members all know what I have said publicly about this matter in previous times.

He continued—

The Criminal Code provides penalties for assaults.

Further on he says—

It also provides penalties for threats. What remedies are there?

That was a question asked by Mr Dans. He continued—

The Criminal Code provides penalties for injuries to property and for conspiracy.

He continues—

I said in 1982, where threats, coercion, and blackmail occur, people are protected by the law. During the debate on the industrial relations legislation, Mr Masters wanted to know why I had removed the question of contempt. I did so because that is something that should go before the civil courts.

Further on he states—

Persons the subject of threats or blackmail should take immediate legal action. I reiterate what I said in 1982, that I support such action being taken, no matter who is the perpetrator of such illegal behaviour. If the existing provisions are inadequate, the previous Government would have taken action to amend the relevant laws.

It continued—

My colleague the Attorney General made this point very clearly in the 1982 debate. He said—

We already have legislation outside the industrial areas which is directed at punishing that sort of conduct. We have that in the criminal law. If the existing provisions are inadequate to deter the conduct complained of, we should amend the legislation.

I turn now to page 8251 of *Hansard*, on 10 May 1984, where Mr Dans said that on 13 October 1982 he had said—

The Minister has belly ached—

I guess Mr Dans meant me. He continued—

—about the Builders Labourers' Federation on many occasions. People associated with that union could have been apprehended and charged under the Criminal Code in this State.

Mr Pendal said. "Would you have supported that?" I replied—

I am giving the truth. I have said publicly, not in this House, but outside, that I would support that action.

He outlined point after point, but the important issue is that Mr Dans recognised that the Criminal Code had an important part to play in the sorts of activities we are discussing today. I did not say that; Mr Dans said it. Mr McKenzie may disagree with me, but that does not matter.

Hon. I. G. Pratt: Was that on Mr Dans' advice?

Hon. G. E. MASTERS: One might think so. Mr Dans may well contradict it, but these are the misleading statements made by a Minister of the Crown, not only in this place, but also in the other place. We get this sort of thing day after day and week after week, and it is disgraceful.

Mr Dans went on to say—

My point is that if Mr Leishman had been placed in that position and had approached the Industrial Relations Service, that matter should have been referred to the proper authorities to be investigated; that is, the police.

"That is, the police"—they were Mr Dans' words. He continued—

The industrial law deals with two things in the main: The prevention and settlement of industrial disputes. There is no one in the Chamber above the law, and there is no-one in this Chamber above the law.

What he is saying is that no-one is above the law. That was not my statement, but a statement made by Mr Dans; no-one is above the law and the proper authority to investigate the matters—namely Mr Leishman—is the Police Force.

I refer now to Mr Dans' reply to a question asked by Hon. Margaret McAleer on 10 May 1984. He said—

I can only answer that question in the way I would face up to that issue. I have taken lots of cases before the Commonwealth Conciliation and Arbitration Commission and if one loses that is the end of it.

"If one loses that is the end of it"—they were Mr Dans' words. He was accepting defeat. He continued—

If attempts were made to extort money from Mr Leishman the legal processes of the law are available to him. What I am gathering from the file is that the case—and I am speculating now—was that the man claimed he had been underpaid.

Mr Dans said that Mr Leishman should deal with the matter in the proper way and let the courts decide.

I refer now to a statement made by Mr Dans on page 8254 of *Hansard*. It is important that we get

this on record again, because no Minister should make a statement in this place, commit himself, and then find his own Minister has let him down for a political reason. He said—

They can talk with me and I will advise them. If it is an industrial matter and some remedy can be found within the industrial laws of this State, I will see what can be done; but if it is a matter of coercion and blackmail I will endeavour to get some action on their behalf, and advise them accordingly. I hope I am more successful in that arena than was Mr Masters.

The statements made by Mr Dans in reply to a question asked by Mr Mark Nevill were in a considered answer that was prepared for him, but he did not answer the question. He made a prepared statement; that is important.

The case was taken to the police after an appropriate complaint had been lodged. The complaint had been lodged by members of the Opposition at the invitation of the Labor Party. The Labor Party said, "You bring evidence forward and we will send the police to check it". So check it the police did. They found sufficient evidence to take the matter to court and lay a charge.

There were demonstrations outside the court and in the main streets of Perth. Those demonstrations by the trade union attempt to intimidate and influence the court. There were speeches saying, "We will not stand for this; we will bring the State to a stop". That is really what influenced Mr Berinson.

The same sort of statement was made by the TLC publicly. The same sort of statement was made at the ALP conference. It was said that the criminal law should not apply to industrial matters. There were no reservations at all. The unions demanded that the charges be withdrawn.

At that stage questions were asked in Parliament, not in this House, not of Mr Dans, who had already committed himself, but of the Premier, Mr Burke. So many questions were asked of the Premier that we could call him the king of humbug and deceit, because he gave so many answers which conflicted with previous statements and actions of his own Ministers, and they were deplorable, to say the least. That man is jointly responsible.

Let us not lose track of what Mr Berinson said. It was his decision and his alone. That man, the Premier, was jointly responsible for the subverting of the course of justice for political reasons. He was as responsible as the Attorney General. In fact I suggest he was more responsible.

Let us have a look at the statement made by Mr Burke on Tuesday, 25 September 1984, on page 1737 of *Hansard*. I quote a question and answer as follows—

244. Mr COURT, to the Premier:

- (1) Does the Government support the Trades and Labor Council in its campaign to have criminal charges against John O'Connor dropped?
- (2) Has the Government discussed plans to resolve this case out of court?

Mr BRIAN BURKE replied:

- (1) and (2) As has been publicly stated by the Government, and as I now restate publicly, there is absolutely no role for the Government in the matter of the charge or charges preferred against Mr O'Connor.

In fact, had the member for Nedlands an elementary knowledge of the law, he would understand that the matter rightly rests with the Police Department and the officer, as an individual, who has preferred charges against Mr O'Connor. There is no scope for the Government to interfere nor would it seek to interfere under any circumstances, with the exercise by that officer of his responsibilities under the Act beneath which he operates.

The Premier went on to say this—

I have personally informed the Trades and Labor Council that there is no role for the Government in this matter. Further than that, I have informed the TLC that its current campaign is likely to be counterproductive in the interests of Mr O'Connor, and I have said, under all the circumstances, there is no role for Government to play in the matter.

I cannot conceive of any situation in which the Government would seek to interfere; so that is where it stands.

It has been said publicly before, and I say it publicly again now, that we see no place whatsoever for Government action in respect of the matter that will be heard by the judiciary in due course; that is, the charge against Mr O'Connor.

So it goes on, page after page, with the Premier saying he and the Government will not be involved.

We know what Mr Berinson will say about this, but let us get what the Premier has said on the record. There was no misunderstanding as far as

the Press or the public were concerned. The Government would not be involved, and the "Government" meant Mr Berinson and all the Ministers.

Mr Burke made this statement on page 1740 of *Hansard*—

Finally, in respect of this whole matter, no matter how the Opposition attempts to tempt the Government to commit itself, we have publicly said there is no role for the Government in what is essentially a police matter, initially at least, and which subsequently may become a matter slightly different in character. I repeat that there is no role for the Government in that matter. We do not see a role; we do not seek a role, nor will we play a role.

That sort of statement from the Premier is an absolute commitment that the Government would stay out of this issue; it would not be involved in any circumstances. The media and all those people who read the statement would have been entitled to accept that the case would proceed in the normal manner, regardless of the pressures, threats and intimidation placed on people involved, regardless of the threats on the Government itself. The unions obviously called on the Government to withdraw.

The lower court believed that the case should go to the District Court. Evidence was presented by the police. The case was argued, Mr O'Connor was well represented, the courts listened to the evidence, and the case was sent to be considered by the District Court. The only reason that the jury did not get to hear the case was that Mr Berinson stepped in.

There are huge political ramifications to the decision which are going right through Australia now. More and more papers are picking it up and more and more questions are being asked, not only in Western Australia but throughout the whole of Australia. Anyone in his right mind, whether inside or outside this House, cannot believe that Mr Berinson made this decision on his own. Of course he did not. No Attorney General, no Minister of the Crown could or would make such a decision without consultation at least with the Premier; and consultation there most certainly was.

We ask Mr Berinson why he bowed to union pressure. Why did he throw his integrity and his ethical standards out of the window? Why did he turn his back and say, "Forget it"? How could Mr Berinson, or any Attorney General, take that sort of attitude or make that decision?

The answer is fairly simple. There is no shadow of doubt at all. Mr Berinson of course will deny

this until he is blue in the face, but there is no shadow of doubt at all that Mr Burke requested that some action be taken to get O'Connor off the hook.

Hon. J. M. Berinson: Untrue.

Hon. G. E. MASTERS: I know it, Mr Berinson knows it, everyone knows it. Of course Mr Burke spoke to Mr Berinson about the O'Connor case at some stage. He did not discuss what he was to do.

Several members interjected.

Hon. G. E. MASTERS: He said, "Go and sort it out". The ACTU and the TLC were the people who applied most pressure to Mr Burke. We know that for a fact; let the Attorney General deny it.

Hon. D. K. Dans: How do you know that for a fact?

Hon. G. E. MASTERS: I know it for a fact. In time that will come out.

Hon. D. K. Dans: Why do you not let us know now?

Hon. G. E. MASTERS: We want Mr Berinson to deny it before we start doing things like that. We know for a fact that the ACTU and the TLC placed enormous pressures on the Premier of this State, and that Mr Berinson was instructed to look into ways and means of getting O'Connor off the hook.

Hon. J. M. Berinson: Untrue.

Hon. G. E. MASTERS: No-one believes that. Of course the Attorney must say that. His integrity has been damaged to such an extent—

Hon. J. M. Berinson: Your problem is that you cannot recognise the truth when you hear it.

Several members interjected.

The PRESIDENT: Order!

Hon. G. E. MASTERS: Mr Berinson, I can recognise the truth, I can recognise lack of integrity and a decline in standards when I see them. Other people in the community recognise that lack of integrity shown through the decision of the Attorney General. Every member of this House on both sides knows Mr Berinson's decision was nothing more nor less than political.

Hon. Robert Hetherington: Not true.

Hon. G. E. MASTERS: There was pressure directly on Mr Burke, and very obviously no-one will deny that particularly the ACTU and the TLC said to Mr Burke, "You have to do something about it".

They said this, "You or someone else must get Mr O'Connor off the hook or we promise you such massive industrial unrest as will cause the Government embarrassment and will affect the Labor

Party's chances at the next election. All hell will break loose if you don't get O'Connor off the hook". That was the threat. It has been made publicly in St George's Terrace and privately to the Government. That was a firm and straightforward standover and blackmail tactic.

Mr Burke was told, "You take some action or you don't stay as the Premier of this State". That was the position and no-one in this State doubts that is what happened. Mr Berinson can make all sorts of statements and use a lot of legal jargon, but the people outside this place understand the facts of the case.

There was a man charged with extortion. There was sufficient proof to send him to court in the normal circumstances—circumstances which would apply to you, Sir, and me were we up for extortion. However, Mr Berinson would not consider coming along to get you or me off the hook. He said there were "special circumstances". We know the Premier, the ACTU, and the TLC were involved in the threats of massive strikes and stoppages not only in Western Australia, but also throughout Australia. So the Attorney General buckled. He buckled, as he knew the Government would buckle, to that sort of pressure. I am surprised Mr Berinson allowed himself to be compromised in this way.

The proposition was put by the ACTU and the TLC, "Make the decision before the next election. Sweat it out during the next week or two. Sit under the table for the next week and let it blow over, because hopefully in the next two or three weeks or two or three months the public will have forgotten this issue."

Let me tell the Attorney General that the public will never forget this issue. They will never forget that the course of justice was changed for political reasons and that someone got off the hook as a result of political pressure being exerted.

The Premier was told, "If you don't want to split the Labor Party, act now". There is no doubt about the Premier's involvement in the pressure exerted by the ACTU and the TLC. Indeed, by way of answer to a question, the Attorney General admitted that the ACTU and the TLC had contacted him and asked him to reconsider the matter. We can imagine the sorts of remarks made in asking Mr Berinson to do that. There would be shouts and screams and threats of, "Do something or else".

If Mr Berinson is able to table papers which show otherwise, I would be interested to see them. Those bodies must have written to Mr Berinson and we would like to see the letters, if he is prepared to show them to us. The Attorney General

said that the ACTU and the TLC had written to him and talked to him, or that pressure had been applied. Is he prepared to table those documents?

Hon. J. M. Berinson: Finish your speech.

Hon. G. E. MASTERS: No, he is not, and that really supports all that I have been saying. The Attorney General was dead quiet. He did not say a single word. If in fact the statements of the Attorney General are correct, if what he has said is right and no pressure was applied to him, if no pressure was applied directly to the Premier, and if no letters were sent to him saying, "Do something or else", but he received other letters, obviously the Attorney would be prepared to put those letters on the Table of the House and say, "This is what it is all about". That is all we are asking for and we would be very pleased to see some of those letters.

If Mr Berinson indicates that he will not table those letters, we shall understand the position. If he does table such letters, we shall be very happy.

We are all aware that Mr Burke and Mr Berinson discussed the matter and Mr Berinson was left to his own devices to find ways and means to stop further proceedings being taken against Mr O'Connor. Mr Burke would have told Mr Berinson about the pressure to which he was being subjected and would have asked him to find ways to get O'Connor off the hook.

The only way in which Mr Berinson could distance himself from the Government and take the political rap was to attempt to deny political and union pressure and suggest that the Government had nothing to do with it. No-one in his right mind would believe that to be the case.

The truth is out and, by denying the Premier's involvement, Mr Berinson puts himself in great jeopardy.

After the decision made by Hon. Joe Berinson was announced in a statement to Parliament last Thursday—a statement made before the weekend in the hope that the issue would have gone away by this week—a number of comments were made publicly by people respected in the community. Those statements demonstrate the unrest in the community about the decision which has been made.

A statement was made on television on Thursday night by Sir Clifford Grant, Chief Stipendiary Magistrate. He said—

A magistrate found there was evidence to justify O'Connor going to trial, but in my 27 years I have never heard anything like this.

Mr Bob Nicholson of the WA Law Society—I know another opinion has come out since this com-

ment was made—made the following statement that night—

In the light of the decision there needs to be an overhaul of the system if the public is to be satisfied justice is being done. It is time to look at alternatives to secure public confidence.

What a condemnation of the Attorney General for it to be said that, "It is time to look at alternatives to secure public confidence".

Professor Mulvey from the University of Western Australia said—

There is a great deal of disquiet about Mr Berinson's announcement. People are extremely unhappy at the decision which looks like a political decision rather than a legal one.

Mr Owen Leitch, who I know does not have the support of all members of the Labor Party, but who was a law officer of great repute and experience said—

Government bowing to threats from union bosses, and honesty and integrity have gone by the board and public confidence in our legal system have been shattered.

That was a statement made by Owen Leitch. I turn now to the editorial which appeared under the heading "What Justice?" in *The West Australian* the day after Mr Berinson made his statement. It reads, in part, as follows—

THERE was "absolutely no role" for the Government in the extortion case involving Transport Workers' Union boss John O'Connor—or so said Mr Burke on September 25 last year.

But now the Attorney-General, Mr Berinson—whether he likes it or not—has involved the Government.

There is no doubt about that. The Attorney General has involved the Government and the Government supported him totally in its vote in the other House yesterday. In a most extraordinary move, the Government felt it had to help the Attorney General who is in this terrible predicament, and it moved a motion of confidence in him. The Government did not wait for the Opposition to move a motion of no confidence in the Attorney General which it could then defeat, but rather it blustered around, went berserk, and said, "We shall move a vote of confidence in the Attorney General". That indicates the terrible state in which the Government found itself. It did not know where it was going. It said, "Let us move a vote of confidence in our Minister". I do not know whether such a position has ever arisen previously;

it may have. The Government said to Mr Berinson, "You have been a good boy. You have carried out our wishes so well that we think you are wonderful and we shall give you a vote of confidence". The Government did not wait for the Opposition to move a motion of no confidence in the Attorney General. That is a condemnation, if ever there was one. I have never previously heard the like.

The editorial in *The West Australian* went on to say—

Nevertheless, he has left himself and the Government open to the inevitable conclusion that they have interfered in the course of justice as a result of threatened industrial action.

In his statement to Parliament yesterday, Mr Berinson quoted legal advice from the Solicitor-General to justify his decision. But even that advice pointed out the danger of giving an appearance that a union official could escape a criminal charge by threats of industrial trouble.

The final paragraph reads as follows—

Mr Berinson has confirmed public suspicion that some union leaders can thumb their noses at the law—with impunity.

Statement after statement was made on that day and the following day saying what a dreadful decision this was. Without exception everyone said it was a political decision which endangered the processes of the law in Western Australia. Obviously Mr Berinson will stand up and give us a lot of humbug. He will insult us and the public by saying that it was not a political decision; it was his decision. He will say he made that decision, because it was his job as Attorney General to do so.

I say again that it is humbug; it is insulting to the public and to the members of Parliament. Let us anticipate what Mr Berinson will say. He will say, "It was my decision, and mine alone". No-one in his right mind will believe that. No-one in his right mind could believe the Premier was not consulted on such an important issue—was not told the day before. Anyone who suggests otherwise would be lying to this House.

Another point Mr Berinson may put to us is that there was no pressure from the ACTU and the TLC. Mr Dans has said, "What proof have you?" I would suggest that they made the decision for the Attorney. They did not just put the pressure on him; they made the decision. He will say, as he said in his earlier speech, that there should be flexibility in the application of the Criminal Code in industrial matters. He simply does not live in the real world if he thinks that there can be one

law for one group in the work force and one law for another.

If he can allow people to extort and bully, as well as apply pressure in the workplace and get away with it when another group cannot, then he does not live in the real world. One law for one and one law for another ought to be the Labor Party's policy for the next election, because that is what it applies.

I suspect the Attorney General will make reference to Hon. Des Dans and his statements. Mr Dans did not recognise any flexibility in the use of the Criminal Code.

He made a straight statement, and said, time and time again, that the Criminal Code and Police Act should apply, and where there is a problem which the industrial laws cannot cope with, it is a matter for the criminal court. Mr Dans said that time and time again during question time in this House.

Now, we have an Attorney General who will stand up and piously say that there should be flexibility in the system and that there should be one law for one group and one law for another. One statement Mr Berinson made and which I found interesting, was that this was a "novel" prosecution. I do not quite know what he meant by that.

Hon. J. M. Berinson: I will explain it to you.

Hon. G. E. MASTERS: Mr Berinson will say, "There were black bans all through your Government and through our Government and it is not an issue to take before the criminal court". I know what he will say. This is not simply a black ban—and black bans are bad enough; they are not right under any circumstances and we try to be consistent wherever we can—there was a court decision and out of that court walked a man who was told he was not guilty. He was met at the door by a trade union leader who said, "If you think you got away with that mate, you haven't. You will either pay that money or you will have no work". Mr Leishman's work was stopped the next day by Mr O'Connor who said, "Pay up or we will send you broke".

I put it to the Attorney General: What is the difference between that sort of action and a person who goes to the court to try to recover a debt? Mr O'Connor made a right muck-up. He was incompetent in that court case, and took it out on other people. Let us say that a person went to a court because a large sum of money was owing to him, but the court ruled that no money was owing. Let us say I was the person to whom that money was owed and Mr Berinson was the person to walk out of the court. If I were to say to Mr Berinson, "If

you don't pay that money I will burn your house down tomorrow", it is no less serious than someone coming out of a court telling another person that he would be sent broke. There is no difference between burning a house down and sending a man broke. What is the difference? Mr Berinson says there is a difference, because it is an industrial matter. Mr Berinson says "That man should walk away scot free, God Bless him, and do it again". That is what he is saying.

I hope the Minister will not make a statement similar to that which he made last Thursday when he said that this was a one-off case, but that it did not mean there would be an immunity in the future. Heaven forbid! What on earth was the Attorney talking about?

The man he had let off made a statement the next day. Members would have seen Mr O'Connor talking on the television and making statements to the radio stations. Mr O'Connor was reported in *The West Australian* on 1 March 1985, the day after Mr Berinson let him off, as follows—

O'Connor said he would not have expected such a decision by Mr Berinson. . .

Not much! To continue—

. . . but given the facts it was the right decision, and in future where employers underpaid his members he would continue to use every means at his disposal to get justice for them.

What he was saying was that he would go out the next day and do the same thing. Every other union leader would have the same thought: If one gets off, the rest get off. It is the same privilege. It is insane for the Minister to stand up and say, "This is a one-off".

Every union leader who uses this tactic—there are not many who will, most are good; there are a handful that would do it—will know that he is safe. I would suggest that the decision will have a great effect on the Police Force and what its members do in future in similar circumstances. It is a direct attack on the integrity of the police. I know they are absolutely furious about the decision. If there were any doubt at all with regard to their view of the Government and what it is doing to the Police Force, it has been made clear for all time with this decision. It is a direct attack on the integrity of the Police Force and its actions in carrying out its job. It will dissuade police officers from taking any further action in the future, in similar circumstances. The Minister might say, as his advice stated, that in the community interest the decision should have been made. What community interest? What sort of decision is that. Tell that to subcontractors, to small businesses, to em-

ployers, to owner-drivers, carpenters, plumbers, electricians, concrete workers, and small manufacturers who suffer daily as a result of the threats of O'Connor, Ethel, Reynolds, and Palmer, and their hired thugs.

It is no different; they will go out and do exactly the same thing. There is a principle involved, which Mr Berinson has not failed to recognise, but has decided to ignore. That is the real situation.

Mr Berinson will say that there is a distinction between a Government decision and the decision of the Attorney General. Again I say, "Tell that to the birds; no-one outside would believe it and no-one is going to believe it". If we hear that sort of argument, the Attorney General is lying through his back teeth. No-one will believe it.

This was a political decision, forced by the ACTU and the TLC. The Premier was involved from day one, and if ever there was any doubt about the Premier's statements and denials, I suppose we should make reference to a telex the Premier sent out this morning. The telex is dated 6 March 1985 and says—

The Premier, Mr Brian Burke, said this morning he had never discussed details of the circumstances that led to charges against TWU secretary John O'Connor with the man whose complaints led to the charges.

I think there is a play on words there, but I will come to that later. To continue—

Mr Burke said the Opposition had quite deliberately misled the Parliament with claims that he had refused to provide assistance to the complainant in the case.

In fact, Mr Burke said he was overseas at the time when the Opposition said he had discussed the matter with truck driver Mr Bruce Leishman.

"I have never discussed the details of the case with Mr Leishman and he has not raised them with me," Mr Burke said.

"At the time when the Opposition alleges Mr Leishman had discussed his complaint with me I was overseas with the Minister for Industrial Relations, Mr Des Dans," he said.

Mr Burke was away from 20 February 1984 and returned on either 19, 20 or 21 March 1984. The complaint to Mr Burke's office was made on 9 April 1984 at 9 o'clock in the morning. Mr Leishman had a load of fat lambs at Robb Jetty. He was refused permission to unload, because a black ban had been imposed on him. He rang Mr Burke's office on 9 April and the secretary refused to put Mr Leishman through to Mr Burke's office, but spoke to Mr Burke, as I understand it. Mr

Burke's office called back in the afternoon and said that the Transport Workers Union was too powerful and he would have to pay up.

That was the advice from Mr Burke's office. I have just read a statement from Mr Burke which stated he was away at that time.

Several members interjected.

Hon. G. E. MASTERS: Two letters were sent to Mr Dans. I admit he was away. Two conversations were held with Mr Carr. A statement was put out, in the telex I have just read to the House, that the Premier was away at the time. However, a complaint was made to his office on the day he was at home, but he refused to talk to Mr Leishman. At least Mr Burke's secretary rang back and said, "Pay up; we can't do anything for you".

I say to members in this House and the public that the Minister has brought shame on himself, his colleagues, and more than anything else the position of Attorney General, as well as the Parliament.

A member interjected.

Hon. G. E. MASTERS: Yes, and the Parliament, to the stage where an alternative must be found. The Attorney General cannot be trusted.

[Resolved: That motions be continued.]

Hon. G. E. MASTERS: Headlines of a paper have accused the Minister of bringing shame on his position, on his colleagues, and on the position of Attorney General. There is no greater condemnation of the Minister than the article which appeared under the headline "New prosecution post sought for WA" in *The West Australian* of Saturday, 2 March, which states—

The Western Australian Law Society has called for an independent public prosecutions office which it says would be free from political pressure.

That says it all. The Attorney General cannot be trusted any more and an independent person needs to be appointed to make the sorts of decisions made by Hon. Joe Berinson. The Attorney General can be trusted no longer to keep the judicial system free from politics. The only course of action open for the Minister and any Minister in any Parliament of this type in the world is for the Minister to resign.

My colleagues in this place and another place, and the public generally who have looked with horror at the decision of the Attorney General say to him, "Get out of it; you are doing no good for the judicial system. You are ruining the image of your own party and are not to be trusted". What a

condemnation that is. I urge members to support the motion.

HON. TOM McNEIL (Upper West) [5.34 p.m.]: I second the motion. I wish to state my absolute confusion about what redress we have left to us in this matter. Last year it was quite evident in this House and in another place that sufficient concern was being expressed about some militant activities and that some action needed to be taken. Questions were bandied backwards and forwards across this Chamber. An assurance was given by the Government that if there was a properly constituted complaint, it would be put in the hands of the police and would follow the normal legal procedures.

I confess to being absolutely stunned last Thursday when, upon entering this Chamber, I heard the Attorney General presenting his statement to the House. If we are confused in this place—I confess to being absolutely confused—what sort of feelings are the general public experiencing? We have been fobbed off over this issue. There is no-one else in this House for whom I have more respect than Hon. Joe Berinson. He has gone to great pains in his statement to point out that the decision was not a political decision and that he carries the ball. In doing so, he has divorced himself from having made a party political decision. However, it is not quite as simple as that. The Attorney General is the highest law-maker in the State. When we delve into this matter as lay people—I am not including Hon. Ian Medcalf—we understand that it was the Attorney General's legal and constitutional right to take that action. However, he had a moral obligation to continue with this case because of the concern expressed previously in this House.

I am not a particularly good friend of Mr Leishman. I know him, although I have not had contact with him for five or six years. The fact that I live in Geraldton does not mean that I am pushing his barrow. I am not pushing Mr Holly's barrow either, nor am I denigrating John O'Connor. However, the Attorney General should have allowed the case to go ahead. By refusing to allow it to go ahead, he has thrown the State into absolute confusion. I agreed with the Leader of the Opposition when he said that we will be subject to industrial blackmail.

I have had instances of union thuggery made to me. I cannot state the circumstances here because of the repercussions which will take place in another region of the State. Some members on the other side of the House are aware of my concerns in this matter. I will not take that matter any further. But is it not an indictment on us that we are too frightened to place facts before the Parlia-

ment because of what may occur in other areas of the State and because of threats of reprisal against the complainants?

I am stunned and bewildered. If I am stunned and bewildered as a representative of the people, goodness knows what they are thinking. This matter should have been allowed to follow its due course. With all due respect to the Attorney General, he should have followed that course. He should not have interfered in the legal processes. If members of this House were guilty of breaking the law, they would expect to face the wrath of the courts and to have judgment served on them. To have allowed this matter to get to the stage where the Attorney General can say that it is his right to make the decision he made and then to absolve the Labor Party from all blame is wrong. I am not going to call Hon. Joe Berinson a liar. He has assured the House that it was his decision alone and I accept that. However, the ramifications for the ordinary people are enormous.

Where do we go from here? Do we have to bring names into this place? Do we have to name unions which are involved in standover tactics, and thuggery, and threaten people? I am prepared to give the Attorney General a list of my concerns. The Leader of the House knows already of those concerns. The people in Upper West Province are stunned. I have pointed out already that I have no involvement with Mr Leishman, Mr Holly, or Mr O'Connor.

The decision the Attorney General has made is the most outrageous decision made since I have been in Parliament because of the effect it will have on the man in the street. I saw on television the demonstrations which occurred when it was suggested that J. J. O'Connor would never go to court. The only attitude that the people on this side of the House can adopt is that there has been a back down as a result of that pressure. I can extract several phrases from the Attorney General's speech where he says that he is answerable only to Parliament. The Attorney will no doubt rise to his feet in his honest way to reply. Last year I accused the Attorney of being cold and analytical; the Attorney is also tough because he has the veneer to withstand the pressure that will come upon him as a result of this decision. However, that will not solve the problem that members have in their electorates. We cannot say we have a solution to the problems in this area because we can put the matter in the hands of the police. That action has been halted and we have been stopped in our tracks. It will be interesting to see what happens next time we have evidence to put before the courts.

I do not know how many times the Attorney has made a decision such as this. I do not know how many times he has been in these circumstances. This is the first time Parliament has been made aware of such a decision. It is certainly the first time I have been made aware of it. People in the community are concerned.

HON. J. M. BERINSON (North Central Metropolitan—Attorney General) [5.41 p.m.]: Last Thursday I made a lengthy, detailed statement to the House in which I set out the consideration which had led to my decision in the O'Connor case. I also tabled a four-page opinion from the Solicitor General. Following my speech, and predictably enough, Mr Masters came out swinging. Unfortunately, and despite the fact that he had received an advance copy of my proposed statement, his response indicated that either he had not listened to my statement or listened but not understood it, or listened and understood it but deliberately ignored the statement itself so as not to allow his prejudice to be affected by the facts. Time has passed but the Opposition's approach is essentially unchanged.

Yesterday Opposition spokesmen plumbed new depths; their personal attacks were not only venomous but right to the edge of hysteria. Their ignorance was palpable. Their facts, to the minor extent that they bothered to use facts, were almost all, or completely wrong. They said for example that my decision was instructed by the Premier. Mr Masters has said so again today. They are wrong. I have denied that absolutely and it is simply untrue. They said that an Attorney General never asks for advice on a *nolle prosequi* but only deals with such questions when Crown Law officers suggest it. That is also wrong. They said that my decision as Attorney could not be separated from a decision of Government. They are wrong again. They said that my decision was an intrusion into the normal legal process. That was not only wrong but also ridiculous.

Mr Richard Court got the front page headline of *The West Australian* today with the astonishing claim that I discontinued proceedings against O'Connor to protect three Ministers from contempt of court charges. If that indeed was my reason, it was a reason I knew nothing about. Not only was I unaware of any contempt of court possibilities, but having today read Mr Court's allegations, I still do not see how contempt of court could conceivably arise. It is an allegation devoid of any sense, let alone of any substance.

Having said that, let me turn to more serious matters. The personal venom and distortion of facts in which the Opposition has so far engaged

are the least part of its disservice to the State in the course of this controversy. Worse by far is its apparent determination to ignore altogether the single most important factor in this case; I refer to the undesirability of bringing the full rigour of the criminal law to bear on essentially industrial disputes. Face to face with Mr Hassell on "State Affair" last week I put that proposition as the single most crucial issue in this current dispute. Mr Hassell did not deny that it was the single most crucial issue, because he could not. Instead he avoided discussing it at all and he still avoids that issue to this day.

He has very good reason for that. The reason is that he is trying to cover his own tracks and I will refer to that in a moment. Before doing so, however, I have one simple request which I put to all members and, more importantly, to the media and the public at large. I ask them please not to base their judgment on this particular case on whether they like unions or not; on whether they dislike strikes or not; on whether they believe unions have too much influence or not. All these are serious questions but they do not go to the particular circumstances of this case. Most of all, these circumstances cannot justify putting a person at risk of 14 years' imprisonment with hard labour for the sort of act which, like it or not—and personally I intensely dislike it—has been accepted for years by the industrial community, unions, employers and governments alike.

The basis for the O'Connor charge was a threat to organise a black ban. Do not ask me to defend or admire that course of action. I do neither. But, when was the last time in this State that a threatened industrial black ban was made the subject of a criminal charge of extortion? Never. When was the last time that a threatened stop to a concrete pour was made the subject of a charge of extortion? Never. When was the last time that a threatened strike to override an arbitration commission ruling was made the subject of a charge of extortion? Never.

Over the years there have been innumerable such threats. It is not as though they have been whispered behind closed doors; they have been proclaimed aloud in the street and Press. All of these threats could potentially come within the extortion provisions of the Criminal Code yet this has never previously been invoked.

Need I remind the House that in the 36 years since 1949 the Labor Party has only been in Government five years federally and 11 years in this State? In other words, the criminal law could have been invoked in this area by Liberal Governments for the greater part of the post-war period.

It never has been; not when Mr Masters was Minister for Labour and Industry and not when Mr Hassell was the Minister for Police and Prisons. The criminal law was never invoked in such a case by any Liberal Government and I suggest that there was a very good reason for that restraint. It was valid during the long periods of Liberal Government.

A member: There is no evidence of that.

Hon. J. M. BERINSON: Do not talk about evidence. One could get it on the front page of the paper every day of the week.

It was valid during the long periods of Liberal Government, and it remains valid today. That is the clear and simple truth from which Mr Hassell is now determined to hide. The reason is that in the industrial realities of this country it is not appropriate or desirable to apply the full rigour of the criminal law to an essentially industrial situation.

The fact is that since the O'Shea case in the 1950s, even the penal provisions of industrial law itself have become virtually a dead letter. Civil remedies also have become virtually irrelevant in industrial situations. Is it now suggested seriously that the criminal law, which has lain unused over all this period, should suddenly be applied and made to stick where the others have failed and been discarded?

We are talking here of a restricted area of threatened bans in the particular circumstances of this case. I repeat what I have already said many times: there is nothing in this decision to encourage the view that unions or unionists are to have some general immunity from the criminal law, whatever they might do.

Several members interjected.

Hon. J. M. BERINSON: That is not the case at all.

Hon. G. E. Masters: Rubbish!

Hon. J. M. BERINSON: This decision does not mean, as the Opposition keeps trying to suggest, that there is one law for unionists and another law for everyone else. Theirs is a neat, glib line as glib lines go, but it is simply not true. The decision in this case is, in reality, the confirmation of a long-established status quo. Indeed, to have gone the other way would have been, without notice, to expand the application of the criminal law into areas previously left untouched, and clearly recognised by Liberal Governments as desirable to be left untouched.

Several members interjected.

Hon. J. M. BERINSON: I started with the plea that judgment in this case should not be guided by

general antagonism towards unions. To proceed in that way is to ignore the basis of the decision and the merits of the particular case. Previously I quoted the Solicitor General at length. To put this matter into context, I quote him again, but only briefly—

... despite the existence of a *prima facie* case, the use of the criminal law in the totality of these circumstances was unnecessary and inappropriate.

And further—

It is also relevant that this case has arisen in the area of employer/employee relations. This is one of many areas of activity of considerable importance to the community where the too ready, or too rigid, application of the criminal law can be counter-productive and contrary to the ultimate interests of the community.

I now propose to deal briefly with a number of other points. It has been suggested repeatedly that the decision to discontinue this case somehow involves a political intrusion into the legal process. This ignores the well-established role of the Attorney General as an important part in the legal process.

Several members interjected.

Hon. J. M. BERINSON: If members are not interested in my own views, perhaps they will be interested in the views of the Commissioner of Police. As the Commissioner of Police has quite rightly said, the due process of the law provides a capacity in the Attorney to discontinue actions. This capacity may be exercised for a range of reasons, and these are not nearly as restricted as some recent public comment might suggest.

Several members interjected.

The PRESIDENT: Order! I call honourable members to order and request that they cease their interjections while the Attorney General is speaking.

Hon. J. M. BERINSON: Such reasons include the fact that to proceed with a prosecution would be oppressive; that a prosecution ought to be discontinued on compassionate grounds; that to proceed to prosecution and conviction would only lead to a certain extension of a sentence already being served; that the criminal offence, if any, has been a technical offence, and the relevant dispute could best be left to the civil law; or that there are factors which go, as this case does, to the general public interest. I am not suggesting that this list is exhaustive.

As against that, the Opposition has tried to say in recent days that the only time a case should be

discontinued is where there is insufficient evidence to convict. Directly refuting that point, the Edwards book, *The Law Officers of the Crown*, quotes Sir John Simon and Sir Hartley Shawcross, as they each then were, in the following terms—

... there is no greater nonsense talked about the Attorney General's duty, than the suggestion that in all cases the Attorney General ought to decide to prosecute merely because he thinks there is what the lawyers call 'a case'...

The power to discontinue a case by entering a so-called *nolle prosequi* is quite regularly exercised in a range of areas where it is unnecessary or inappropriate, to use the Solicitor General's words, to administer the criminal law to its letter. What must be decided in each case is whether that discretion ought properly to be exercised.

What has not been addressed by the Opposition in this debate, or at all, is the merits of this case, and why the discretion of the Attorney General ought not to have been exercised. That evasion by the Opposition is clearly deliberate. It is another expression of their anxiety, at all costs, to avoid discussion of what I have called, and what Mr Hassell surely knows to be, the single most crucial issue. That issue, to stress it again, is the undesirability of applying the criminal law in its full rigour to essentially industrial matters.

Hon. G. E. Masters: One law for one group and one law for another.

Hon. J. M. BERINSON: The Opposition has also suggested that the decision in this case is political interference by the Government.

Hon. G. E. Masters: It most certainly was.

Hon. J. M. BERINSON: Again I reject that absolutely. The decision was not made by the Government; it was made by me personally in the exercise of the professional duties of my office.

The Opposition has enormous difficulty with the concept that a decision by the Attorney General in his official legal capacity can be separated from a decision of the Government. At least, members of the Opposition pretend to have that difficulty. The argument has been put *ad nauseum* both today and by Mr Hassell at other times that, as the Attorney General is a member of the Government, any decision of whatever nature by the Attorney General must necessarily be a decision by the Government.

That it must be said is a superficially attractive argument. The only trouble is that it betrays a most profound ignorance. A decision to prosecute or not to prosecute has historically become established as one for the Attorney's personal pro-

fessional discretion. It is not only so where purely legal considerations are involved, but even more the case where considerations of public interest are at issue, as they are in the present case.

In a letter to *The Times* on 19 November 1970 Lord Shawcross, a distinguished British Attorney General, said this—

... the Attorney-General is entitled to (but rarely does) seek the views of colleagues as to matters of public interest involved in a prosecution. The eventual decision, however, and the responsibility for it lies with the Attorney-General alone and it is very well understood that no-one may seek to influence him on political grounds. In my own experience no-one ever does and no Attorney-General worth his salt would tolerate any such intervention in his quasi-judicial duties.

I have been asked specifically today whether the Crown Prosecutor offered an opinion on this question. He did. His view was that, a *prima facie* case having been established and the committal made, the case should proceed.

The House should please note that the Crown Prosecutor's advice was considered by me but was not directed to me. In the normal course of events it was directed to the Solicitor General and was taken into account by the Solicitor General when he prepared his own opinion on rather broader grounds. It is the Solicitor General who is the senior legal adviser to the Crown in this State, and as I indicated in my statement last Thursday it is my invariable practice to seek his opinion in such matters. With no disrespect to the Crown Prosecutor, his views were simply overtaken by the Solicitor General's advice.

Hon. Gordon Masters quoted me in respect of the use of the Criminal Code in industrial disputes. Typically he quoted my comments out of context. Knowing that we are dealing here with a threat of a black ban, he quoted me in these limited terms—

We already have legislation outside the industrial arena which is directed at punishing that sort of conduct. We have that in the criminal law. If the existing provisions are inadequate to deter the conduct complained of, we should amend that legislation.

My full statement, which can be found on page 2711 of *Hansard* of 13 October 1982, was as follows—

I do not deny that examples can be brought of conduct by unionists which is improper and intolerable by any standard. Threats to workers' physical safety or employers' physical safety would come within that

example and so does malicious destruction of property. We already have legislation outside the industrial arena which is directed at punishing that sort of conduct. We have that in the criminal law. If the existing provisions are inadequate to deter the conduct complained of, we should amend that legislation.

That is, as will be crystal clear, what I was talking about at that time were acts or threats of physical violence and deliberate destruction of property. Those sorts of acts have always attracted the criminal law, and so they should, and they will continue to do so while I have anything to do with it.

But the O'Connor case involved an area which has never attracted the criminal law and where its use now would be novel—novel, Mr Masters—expansive and, especially without notice, unnecessary and inappropriate.

Hon. Gordon Masters also put some weight on a statement last week by the Law Society. He is clearly unaware that the Law Society has issued a qualifying statement which corrects its earlier comments in all important respects. Mr Masters now says that he is aware of the clarification. But he did not bother to mention that when he spoke; all he bothered to mention was the original comment, which he thought would suit his purpose best.

I end on a frankly subjective note. As anticipated, the decision in this case has proved highly contentious. I am conscious as well that early reaction has been critical. I do hope that people who are interested in this issue, especially those who feel strongly about it, will be prepared to come to grips with the difficult and complex issues involved. I hope they will not rely solely on the sloganeering and personal abuse which has marked the Opposition's approach.

The media has an important role to play in ensuring that the histrionics of the Opposition are not allowed to obscure the real issues. So far, the treatment in the morning Press in particular has lacked that professionalism. Not only has it again given prominence to allegations which were raised and denied in Parliament last year, but it has also failed to publish the clarification by the Law Society of its reported views on this matter. As if that were not enough, this morning's front page highlighted comments which were peripheral to the issue and which I can only describe as nonsensical. These comments have no basis in fact or in law.

For myself, after intense self-examination, both before and since the decision was made, I am

bound to say that I am confirmed in the view that the decision was correct. I do not say that in any spirit of defiance. I state it simply as a matter of fact and, if I may say so, with a clear conscience.

Government members: Hear, hear!

Sitting suspended from 6.10 to 7.40 p.m.

HON. G. C. MacKINNON (South-West) [7.40 p.m.]: I listened with a great deal of interest to the speech made by Hon. Tom McNeil. I listened because I thought his remarks were totally apposite and summed up the feeling of the public. He did not go into any technicalities and did not debate the legal niceties of the Attorney's position.

His remarks struck at the very heart of the Attorney's job in this place as a politician.

The Attorney is elected as a politician first and foremost. He remains a politician while he becomes a Minister. Indeed, he becomes a Minister because he is a politician and for no other reason. The one expertise he takes with him to whatever portfolio he has in Government, is his expertise as a politician. All the other expert aspects of his life and character are subsidiary to that. His life as a politician is first and foremost. Indeed, he has not always been Attorney General in the Governments in which he has served. Many experts who have written on it maintain that politicians should be moved fairly regularly from portfolio to portfolio so they do not get involved in the niceties of their departments, but remember constantly that their job is politics.

My colleague, Tom McNeil, dealt with politics and with the heart and soul and feeling of the people in the community. His reaction was exactly the same as mine—one of distrust with what has happened, disappointment in the action, fear of where we go from here, and an underlying conviction that the decisions made were not basically and fundamentally honest.

I do not care whether the Minister is fundamentally and basically honest. The feeling in the community is the decision he made is not.

There is no rule of thumb as to what decisions are taken to Cabinet and what decisions are not. That is a decision for a Minister. He decides what will be taken to Cabinet to get the support of his colleagues, and depending on the Premier of the day, the Minister trims his sails. I think that is a reasonable metaphor in these days.

Some Premiers like most things to go to Cabinet; some like less. In my experience it is almost universal that Premiers want a Cabinet Minister to take an item to Cabinet when it impinges on the portfolios of his other colleagues. That is a reasonable rule of thumb. I think a Premier would

normally want a Cabinet Minister to take items to Cabinet if they were going to become *causes célèbres*. On both those criteria I think Mr Berinson would have believed this ought to go to Cabinet. I do not care what Shawcross said, because I accept there are cases when an Attorney General makes a decision in isolation.

If a fellow robs a bank and there is no evidence to prove it, but the police are quite sure he did it, that is different. However, this is not like that. It is a matter which has touched on, and which is exemplifying, the problems of industrial bullying which have been evident in the community in cases involving the Building Workers Union, the Builders Labourers Federation and the Transport Workers Union over a number of years.

We are talking about a case which concerns the Minister for Police and Emergency Services, the Minister for Industrial Relations, and the Minister for Transport; yet the Attorney General saw fit to make his decision in isolation. I simply do not believe it, and if that is doubting the veracity of the Attorney General, I am sorry. However, I do not believe that a Minister of his undoubted intelligence—whatever we have come to doubt about him, we cannot doubt his intelligence—would have dealt with the matter in isolation.

The Attorney General has said that the Premier did not influence him or tell him to make the decision he made. I believe that. I have had Premiers saying to me, "Get this matter fixed", and I went away and fixed it. They did not interfere with my decision. Premiers will say that they do not interfere with the decisions of Ministers, but when problems arise the Minister concerned is told to go away and fix it. The Premier is in a position to claim, with all noble justification, that he did not interfere in the decision. That is the only reason that Mr Berinson did not take this matter to Cabinet. After all, he has told us that he did not take the matter to Cabinet.

Mr McNeil was reflecting upon the community's attitude. We have a union chief who took a businessman to court and lost the case. The union chief made certain threats and obtained satisfaction for his supposed union member—remember the word "supposed" because as I understand it that is the one thing that has not been proved.

It could not be proved that Mr Holly was a member of the TWU.

Hon. J. M. Berinson: They did not have to prove it.

Hon. G. C. MacKINNON: The matter was referred from a lower court to the District Court. I do not understand the technical ramifications, but

I am trying to reflect the views of John Citizen who is out in the cruel world and has to obey the law. He is saying, "Where do we go now when the Attorney General of this State is, as far as I can see, allowing these bully boys to get away with it?"

Hon. J. M. Brown: I can understand it without you telling me all about it.

Hon. G. C. MacKINNON: They do not understand the technicalities and they do not understand the ramifications of the Shawcross case and the similarities between the case he has considered and the case that Mr Berinson has considered. John Citizen can only understand that the police prosecution prepared the case and it is being frustrated because the rug has been pulled from under its feet.

They hear that the Chief Prosecutor, a very senior and important officer, says the matter should go to the District Court, and the Attorney General says, "No". He takes counter advice.

Hon. J. M. Berinson: I take more senior advice.

Hon. G. C. MacKINNON: But not necessarily the correct advice. There he is talking as an Attorney General again. That is very nice in its context. I am suggesting that the people of Western Australia would take him as a good politician. Here is a fellow who has been billed as a man of undoubted integrity; a sound, reliable fellow. All of a sudden the public sees him in a totally different light. For one who came into politics when politicians were given some regard and who is going out when they are given very little, this is another nail in our coffin.

It is no good saying that nail was driven in by the Opposition. Tom McNeil is not a member of the Opposition; he sits on the cross benches. Tom McNeil made a speech which was from the very heart of the voters of this State. It was not from the Law Society, not from the shadow Attorney General, not from someone who understands the technicalities of the law, like Mr Hetherington; it was a cry from the heart of the voters of this State. The normal, law-abiding, taxpaying citizens have been crying for years to have some discipline imposed on the BLF, the TWU and TLC. We have seen cases where the TWU was reported to have a two-way radio and fellows with binoculars on top of a tower in St George's Terrace watching and spying and threatening years ago.

Here it comes up again. Mr McNeil pointed out that nobody believes that the technicalities were sufficient to overcome the real, fundamental truths, as they see them, and threats were made. They saw pamphlets put out and politicians

threatened, and they saw a politician succumbing to that pressure.

Mr Berinson can argue all he likes, and his colleagues can argue on his behalf until the sun shines through the windows. They should go out into the byways of Perth, Geraldton and the country of Western Australia and convince those ordinary people. They think something stinks in the State of Denmark; certainly they think it stinks in the State of Western Australia.

They register something about what is happening in New South Wales and they think the same thing will happen here. A number of them are terrified that Mr Berinson, who has been billed almost as the conscience of the Labor Party, is up there carrying the banner. That is a very sad situation. I am sad for the Parliament, for all our constituents, and for Mr Berinson. I have had accusations levelled at me at different times. There has been closure of the Wooroloo Hospital, the banning of the Scientologists, the clearing controls, and the farmlands. I had the solid knowledge that Cabinet was behind me. Mr Berinson is there alone and forlorn. The only excuse he has is that, in my opinion, the Premier said, "Fix it". This has fallen on his head.

The terrible part of this is, if I understood his speech correctly, he was almost sure it was going to happen. That really bugs me. I cannot follow it, unless he was so certain that he just had to get the matter fixed. He said he expected it to be a difficult decision, as I understood him, and he expected some repercussions.

Let us look at the history of the TWU and its previous office bearers—one of them disappeared, did he not?

Several members interjected.

Hon. Robert Hetherington: There is no saying he had to.

Hon. G. E. Masters: I think you will find he did.

Hon. G. C. MacKINNON: I suggest that Mr Hetherington go back to look at the record, and he may well find that discretion is the better part of valour. Might I suggest that it would be wise if he leaves the championing of the TWU and its office bearers to Mr Berinson who is in more trouble than all of the Labor Party put together on this one.

It is very important that we keep in the back of our minds the fact that any Minister takes advice. He does not always follow the advice of a senior; he may follow the advice of a man who he thinks is the best, the most just, the most reasonable and has the best interests of the people of the State at heart. That applies not for one person but for the

people of the State as a whole. If it impinges on other folk in his Cabinet, he will almost invariably take this matter to the Cabinet.

All the guidelines required for a Minister to take a matter to Cabinet were there in this case. The question one must ask is why Mr Berinson, a man of obvious intelligence, did not take it to Cabinet. Members can make up their own minds about that. I have given a few suggestions.

Mr Berinson has suggested there is a certain amount of personal venom in this debate. I did not think there was any personal venom in Mr McNeil's speech, which Mr Berinson skilfully avoided even commenting on, let alone answering, although he put the case of the reaction of the people. All the complications and ramifications of the other arguments he left to those who, as he said, might understand them better. He said himself he did not understand. That is fair enough. As a matter of fact he disregarded those things; he did not think they were germane to the argument. As he said, stripped to its absolute essentials, the court case was lost and threats were issued by the fellow who lost it. He had excellent representation, as I understand it.

Hon. G. E. Masters: Yes, he did.

Hon. G. C. MacKINNON: He made threats, and the proper authorities considered there was enough substance in those threats to refer them to another court. The fellow who lost the case did not see fit to take the matter to a higher court of appeal.

I have on a number of occasions heard Mr Dans say that the penal clauses as applying to industrial matters are of no account, will not work and are not to be used. I suggest he look at the situation in West Germany, a country he seems to love and an example to which he often points. There he would find that its unions are subject to penal provisions—they are exercised frequently. Mr Dans is on record repeatedly in Council debates as saying that these matters should be left to the police.

I was never even an acting Minister for Industrial Relations, but as I understand it our Liberal Ministers always used industrial inspectors with alacrity. Mr Masters nods in agreement. This applies also to previous Ministers such as Mr O'Neil and Mr Grayden. They always used industrial inspectors, but Mr Dans says he will not use them. I remember his boasting one minute that his Government had not experienced disputation under the Act in force at the time, an Act enacted by a Liberal Government, and then the next minute saying that it was a terrible Act. He was trying to have it both ways. He has said over and over again that this sort of thing is the job for the police

to look after and that he will not use industrial inspectors. Okay, that is a difference of opinion and a difference of administration. Not everything comes through here, because lots of matters are changed by administrative action.

Mr Berinson has argued as though his only job in this place is to act as the head legal officer, and admittedly he has a terribly important position to fill.

Hon. J. M. Berinson: I have never pretended that is my only role. I am saying that when it comes to a decision of this kind—

Hon. G. C. MacKINNON: Now we get some backtracking. We have heard throughout the debate how he puts forward technical, specialised arguments and displays that sort of consideration in his role as Attorney General, quoting Lord Shawcross and indicating that the only advice he takes is in strict order of seniority.

Hon. J. M. Berinson: Do you think it was merely a technical argument to put that there has never been such a prosecution in the history of this State in spite of innumerable similar acts?

Hon. I. G. Pratt: Will there ever be while you are Attorney General?

The PRESIDENT: Order!

Hon. G. C. MacKINNON: It could well be, because for so many years now—except for a slight hiccup when Mr Tonkin got in for three years and for three years when I first came here—a Liberal Government has been in office. During that time we always had industrial inspectors on the job straightaway, quick as a flash. Mr Dans says that we should wait for the police to take action in such matters. But the moment the police take action, in hops the Attorney General, with all his technical knowledge.

Several members interjected.

The PRESIDENT: Order!

Hon. J. M. Berinson: What action did the industrial inspectors take—

The PRESIDENT: Order! The Attorney General will come to order when I call for order, and so will other members.

Hon. G. C. MacKINNON: There is no doubt that the discretion exercised by the Attorney General, or by a Minister for Justice as I have known the title, is terribly important. I can recall at least three occasions when I have had the necessity, in my view and my judgment, to contact a Minister for Justice—as he then was—to ask him whether he would intercede in some discretionary way. In two cases he did; in one he did not. That is the right of a Minister for Justice or an Attorney General, and that is perfectly proper.

I am suggesting that all sorts of things have happened in this case which leave people a little aghast. Bearing in mind all the points I have enumerated, I find it difficult to understand how the Attorney General made his decision totally on his own, as though it were purely and simply a matter of law and nothing else.

In the light of the history of the Costigan inquiry, surely a shadow is thrown over the Attorney's decision. In the light of the history of the TWU, surely a shadow is thrown over the Attorney's decision, which was taken purely and simply on the basis of legal niceties. It does not wash that he could have made such a decision. I do not know anything about whether Mr O'Connor was guilty of contempt of court, but this matter touched on the Minister for Transport, the Minister for Police and Emergency Services, and the Minister for Industrial Relations. Therefore, the matter should have been taken to Cabinet.

I almost sit alongside Mr McNeil and I want my remarks to go side by side with his. I too believe that the people are utterly bemused by the Attorney's action. The people see the facts of this case as I have enumerated them, including Mr O'Connor's failure to take the case to appeal. Even in the light of the prosecution and all those other items I have mentioned, Mr Berinson claims to have acted of his own volition, to have made this decision, and to be accepting full personal responsibility for a number of technical reasons quite divorced from any of the issues of concern to the public and divorced from the politics of the case. He has said that there will be no case, and he even has a technical term for that. For all those reasons, both those technical and those earthy, human reasons that Mr McNeil and I have tried to explain, I support the motion and am extremely critical of Mr Berinson.

HON. MARGARET McALEER (Upper West) [8.10 p.m.]: I support the motion, and in doing so I express two main concerns. One is the damage done to the law and concept of justice in this State by the Attorney General's decision not to prosecute in the O'Connor case, and the other is that Mr Leishman, my constituent, is the particular victim of his decision.

The Attorney General said in his ministerial statement that he based his decision on the relevant facts and the background of the O'Connor case, as far as these appear on the information available to the Solicitor General. He listed a number of these purported facts and added "This is not a context, in my view, for the sledge hammer approach which the invoking of the criminal law would involve". He then went on to disclaim the view that the criminal law has no place at all

where acts in the course of industrial disputes are involved.

One is left to wonder when the Attorney General would consider it appropriate to invoke the criminal law. Would it be when there were no prominent union officials involved? Would it be when there is no threat of industrial disruption accompanying the hearing of the case? Would it be when there is no pressure from the Labor Party and the TLC to sweep the matter under the carpet?

However satisfied the Attorney General may feel that he made the correct decision on the facts as they were available to the Solicitor General, he has not been able to make it clear to the Parliament, let alone to the general public, that he had any business to make a decision at all. He has certainly not been able to divorce it from the tremendous pressure which is known to have been applied by the ALP, the TLC, and various individual unions to have the case dropped.

The majority of people do not believe that he did not yield to these pressures. In spite of all his efforts, they do not believe that the Premier and the Government had nothing to do with his decision. I should say that it seems unlikely that Mr Dans was in full agreement with his view, because of the statement he made in answers to questions without notice on 10 May 1984. While this has been repeated by my leader (Hon. Gordon Masters) and referred to again by Hon. Graham MacKinnon, I think it would still bear repetition.

Mr Dans said on page 8250 of *Hansard* of 10 May 1984—

Persons the subject of threats or blackmail should take immediate legal action. I reiterate what I said in 1982, that I support such action being taken, no matter who is the perpetrator of such illegal behaviour.

Again, on page 8252, in *Hansard*, in answer to a question from me which read in part—

I ask whether he considers it is justified, for whatever reason the case fails, for a union to take the matter into its own hands and to extort money by imposing a black ban?

Hon. D. K. Dans replied—

I can only answer that question in the way I would face up to that issue. I have taken lots of cases before the Commonwealth Conciliation and Arbitration Commission and if one loses that is the end of it. If attempts were made to extort money from Mr Leishman the legal processes of the law are available to him.

So, why did Mr Berinson go out of his way to involve himself in a case which normally would have been left to the Crown Prosecutor?

The question is not whether the Attorney General could make the decision he did, as the first law officer of the Crown, but rather whether he should have made it.

He has, in my opinion, brought his own office into disrepute, and he has made it appear that the processes of the law can be subverted for political considerations. And in justifying his decision, he has made damaging speculations about Mr Leishman which he is not in a position to back up.

It may be that the Attorney General has decided that the law is not enforceable in circumstances when a prominent union official is involved. But certainly he has now done much to render it unenforceable in the future by setting this precedent.

The consequence is that he has removed the hope of protection of the law from anyone who is threatened by a prominent union official, and he has certainly removed the protection of the law and the possibility of redress from Mr Leishman.

Let us look a little closer at the way in which the Attorney General says he made his decision. While publishing the Solicitor General's advice to him Mr Berinson has made it clear that he himself is responsible for the decision not to proceed with the prosecution. He has relieved the Solicitor General of responsibility.

In a sense that was unnecessary, because the Solicitor General did not express a firm opinion at all. He gave views, for and against, some purely personal, some speculative, but he did not commit himself to advice on a course of action.

Nevertheless since this is the only advice that we know of that Mr Berinson received, it is worth looking at in more detail and looking at Mr Berinson's own version of it, as expressed in his statement to this House.

In his letter to the Attorney General, under the heading of "Essential Facts", the Solicitor General said that it is alleged that O'Connor threatened Leishman, the director of Cartage Companies, that the companies' trucks would be black banned.

One would think that the Solicitor General was referring to a transport empire the size of Bells. The truth is that Leishman's cartage operation is carried on as part of his grazing company, Georgina Pastoral Company, and he has only one truck on the road which carts between Perth and Geraldton.

The Attorney General in his summary on page four of his statement repeated the Solicitor General's rather extravagant version of the operation, mentioning companies and trucks.

The Solicitor General said that although it is strictly irrelevant to the offence, the companies' trucks remained black banned until \$3 000 was paid by Leishman.

In the Attorney General's summary this becomes, "A claim by Holly against Leishman for \$3 000 was dismissed by the industrial magistrate". In fact the original claim in court was for approximately \$8 000, and, if my memory is correct, the amount which O'Connor is alleged to have sought to extort by threats, in the first instance was \$5 000. Subsequently it was reduced to \$3 000.

In giving the background to the case the Solicitor General ventures the opinion that, "It seems likely that the companies of which Leishman is a director, sought to avoid the operation of the award by purporting to engage Holly... as though he was an independent contractor".

This is speculation on the Solicitor General's part because as he says the matter was not determined in court. What was demonstrated in court, however, was that Holly made out his own accounts, in his own handwriting, and presented them to Leishman to pay.

The fact is that Holly was driving for Leishman for 2½ years on terms and conditions which were mutually agreed although they were not those of the award. They were based on kilometres driven, not hours of driving. During that time Holly asked for, and got, increased rates. If this was wrong and had a bearing on the charge against O'Connor, no doubt it would have been used in the trial.

Some time after his dismissal for misconduct Holly was able to get the TWU to take up a case for him. At that point he produced a record of hours worked, but it was not established that the list of hours was valid at all, let alone correct in detail. So when the Solicitor General writes that, "The companies would have had the financial benefit of any excessive hours," he is speculating again.

The Solicitor General went on to say, "O'Connor seems to have instigated the imposition of bans by other unions on the companies' trucks". Notice the continued use of the plural for "company" and one truck only. After some days Pam Bentley, an industrial advocate with the Confederation of Western Australian Industry (Inc.), acting for Leishman, approached O'Connor. A compulsory conference had failed. Pam Bentley

and O'Connor reached agreement on a figure of \$3 000.

I explain in parenthesis that the compulsory conference was, of course, called on behalf of Leishman to try to have the bans lifted.

The only trouble with this account is that it does not make clear that at least five weeks had elapsed since the imposition of black bans on the truck, not "some days". This represented a loss of thousands of dollars to Leishman in actual work lost and the probability that he would lose his cartage contracts altogether.

In the Attorney General's summary, this then becomes "the payment was agreed and processed with the good offices of the Confederation of Western Australian Industry. On the face of it, all parties to the transaction at that time dealt with it as being founded on an industrial dispute". What is that supposed to mean? Leishman was unable to use his truck. He was suffering severe losses for a small businessman and had appealed to the Premier, the Minister for Police and Emergency Services, Mr Jeff Carr, who is his local member, and the Acting Minister for Employment and Training, Mr Parker. He had received the advice from all Ministers or their offices to pay if he wanted to get the bans lifted. If negotiating to pay in those circumstances is taken to be dealing with the matter as being founded on an industrial dispute, which is to say a normal activity, I will eat my hat. Certainly, Mr Leishman did not take that view. In a letter of 3 April 1984 to Mr Jeff Carr he said—

Jeff,

You will recall our telephone conversation at the beginning of March referring to black bans placed on our Company by the Transport Workers Union.

Although now, after another Industrial Commission hearing and four weeks of bans imposed, not only on my transport but also produce and livestock, I have had no alternative but to pay a settlement amount to allow me to continue trading and to lawfully go about running a business.

But Jeff, what I am sour about—where is there justice? Surely I went through the correct channels of the law, but there was no help or sound advice available to me from any Government Department or politician to ensure law was enforced.

I would be confident that had I lost my case and not have paid my fines, I would have received a demanding call from the Police

Department. However it was just passed over by our Government with no attempt to overcome this impasse.

Unfortunately it just makes me realise who is in charge of our country and wonder why should anyone endeavour to find alternative export markets and employ a large number of men as we do. The handling of this matter by your Government and your Industrial Relations Department leaves much to be desired.

Regards

Bearing that in mind, the Attorney General went on to say: "This is not a context, in my view, for the sledge-hammer approach which invoking the criminal law would involve". He amplified that tonight by saying that one could not submit a man such as O'Connor to a charge which could bring a 14-year gaol sentence. That is a red herring. There is no question of 14 years being a minimum sentence for the offence with which O'Connor was charged. There was very wide discretion and it would have been possible to give a sentence of one day. The Attorney General was misleading us and trying to play on our sympathy when he said categorically that O'Connor faced a 14-year gaol sentence. That also assumes, of course, that he would have been convicted.

The Attorney General, in his summary of the relevant facts, laid stress on the fact that the money went to Holly and not to John O'Connor or the TWU. It has been pointed to as a mitigating fact or the money went to Holly, and that he had some strong moral claim to the money, although no legal claim. We all grew up with the legend of Robin Hood, who robbed the rich to give to the poor. However, I never knew that principle had been applied in our system of law.

To be serious, there are two very important omissions in the Attorney General's summary of the relevant facts. The first is that, when the case was dismissed in the industrial court, O'Connor had available to him the right of appeal to the Full Court of the Arbitration Commission in order to press his claim for payment to Holly.

The second omission was that, far from availing himself of it, O'Connor demanded the money from Leishman with the threat of black banning his truck. The Attorney General does not mention those facts in his summary of the relevant facts.

It is true that only a *prima facie* case has been made for the extortion, but it is equally true that the bans were in force within 24 hours.

Finally, while the Solicitor General says that the evidence for the attempt to extort money by threat was not compelling, he did not ask, nor can

we suppose that any other Crown Law officer including the Crown Prosecutor had asked, for the case to be dropped because the evidence was too weak.

The Attorney General has referred to that tonight and we know, of course, from the statement, that the Solicitor General certainly did not. The police case was presented with the agreement of the Crown Law Department. The magistrate subsequently committed O'Connor for trial. The Crown Prosecutor reviewed the evidence and found it sufficient. So, we end where we began.

The Attorney General made the decision without any real legal support. I consider that he has subverted the process of law and damaged the public's perception of justice in Western Australia. In passing, he exaggerated the nature and scope of Mr Leishman's business, he left him without the possibility of redress for the losses he had suffered financially, and he inflicted damage on his reputation. He also appears to have left Mr Leishman and any other individual who defeats a union official in an industrial court, prey to whatever action, criminal or otherwise, that official might be likely to take.

Contrary to the Solicitor General's opinion, I believe this case against O'Connor, whatever the verdict might have been had it been allowed to proceed, to be of significant importance for the community of Western Australia. Indeed, last Thursday, when the Attorney General made his unwise decision, was a black day for the public perception of the administration of justice in this State.

HON. ROBERT HETHERINGTON (South-East Metropolitan) [8.28 p.m.]: I oppose the motion. It appears that the Attorney General cannot win because the Leader of the Opposition will not believe him when he says that he made the decision by himself, and Hon. Graham MacKinnon says he believes him but says he should not have made the decision. At the same time, I note the confusion of Hon. Tom McNeil.

Let me, at the outset, say what I believe about the Attorney General, because I want to make my position quite clear.

Hon. Neil Oliver: Give us a lecture on your politics.

Hon. ROBERT HETHERINGTON: I will make a speech and I will be glad if the gentleman would shut up for a while. I have known the Attorney General since 1967 when I first arrived in this State. I have known him in the party and personally.

I know the Attorney General as a person of honesty, integrity, courage and principle. I have always found him that way. He is not a man who shrinks from making unpopular decisions or, within our party, from espousing unpopular causes. If he is in a minority he does not back away from arguments. He does what he believes to be true; he does the right thing; he does the moral thing. It is disgraceful for the Leader of the Opposition to make the statements he did about the Attorney. What else can I say? I know that if the Attorney General says that he made the decision by himself, he did so. There is no doubt in my mind about that at all.

Hon. G. E. Masters: You are wrong.

Hon. ROBERT HETHERINGTON: I am not. Mr President, I would be glad if I did not get this childish nonsense from the gentleman leading the Opposition. Whenever one makes a mistake he says, "You're wrong, you're wrong". It is like being back in the schoolroom again. I am not wrong. I am right. I know I am right because I know the calibre of the person about whom I am talking. Furthermore, I think he made the right decision.

Hon. G. E. Masters: What was the decision?

Hon. ROBERT HETHERINGTON: The basic decision made by the Attorney General was the correct decision.

Hon. G. E. Masters: I would be surprised if you had said otherwise.

Hon. ROBERT HETHERINGTON: I happen to believe it.

The PRESIDENT: If the honourable member will disregard the unruly interjections and address his comments to the Chair I think we will make some progress.

Hon. ROBERT HETHERINGTON: I believe he made the right decision. My reaction when the statement was made in the House was one of surprise and delight, because it was the correct decision. I do not think it was an easy decision; I realise it was a difficult decision. It was not made any easier by the pressures publicly applied by the Transport Workers Union. If the union had been less noisy about it the Attorney General could have gone quietly about his business without having to face the fact that if he made the decision in one way he would be accused of succumbing to pressure. That is not the case because he does not succumb to pressure but makes what he regards as the right decision.

I have no objection to members disagreeing with the decision. I understand Tom McNeil's concern

and worry particularly because of the way this event has been written up, blown out of proportion, and taken out of context. However, in the long run this decision will be seen as the correct decision. The crux of the question is whether we should use the criminal law in industrial matters. I am not talking about whether we should use the criminal law in matters where people are physically attacked or their property is destroyed. Of course we should under those circumstances, and the Attorney General has said so.

Hon. G. E. Masters: What about businesses being destroyed? Is that the same?

Hon. ROBERT HETHERINGTON: What about a whole range of things? If we went on with this prosecution it could be the beginning of a retreat into the conditions of the nineteenth century where the criminal law was used in such matters.

Several members interjected.

Hon. ROBERT HETHERINGTON: I think it is a pity that some of the raucous interjectors in this Chamber did not read a little history and learn of the conditions in the nineteenth century and how the criminal law was used against people trying to improve their conditions. If we start on that road we shall find ourselves in a parlous and unfortunate position.

Sometimes it is important not to react to what Mr MacKinnon claims is "What people think". I do not think he knows what people think; he knows what some people think but not what the whole range of people think. It would be a good idea for him to consider the question more fully. A politician—and Mr Berinson is a politician, in fact a good politician and a good Minister—does not always have to react to what he thinks people will think of his decisions. He must do what he thinks in the long-term is good for the State.

Hon. G. E. Masters: You mean for the good of the Labor Party.

Hon. ROBERT HETHERINGTON: I mean for the good of the State. I do not know whether his decision will be good or bad for the Labor Party. It was made with regard only for the long-term benefit of this State and the need not to use the criminal law unnecessarily in industrial disputes because it could lead to a range of suppressions that we do not want to happen.

Hon. G. C. MacKinnon: With a need not to get offside with the ACTU.

Hon. ROBERT HETHERINGTON: Not at all. One of the things the Leader of the Opposition could not understand, and said he did not believe either, was that O'Connor said he did not expect

such a decision from Mr Berinson. I believe that, because Mr O'Connor has known Mr Berinson a long time and knows he does not bow to pressure.

Hon. G. E. Masters: O'Connor said he would also do it again. Will he be let off?

Hon. ROBERT HETHERINGTON: The Attorney General does not bow to pressure and, therefore, I presume O'Connor thought if he put enough pressure on the Attorney he would be sure to go the other way.

In fact, the Minister is stronger than that and is prepared to face the kind of accusations so facilely slung across this Chamber tonight by the Leader of the Opposition. He is prepared to go ahead and make what he believes to be the right decision—a decision he made himself as Attorney. He did not bring the law into disrepute. He is part of the legal system.

Hon. G. E. Masters: Most of the public would totally disagree with you.

The PRESIDENT: Order! The Leader of the Opposition is instigating all the interjections which are occurring. He knows that he has the right of reply and I suggest that if he does not stop the interjections he will not have anything to say in reply.

Hon. ROBERT HETHERINGTON: The Attorney General has made a very hard decision by himself because he believes that is his duty as Attorney General in relation to the law. He believed he had to take the long-term view of what this prosecution might lead to. In taking the long-term view he made this decision. The other night Mr Medcalf asked the Attorney General whether this had ever been done before. Of course, the answer was "No", because this kind of prosecution had never been undertaken before. Therefore, there must be a first time. It was because this kind of prosecution had never been undertaken before under any preceding Government—Labor or Liberal—that the Attorney General found himself in the position of facing a new and novel situation. In facing the novel situation he had to determine what to do for the long-term good of the State. This I think over-rides a whole range of other matters.

Once we start using the criminal law in the area of pure industrial dispute, we start on the road to suppression, violence, and many things that we might otherwise not have. It is not the way to deal with industrial disputes. We have turned away from that method and people who want to deal with disputes in this area by the use of criminal law are, as I have suggested, turning the clock back to the sad, bad days of the nineteenth century, to the days of the Dorchester labourers, the Taff Vale decision, and other decisions that set out

to crush the new young union movement. Incidentally those decisions were responsible for the formation of the Labor Party in Britain and they are the kind of decisions responsible for the formation of the Labor Party in Australia.

The history of the Labor Party is the history of a party formed originally by unions to stop the use of the criminal law in industrial disputes. It is important that we do not go back from that position.

There is one simple problem, which is that which the Attorney set out. He has made the right decision and he has made a decision which will be in the ultimate, long-term good of the State. It does not mean that there is not a whole range of other problems with which we have to deal; but certainly I am sure that, had the Attorney taken his decision to the Cabinet where pressure had been exerted already from outside, people would say what they are saying now, when in fact he did not take it to Cabinet. They would say, "It is all the result of pressure. Political pressure was brought to bear to pervert the carriage of justice in this State".

Political pressure may have been brought to bear, but it was not brought to bear through the Cabinet and it was not political pressure which affected the person who made the decision, because he does not bow to political pressure. I have no doubt that if the Attorney General knew he would lose his place in the Cabinet or in Parliament, where he is doing such a good job, through this decision, he would still make it, because the decision is morally right. I know all members will not agree with this, and they see the position differently, because in fact they see the whole problem of industrial relations and the trade union movement differently. They are worried by a whole range of issues. All they want to do is bring down the repressive heel of the criminal law to solve industrial disputes, and this is something we do not want to see.

I think Hon. Tom McNeil will agree with my view in due course. Ultimately he will understand why the Attorney made this decision, but I understand that he is worried about it.

I do not know whether the Leader of the Opposition understands anything, but I am quite sure that he is interested only in scoring political points.

I take note of what Hon. Graham MacKinnon said, but I do not agree with him. The statement that we on this side of this House do not support the Attorney General's decision is quite erroneous. We do support the Attorney General. We support what he did. We support his decision and, indeed,

we supported him spontaneously on the day he made that decision without any of us here, except perhaps the Leader of the House, knowing beforehand that the statement was to be made. The Leader of the House was in a better position to know what was to happen at that time than we were on the backbench on this side of the House.

The statement came as a bolt from the blue, but sometimes bolts from the blue are welcome and acceptable. It came as a welcome and acceptable bolt from the blue. Law and order remains and the Attorney General as part of the legal system remains.

It is nonsense to say that because the police started the prosecution and it has not been proceeded with, that indicates that we have no confidence in the police.

Hon. G. E. Masters: You tell them.

Hon. ROBERT HETHERINGTON: It is nonsense. The fact remains that if the police make a decision in good faith in respect of a prosecution and we think that is a wrong decision—I have no doubt it was a decision made in good faith and I am not accusing the police of being political—

Hon. G. E. Masters: They were just doing their job.

Hon. ROBERT HETHERINGTON: They were just doing their job and, in this case, I think they were in error and the Attorney has corrected that error.

Hon. G. E. Masters: It is unbelievable.

Hon. ROBERT HETHERINGTON: It is not unbelievable to say that the person who first introduced the prosecution made an honest mistake.

Hon. J. M. Berinson: Effectively that was what the Solicitor General said.

Hon. ROBERT HETHERINGTON: It is also not unbelievable to say that Attorneys General may make honest mistakes. What I do find unbelievable, and I have found unbelievable tonight—not from Hon. Graham MacKinnon—is the statement that the Attorney General not only made a mistake, but also made a dishonest mistake, because that is not in accordance with the facts or his character, and I find such statements despicable.

It is one thing to say that the Attorney has erred; it is another thing to say that he has erred maliciously. That is not so, and I am prepared to stand behind him so that he has my full confidence. He also has the full confidence of the Labor members in this House and he remains in our minds as a good Attorney General and a good

Minister, and we support him whatever people on the other side of the House may say or do.

Government members: Hear, hear!

HON. NEIL OLIVER (West) [8.47 p.m.]: I would have expected that another speaker from the Government benches would rise to support the Attorney General because no doubt there should be a move to ensure that as many Government members as is possible speak to this motion. I have observed that this occurs on industrial relations matters where it is obviously necessary that all members on the Government benches, once their speeches have been passed by the Leader and the Premier, do speak. It is extremely important that Government members speak on industrial relations issues, in view of the involvement of the TLC and the ACTU and the pressure that has been brought to bear. I can understand that, because I understand the principles of the constitution of the ALP and how its electoral system works. Based on that constitution, it is vital that members of the Government speak in support of the TLC and the ACTU because, if they do not, it is doubtful that they will be endorsed for the next election.

The position tonight is no different because we see that the Attorney General and the Government have succumbed to the pressure of the TLC and the ACTU and have put aside the laws of Western Australia and the good of this State for purely political reasons as a result of pressure from the TLC and the ACTU.

It is incorrect for the Attorney General to say that this is a precedent. We have seen many examples of the law being broken and people being charged with breaches of the industrial relations Act. We saw it in Fremantle early in 1977. Mr Dans will recall that terrible example when our police were confronted with a very serious situation in respect of the Transport Workers Union.

Incidentally, the Attorney General in making this decision seems to have ignored the ample evidence of standover tactics and corruption involved with various unions, particularly the Transport Workers Union and the Builders Labourers Federation.

Last Sunday I was travelling down Colin Street in Melbourne and I stopped to inspect the Rialto building under construction. All around were posters stuck on various areas of the site and these posters depicted a judge—we are all aware that a charge has been laid against Mr Gallagher, one of many—as a humorous figure. Of course, these posters were green because all the BLF are greenies, and they said things such as, “Gallagher

is innocent” and “Gallagher did not build the house”.

The PRESIDENT: Order! I ask the honourable member to relate his comments to the motion. He may well be getting around to it, but he is taking an awfully long time.

Hon. NEIL OLIVER: I was making the point because we have been told that we have no industrial problems, that there will be no problems, that this sort of thing cannot happen in WA, that we do not have standover tactics in the workplace, and that we do not need to take action under the Criminal Code.

I can assure members that in 1973 in South Australia there was a case known as the *Adriatic v. Terazzo* case involving the Builders Labourers Federation. A conviction was recorded under the Criminal Code, but what is more, the people convicted refused to stand for sentencing and were found to be in contempt of court. This is a union affiliated with the Australian Labor Party, a union whose members vote to elect members opposite. The general secretary and the assistant general secretary were found to be in contempt of the court. That is one of the reasons I am concerned that the Attorney General said that we need not use the Criminal Code because there is no need for it.

Perhaps the Attorney General has not had discussions on this matter with his Eastern States counterparts. When next the Attorneys General meet he might like to put this subject on the agenda in order to find out a little about it.

I am speaking now as a member of this House, not as a member of a political party. I do not have to make my own endorsement. From this position I say that the Government lacks the leadership both in thought and in action to engender a respect for law among Western Australians. This Government is not prepared to uphold the law. Members opposite are law makers but are unprepared to uphold that law, to maintain that law and to set an example for the community. I wish the Attorney had taken that into account. After all, he is the principal legal officer in the Cabinet and in the executive of this Government. He has put aside his duty. He has put his party before the people of Western Australia, and that is a very serious offence. He has succumbed to pressure.

It was put to the Attorney this evening that he might like to table some of the letters he had received, but I do not know whether he acquiesced to that request. The Attorney General, together with other parties, other very powerful parties, has set about undermining the standing and influence

of this Parliament and the essential fabric of the law of this State. They stand condemned for that.

The Attorney General had plenty of precedents to follow. He could have taken the action taken by Federal Attorney General Ellicott in the Sharkey v. Whitlam case. He took his opinion to Cabinet but could not get the decision he wanted, so he resigned. But, no, this Attorney General did not do that.

The Attorney General did not act off his own bat. He went to his leader, the principal member of the WA Government; that is, the Premier of WA. He went to him on Wednesday evening, the evening before what is the black Thursday in the history of this State. He went to him and told him what he intended to do. According to the Attorney General, his leader said, "Oh, yes; that's interesting". If anyone else had been the leader of this State I am sure he would have asked for some elaboration, such as, "What are the facts of this matter? Let's look at this politically". Obviously the Premier of the State does not understand that there may be some political ramifications to all this. It seems he said to the Attorney General, "Well, go ahead. Do you think there will be any political problems with this? Do you think you are doing the right thing? Good. Have you spoken to anyone else? No?" It is all very vague indeed.

Hon. D. K. Dans: I bet you got your degree from the Royal Academy of Arts.

Hon. NEIL OLIVER: I have not heard precisely what the Premier of this State had to say about the Attorney's actions.

I am a little inclined to take the line of Hon. Graham MacKinnon, which was to the effect that "We have problems, fix them. The TLC has said this and the ACTU has said that, so fix it". We might say the Attorney General had to carry the can. We do not know what the Attorney General may think. After listening to Hon. Bob Hetherington giving us either a valedictory or a eulogy on the Attorney General, anything may happen. Time will tell. The most interesting aspect is that having seen the Attorney General succumb to this type of pressure, one is led to examine the role of the Director of Public Prosecutions, Mr Ian Temby, QC, who was faced with the case relating to Mr Justice Murphy. Mr Temby, a Labor candidate for the seats of Nedlands and Cottesloe, holds a public office but the decision he made was that a prima facie case existed, and that was it.

If one lives in Melbourne, particularly in Port Melbourne, and has anything to do with the Federated Ship Painters and Dockers Union, one would know that life is very difficult. If one goes to South Melbourne markets on a Friday after-

noon and nips across into the local for a drink, he has to be careful whom he chooses to drink with because he may not be around a couple of hours later. That is well known. There is nothing new about standover tactics. Yet the Attorney General says that this man should not be treated under the criminal law and that the industrial laws of this State are more than adequate to deal with this matter.

I understand that in this particular instance a series of complaints have been made regarding activities of unions, and in particular the Transport Workers Union and the Builders Labourers Federation. I am aware of that, because 12 months ago there was insufficient evidence to proceed on several instances of breaches of the industrial law and the Criminal Code. In this case, the police considered there was a likelihood that an offence had been committed. They sought the advice of the Crown Law Department, which said it believed a charge should be laid. The next process of the law was a preliminary hearing to ascertain whether a prima facie case had been established. In that preliminary court hearing it was decided that a case had been established and it was necessary to proceed with a committal, with strong likelihood of an indictment being presented.

The Attorney General went on to say that the advice he had received was there was a likelihood of threats of industrial action, and therefore he was concerned. There are threats of industrial action in this city and State in every hour of every day that work takes place. When I was 16 or 17 years of age I was stood over and had to belong not to one union, but to three in one year and pay the full annual fees. I was stood over and told that if I did not pay I would not have a job. It takes a bit to stand up to that at 16. I was told I was to belong to three unions and had to pay the annual fees, and that was it. If I did not, I would not get a start. So I belonged to three unions in one year.

Hon. D. K. Dans: Is that the same three or another lot, because that makes nine?

Hon. NEIL OLIVER: It is three. The Australian Workers Union, the Wool and Basil Workers Union and the Storemen and Packers Union. I paid the fees because I was 16 and I was stood over. That is happening in this State every day and we know it.

For the benefit of the Attorney General I point out that it is very hard to get evidence and to provide a prima facie case. In this instance there was one and because of that pressure went on.

Hon. J. M. Berinson: Can I interrupt you for a moment to remind you that in the debate yesterday Mr Rushton, who was then a Minister, said

such a threat had been expressed in his own office. What more evidence than that would you want?

Hon. NEIL OLIVER: I do not know what was said yesterday or any other day unless it is in *Hansard*, and I read it. I do not know what Mr Rushton is doing. If he had a witness I presume he lodged a complaint.

Hon. J. M. Berinson: He was the witness.

Hon. NEIL OLIVER: I cannot be answerable for him. I know what my action would have been. If Mr Berinson was in my party I would not be answerable to him. I would not accept him and the actions he took.

We were told in this case there was a likelihood of a threat of industrial action and that the Attorney General weighed this up and came to a decision. The thuggery of the unions in this country is such they can stand over and threaten the people who administer the law in this State and say, "We look like we might have some industrial action on this and therefore the case must be dismissed". That is what happens. The case was dismissed on one basis, and that was the likelihood of industrial action.

The Attorney General then went on to say there was a likelihood of industrial disruption which could harm many members of the community. The community wants to see leadership on this matter; it has had enough. Many people in the community are members of unions and they have had enough. They cannot go to union meetings and put up their hands and vote in a normal way, and it has been going on for ages.

Hon. S. M. Piantadosi: What nonsense!

Hon. NEIL OLIVER: It was going on in the Teachers Union Trades Hall in Melbourne in 1926, if members care to read some of the biographies of members of the Australian Labor Party.

In fact, I will actually buy one of the biographies and give it to members of the Government in order that they can read it.

I cite the case of a young fellow who eventually became a senator. He was taken into Trades Hall when a vote was about to be taken and was given a few beers together with his voting card and after a while was told how to vote. I think members opposite know who I am talking about.

The DEPUTY PRESIDENT (Hon. John Williams): Order! I wish the honourable member would address himself to the motion and not to some historical background. I would appreciate it if he would stop pointing to me because I am not responsible for it.

Hon. NEIL OLIVER: Sir, I understand that you would not be responsible for it, but in your country of origin there is nothing unusual about these tactics.

As a young boy of 16 I had experience of this. I travelled from the Gulf of Carpentaria to the Riverina and I had good times; but at other times I was under the thumb. This attitude was not active in Western Australia in those days, but it is here today and it is hard to get a charge laid. In this case it was laid and proven and the legal procedure should have been followed. However, it was not because the Attorney General, of his own volition, weighed up the advice of the Solicitor General and decided he would request the prosecutor not to proceed with the case.

It is not the normal way that such decisions are made. It has been reported in the Press that a case of this type comes before the Attorney General every six weeks. The cases which appear before the Attorney General every six weeks are nothing like this case; in fact, there has never been anything like this case. What actually happens is that when a case is about to proceed the Solicitor General, the Crown prosecutor, and the counsel for the Government individually, not collectively, write to the Attorney General and request that he dismiss the charge because they are of the opinion that the charge cannot be sustained. That is what happens; it is not initiated by the Attorney General.

Do not let us be confused with this case and do not let us become involved with the Premier's media people who tell us that these sorts of events occur every six weeks. In fact, I recall that in one paper it was said that these cases occur five times every six weeks. To the best of my knowledge it has never happened before.

The Attorney General has a lot to answer for and he stands condemned as the senior elected officer responsible for the administration of the law in this State. He has sold the legal procedures down the river on this occasion and has set an extremely dangerous precedent.

HON. KAY HALLAHAN (South-East Metropolitan) [9.16 p.m.]: I oppose, in the strongest possible terms, the motion before the House, and in so doing I speak in support of the courageous and independent decision made by the Attorney General. I accept that his decision was made in his professional capacity and in line with the duties of the office he holds.

There is no doubt that the Attorney General does have the power which he has used. He has a well established right to enter into a *nolle prosequi*, therefore ensuring that the Crown takes no further action in a particular prosecution. The

exercise of the Attorney's discretion is an important part of the due process of the criminal law and a *nolle* can, of course, be exercised for a variety of reasons, and not only in the case which is the subject of the debate in the House tonight.

We have heard a lot about the law being brought into disrepute by the action of the Attorney General. It appears that people consciously want to disregard that the Attorney General has acted in accordance with the law and, in so doing, has strengthened the law in this State.

There is no evidence to support the spurious positions put forward by successive speakers from the Opposition. To me they appear to be politically motivated. They brought forward a whole lot of irrelevant detail, and I refer especially to Hon. Sandy Lewis. It appears to me that there has been a simplistic response from every member opposite who has spoken.

Hon. A. A. Lewis: There was one from the Attorney General.

Hon. KAY HALLAHAN: The statement made by the Attorney General was an incredible statement—

Hon. A. A. Lewis: It certainly was.

Hon. KAY HALLAHAN: —and my reasons for saying that are not the same as the reasons of members opposite. The Attorney General was very frank in the comments he made in favour of his decision. The statement was read out to the House and to the people of the State in an open way, and we have not heard the converse side of any argument which has been put forward by members opposite. The Opposition has tried to gain political points and has discredited the Attorney General, the trade unions, and the hard work of the working people and the wage and salary earners in this State—they have all been undermined by the arguments that have been put forward by Opposition members in this House: All I can say is that it is disgusting and I am glad that the arguments are on record. It will give me great pleasure to go to my electorate and show it what the Opposition has said. Members opposite may smirk but they will stand condemned by the electorate at large.

Several members interjected.

Hon. KAY HALLAHAN: People in Labor electorates like to receive a fair wage for a fair week's work. That is a fact of life.

One of the omissions from the debate tonight is that there has been no reference whatsoever to the fact that this case started because someone had been done out of his wages. Where was that mentioned?

Several members interjected.

Hon. KAY HALLAHAN: Let us get on with it. I have made it quite clear that the Attorney General—

Hon. A. A. Lewis interjected.

Hon. KAY HALLAHAN: The member should listen to me. If he tries to turn it on me he will not succeed.

The DEPUTY PRESIDENT (Hon. John Williams): Order!

Hon. KAY HALLAHAN: The point I would like to make is a straight, clear, and uncomplicated one. The Attorney acted in his legal capacity in accordance with the duties of the office he holds. Members will not accept that, but they will accept the decision of the court.

Hon. A. A. Lewis: He moved politically.

Hon. KAY HALLAHAN: The member is quite right. It was a courageous decision, one that takes courage. Do not think the Attorney General does not have an independent spirit and intellect. That is something we would all agree to—or so I thought prior to some of the interesting things I have heard today.

I accept the outcome of that court case. We all talk about the technicalities of the law. That case turned on a technicality.

An Opposition member: What about the appeal?

Hon. KAY HALLAHAN: The basis of the complaint was that somebody was done out of his wages. I am now making the case that somebody was done out of his wages. Not one of the members opposite mentioned that. That has not crossed the mind of one of the members opposite. All members have referred to is the deleterious effect this has had on the business of one person. I do not like anyone's freedom being interrupted, nor do I like to see anyone done out of his wages.

Hon. A. A. Lewis: You are saying the court decision should not be abided by?

Hon. KAY HALLAHAN: I am not saying that. I am pointing out the situation. The Leader of the Opposition talks about free societies. These phrases just tumble out. Freedom is a complex thing. It applies to us all, not merely certain selected members whose issues and interests members opposite want to press. That has been a most unsatisfactory feature of this debate.

The integrity of the Attorney General remains as high as it always has been. That has been constant in the feedback I have had since the decision was announced last Thursday.

The other point I wish to mention is the industrial relations issue. There has been a complete

absence of this point from the Opposition's arguments. I cannot be convinced that the Confederation of Western Australian Industry did not also believe that this was an industrial relations issue. It was clearly not a criminal issue. The path taken was a most unexpected one, and one which needs to be looked at. The Attorney General is the only person who has that overriding view, who is not confined to the narrow interpretation of the law. Even there he is acting within his legal rights in this decision.

Another argument I would like to put forward is important to me personally, and that is that the law is above reproach, and that it is a fair law to everyone. The argument that has been put forward is that fear about this has been created. Frankly, I think the Leader of the Opposition is very able at creating fear and confusion. Hon. Tom McNeil stood up and said he was confused after listening to a lot of irrelevant stuff from the Leader of the Opposition. That is an indictment of the Leader of the Opposition. Even though he is in the Opposition, he is a leader of his community and he still has certain responsibilities.

Hon. A. A. Lewis: He does not mislead.

Several members interjected.

Hon. KAY HALLAHAN: He has spoken on the facts of a particular case and there is a fear about what has been said. When we look back on this we will not have to look at other cases; we will be looking at a particular case based on a particular set of facts, and the Attorney General had every right to exercise his judgment in that situation. That might be difficult to swallow, because people in the community have courage.

I was going to refer to a lot of the confusion and fear felt by Hon. Tom McNeil, but I really think if members opposite read the statement delivered to the Parliament and the accompanying document from the Solicitor General, they would not make some of the ignorant and ill-informed statements they have made in this debate.

I have read the Solicitor General's advice.

Hon. A. A. Lewis: Can I give you one piece of advice?

Hon. KAY HALLAHAN: Does one go half-way down the tree when one wants advice? One goes to where the information came from. Are members disputing the opinion of the Solicitor General?

Several members interjected.

Hon. KAY HALLAHAN: What weighed most importantly in the Attorney General's mind was whether or not the criminal law should have been pursued when the totality of the factors was con-

sidered. The totality of the factors must be considered. That is not simply a label, it is a matter of the leadership we expect in this State from the people we elect to the Government. The Attorney General is carrying out his duties in an exemplary manner.

Several members interjected.

Hon. KAY HALLAHAN: It seems to me from the interjections on my right that some people have not read the advice of the Solicitor General. I would like to take the opportunity of quoting it to them. It contains dramatic statements by somebody who is weighing up the matter. They are not flipped-off-the-top-of-the-head comments. Members may have to listen. One of them says this—

That is not to say that the case is compelling and that a prosecution must succeed.

I ask members to think about that statement.

Hon. G. E. Masters: Read a bit more.

Hon. KAY HALLAHAN: I am selecting what I am reading.

Several members interjected.

Hon. G. E. Masters: You want to draw out the bits that suit you.

Several members interjected.

Hon. KAY HALLAHAN: I want to read the parts I think are relevant, just as it is the member's prerogative to do the same.

Several members interjected.

The DEPUTY PRESIDENT (Hon. John Williams): Order!

Hon. KAY HALLAHAN: This is a second quotation taken from the Solicitor General's letter to the Attorney General—

... the whole affair may well have stemmed from an attempt by Leishman and the companies to avoid the award and ignore the Act to their financial advantage, and, at the least, there was a strong moral claim by Holly to the moneys the subject of the 'demand'.

It would seem that the Confederation of Western Australian Industry agreed with that considered opinion, because it assisted to transfer the demand to Mr Holly. We are not talking about isolated incidents; we are talking about a big organisation involving itself in this transaction.

The third quote I would like to give, despite the obvious lack of interest by some members of the Opposition, is another quote from the Solicitor General. He said—

I must say that had it been for the Attorney General rather than the police to decide whether a complaint should have been

laid in the first place, I would have advised against instituting proceedings.

That is the advice given by the Solicitor General. He continued—

In essence my reasons for that advice would have been that, despite the existence of a *prima facie* case, the use of the criminal law in the totality of these circumstances was unnecessary and inappropriate.

We are not arguing on matters of insignificant advice. It is very serious and well-considered advice. That is the point I put to the House. A further significant part of the same advice reads as follows—

It is also relevant that this case has arisen in the area of employer/employee relations. This is one of many areas of activity of considerable importance to the community where the too ready, or too rigid, application of the criminal law can be counter-productive and contrary to the ultimate interests of the community.

I submit that ultimately the Attorney General must consider the interests of the community.

Hon. A. A. Lewis: Really!

Hon. KAY HALLAHAN: This is an opinion by the Solicitor General, and I happen to have made an observation about that, Mr Lewis.

I commend the following quote from the Solicitor General's opinion—

In many respects an Attorney General may more readily take account of the sort of considerations outlined above in deciding whether to indict after a committal than the police in the first instance, because the nature of the case is known publicly after a committal (there can be no 'cover up') and the Attorney is directly answerable to the Parliament for the policies he follows and the decisions he makes.

That is the process in which we are engaged. The fact that we do not have a democratically-elected House is a factor added to this debate, of course.

Hon. G. C. MacKinnon: What are you talking about?

Hon. KAY HALLAHAN: I would expect that Mr MacKinnon might know what I am talking about. We are not looking at a radical departure by an Attorney General; we are looking at an Attorney General who weighed the case, received the advice of the Solicitor General, and made a decision in favour of the status quo. That is a very important point. It should be taken to the community and made known to the people that this decision will not lead to the criminal law being

applied in industrial issues in a way that is not appropriate and in a way that would cause enormous community unrest. It behoves us all to govern in such a way that we retain our cohesion as a community and stand by the administration of the law.

HON. D. J. WORDSWORTH (South) [9.33 p.m.]: I enter the debate only because of the standard of argument that has been presented tonight by the Attorney General and other members of the Government in opposing the motion. In short, the arguments that have been presented are that standover tactics—

Several members interjected.

The PRESIDENT: Order! Would honourable members please remember that the decorum in this place is falling into shambles because of the activities of several members. If members will not abide by my call to order, I will start taking action.

Hon. D. J. WORDSWORTH: In short, the argument is that over a long period the unions have carried out standover tactics, yet this is the first time that criminal charges have been laid. That was the argument put by the Attorney General and backed up by Hon. Robert Hetherington and others.

One is forced to question why criminal charges have been laid for the first time. What is different? What has suddenly occurred to make the police take action?

Hon. Neil Oliver has thrown doubt on whether this is the first time that the police have taken action; but let us assume that what the Attorney General said is correct, and that it is the first time. Why did the police suddenly decide to lay legal charges? The House ought to consider that question. I believe that occurred because of the changing view of the Government in relation to the protection offered to employers against such union action.

As has been pointed out previously in the debate, industrial officers were previously responsible for identifying threats made; but under the present Government, the previous Minister for Industrial Relations (Hon. Des Dans) changed the policy, got up in this House, and said that if there are—

Hon. D. K. Dans: What did industrial officers do to stop black bans?

Hon. D. J. WORDSWORTH: Let me finish. The Leader of the House can tell me if the policy has changed. That matter has already been debated in this House, and it has been explained under the previous Government, including the

time when the Leader of the Opposition was the Minister for Industrial Relations.

Hon. D. K. Dans: When I get up to speak, I will speak about the censure motion.

Hon. D. J. WORDSWORTH: I am speaking to it. Mr Dans is getting very sensitive.

Hon. D. K. Dans: I am just thinking about the level of debate.

The PRESIDENT: Order! The Leader of the House is implying that the Chair is not controlling this debate. I take exception to that. If the Leader of the House believes that the President is not controlling the debate, let him say so or apologise.

Hon. D. K. Dans: Mr President, I passed the comment that before this House was a censure motion. I did that by way of an interjection. It certainly was not a reflection on the Chair. If anyone wants to read the *Hansard*—I am sure many people will—they will realise the level to which the debate has been downgraded. However, I am certainly not casting any aspersions on the Chair. You have not been in the Chair all night.

The PRESIDENT: I want honourable members to know that this particular motion is a very serious one. It is entitled to be debated to a very serious standard. If honourable members totally ignore the call from the Chair for order while other members put their points of view, that is unacceptable as far as I am concerned. I ask honourable members, including the Leader of the House, to leave the control of activities in the hands of whoever happens to be in the Chair.

Hon. D. J. WORDSWORTH: I am pointing out to the House the changing attitude of the Government towards identifying standover tactics by unions. We have heard repeatedly in this House from the previous Minister for Industrial Relations (Mr Des Dans) that if there were standover tactics, the police would identify them and would take action. I believe that is the reason why we suddenly saw charges laid. Previously the police were quite happy, if that is the right word, not to lay such charges but to turn a blind eye and not interfere with industrial action in the workplace. However, the former Minister repeatedly challenged the police to take action if they could find any indication of threats in the workplace; so the police had to take action.

In the past, the police were very good at turning a blind eye, not only to industrial relations matters but also to brothels, to illegal casinos, and to two-up. However, the continual challenges by the former Minister for Industrial Relations forced the police to change their attitude, just as they changed their attitude towards illegal casinos when the Government changed its attitude

towards casinos and, indeed, two-up. So, we saw criminal charges laid for once.

That is the difference; and it is very interesting that the Minister who came out with that sort of policy and philosophy has been moved sideways, and is no longer the Minister for Industrial Relations.

Perhaps Mr Dans did not do such a fine job when in charge of industrial relations matters as he would like to think he did. It would be interesting to see what the new Minister for Industrial Relations will do—whether he will go out and challenge the police to see whether they can identify industrial standover tactics. I have an idea he will not do that.

What happened to the man that perhaps could be said to be responsible for the laying of these charges? The public should be interested in examining this point. The previous Commissioner of Police has just retired; he received a very good farewell from the Government. I wonder whether he was really being rapped over the knuckles for laying these charges. I wonder whether the new commissioner will in the future lay charges of this sort when he becomes aware of standover tactics in the workplace.

I, like other members of the Opposition, have a lot of sympathy for the Attorney General because I think he was put in a position where he had to get the Government off the hook. The previous Minister for Industrial Relations said that the police would have to go out and look for this sort of thing and identify it. They did identify it and the Solicitor General said that there was a worthwhile case to be made out for charges to be laid, and indeed a case went before a lesser court. But the Attorney General was told to get the Government off the hook. I have the greatest respect for him, because undoubtedly he knew that if he had not made that decision, major industrial unrest would have followed. Unfortunately for him his reputation is at stake and I do not think it is fair that he should have been placed in this position. Like Mr Hetherington, I feel sorry for him.

The whole situation in Australia has changed because of his decision. Hon. Tom McNeil has already asked what the Government thinks the people feel about the whole situation. Just where do they stand? The Government cannot have it both ways. The Government has put up an argument to say that the Attorney acted because this was the first time criminal charges had been laid in these circumstances.

Hon. J. M. Berinson: That is not really correct. One of my problems is that people will not listen. If you look at *Hansard* you will see precisely what

I described as the crucial elements in this case. I hope you apply yourself to them.

Hon. D. J. WORDSWORTH: The crucial element is that this was the first time criminal charges had been laid in this manner. That is what I drew from the Attorney's words.

Hon. J. M. Berinson: Please refer to *Hansard* because you will then see that you are reading it too narrowly.

Hon. D. J. WORDSWORTH: I may be simplifying it, but I am not grossly simplifying it. It is how the public see it and that is why Hon. Tom McNeil raised the issue of just where do the public stand.

Can we now assume that criminal charges will never in the future be laid and that this was just a one-off affair? That seemed to be the Attorney's argument; and he indicated that he had received instructions that he should put on his armour and take action. It was said that the best thing he could do would be to remove the charge. From the Government's point of view it was the best thing to do, but where do the public stand? That is our concern. The public lose confidence in our whole democratic system in Australia when charges are removed by a Government. This is something members of Parliament soon learn when they are elected. Members can influence the making of the law, but they cannot influence the way it is carried out.

Many a time a member is approached to get someone off a drunken driving charge perhaps. But we realise that once the charge is laid, that is the end. The Parliament and the Government must remain apart from the courts. That is how the public see it. I guess from now on they will be approaching us more often. Next time they have a friend who is charged with drunken driving, they will say, "The Attorney General got his TLC friend off a charge, why can't you use your influence to get my mate off his charge?"

We are reaching the stage of being a banana republic, and that frightens me. No wonder Australia is in such a bad state.

I support the motion.

HON. D. K. DANS (South Metropolitan—Leader of the House) [9.45 p.m.]: I have listened with great interest tonight to the debate on this motion and to a number of statements which have been made, most of which have been wrong. Let me start first of all with the statement by Mr Wordsworth that when I was Minister for Industrial Relations I said that certain things should be investigated by the police. Members will recall that in 1982 the Minister for Industrial Relations was Mr Gordon Masters and at that time

he introduced his infamous industrial relations legislation. He tried to convince this House that industrial inspectors would deal not just with union blackmail but general blackmail, intimidation, standover tactics and conspiracy. I made the statement then and I have repeated it since I have been in Government that they were matters which were rightly addressed by the Criminal Code or the Police Act. I have been presented with no reason to make me change my stance.

Again, when we came to Government Mr Masters introduced the same element of extreme language to describe industrial disputation. We disagreed then and I still disagree now. When legitimate union action takes place in defence of workers' rights, Mr Masters and his colleagues describe it as union blackmail and union standover tactics. So we are really talking about two different things, but I will get back to that later.

Let us now consider the issue which caused this: The underpayment of a Mr Holly by a Mr Leishman of Geraldton. It is interesting to note that the complaint taken to the police was taken by the Opposition. The police were sent to Parliament House at the express request of the Leader of the Opposition.

At no stage did Mr Leishman do one of three things. When he was first threatened—when he was the subject of an extortion threat, not an industrial extortion threat, if there is a difference—he should have gone to the police. The police may have taken the same action they eventually took and the matter would have been handled under the Criminal Code.

Another recourse to action he could have followed was a civil remedy; in other words, he could have instituted a case under the secondary boycott section of the Trade Practices Act. Mr Leishman did not do any of those things.

I do not want to go into the rights or wrongs of what happened in the court, but Mr Leishman, with the assistance of the Confederation of Western Australian Industry, decided that he would come to an agreement with the union. No-one pinned him against the wall. If he was a man of such high principle and if he was right, he would have taken one of those three actions in the first instance. But he paid the money and then he decided he would make a political football out of it.

Or maybe he did not. Maybe he wrote the kind of letter referred to by Hon. Margaret McAleer to a number of members of Parliament and then the Opposition decided it would make a political football out of the matter. What happened is a matter of history.

I agree with Hon. Kay Hallahan that the facts are that Holly had been underpaid. There is no dispute about that. Mr Leishman admits to that. But for one reason or another, whether it was through the incompetence of the advocate or because of some technical point, the court found in favour of Leishman. All the subsequent actions flowed from that.

At that time the Leader of the Opposition used the same extreme language to describe legitimate union actions in defence of its conditions. He said there were 40 or 50 cases and he was ably assisted in that travesty of the truth by the member for Nedlands. *Hansard* is full of examples of how we got to that situation in both Houses. However, only one was found by the police to have any merit.

I read a Press report this morning. I do not know who made the statement. However, it was full of deliberate lies or the Press had picked up the message wrongly, because every member in this Chamber knows that that article was incorrect. I could quote from *Hansard* as Opposition members quoted their choice passages. I made an offer to Hon. Margaret McAleer to go to Geraldton if she could arrange an interview with Mr Leishman. I had never heard from him because I had been overseas at the time and an Acting Minister was dealing with my portfolio. I received a query from the Deputy Leader of the Opposition which I referred to my department. My department told me the matter had been settled. Subsequently, in debating the industrial relations legislation I referred again to the fact that Hon. Margaret McAleer had not taken up the matter with me and asked me to go to Geraldton.

As a matter of fact, I visited Geraldton during that time. Hon. Margaret McAleer will recall that visit. No-one asked me to see Mr Leishman. I have no argument with that. She said the matter had been investigated by the police. I do not argue with that either. For this article to appear in the Press this morning as a result of a statement by a member of the Opposition is contemptuous. I had not been involved in the matter. Mr President, you were in the Chair and you did not challenge me on the statements that I made because they were perfectly truthful and the record is in *Hansard* for all to see.

Mr Leishman at no stage had any personal contact with me by telephone or by letter.

Hon. Margaret McAleer interjected.

Hon. D. K. DANS: Thank you. The statement that appears in this morning's *The West Australian* is a patent and deliberate lie. I suppose

that lying statement in the Press epitomises the level to which this debate has degenerated, not only in this Chamber, but in the public arena and in the Legislative Assembly.

I do not want to deal much more with who said what. I referred to the impending court action as a borderline case. That is in *Hansard*. There is no reason for me to quote it, as it is part of a number of general comments that I made.

I received reports later that Mr Leishman had told the Premier—this information was second-hand—that he was sorry that this thing had got out of hand. He had never intended it to happen and in fact he was embarrassed by the whole episode. Whether that is correct I do not know. But in the whole debate that has developed, I have not heard one quote or seen one Press comment of anything that can be attributed to Mr Leishman, bearing in mind that if he had been subject to threats it was his duty to go to the police.

The second matter is that, if he had been advised properly by the Confederation of Western Australian Industry he would have known that he had a civil remedy under the secondary boycott provisions of the Trade Practices Act. However, he was happy with the way the matter was settled, for one reason or another.

Hon. Margaret McAleer: He was not.

Hon. D. K. DANS: If he was not happy, why did he succumb to the proposition put to him by the Confederation of Western Australian Industry? If he belonged to the confederation, surely it was remiss of it not to remind him that he could take civil action under the secondary boycott provisions of the Trade Practices Act. However, he wanted out.

All of the erroneous statements made by various Opposition members who used criminal and extreme terms were found to be groundless. One of the reasons for that is that the Opposition cannot distinguish between people who work for a living on wages trying to defend themselves against people like Mr Leishman. There has been no denial of the fact that he underpaid that man. That is the other side of the coin.

Much has been said tonight of the Attorney General. I received the papers and the statement that the Attorney General was going to make. That was the first knowledge that I had of the matter. The next person to receive knowledge of it received that knowledge 60 seconds after I received it, and that was the Leader of the Opposition.

There is little Mr Berinson or I can do about the fact that people say that they do not believe us. However, I know Mr Berinson for what he is. I

have not always agreed with him in party meetings. We have had numerous clashes about a number of issues. However, one thing I have always thought about him is that he has extremely high principles and is a man of honesty and integrity. Those feelings go well beyond the bounds of the Labor Party. In fact, he is a highly honoured member of the legal profession.

The censure motion states—

The astounding decision to direct the Crown to take no further action in the case of Mr J. J. O'Connor . . .

The Attorney General has done nothing illegal. He has acted in accordance with the powers available to him. No-one in the Opposition can get up and argue that that is not the case. What has the Attorney General done wrong?

Hon. G. E. Masters: He has made a political decision.

Hon. D. K. DANS: He made a principled decision bound up in the powers of his office in the interests of the people of Western Australia. That is what he is accused of. The Opposition cannot have it both ways. Every decision we make in public life is a political decision.

Hon. Margaret McAleer: But not every decision we make is the right one.

Hon. D. K. DANS: On this occasion, in my opinion, and in the opinion of everyone else in this Chamber, he made the right decision. I have no quarrel if members disagree with that or if they say he made a wrong decision. However, they should not disbelieve the man. Even if it is such a wrong decision, the Labor Party has to wear it. We will wear it with honour because we believe it was the correct decision. That is unlike the members of the Opposition who have always taken the easy road and never the principled approach. On every possible occasion the Opposition changes its name; it has changed its name three times since inception and I believe another change is on the way if the seagulls are correct.

Hon. G. C. MacKinnon: You just change your faction.

Hon. D. K. DANS: That is a very glib quip by my old mate, Hon. Graham MacKinnon. However, it really does not carry much weight.

The use of discretion within the legal system has developed over centuries. Does anyone argue with that? If there was no legal discretion we would have the type of legal system which existed under Nazi Germany or the system practised in the Soviet Union. It reflects the principle that situations can arise where the law or the full force of the law should not be applied when extraordinary

circumstances exist. Does anyone argue with that? Members opposite can go out and carry out another political tub-thumping exercise if they wish because when the full weight of this comes down and people are able to look at the decision made by the Attorney General in a little more isolation, they will know that he made the right decision.

It has been said that the decision made by the Attorney General somehow or other brings Parliament and this Chamber into terrible disrepute. Two or three times tonight speeches made by individuals have made me shudder when I think that people in the gallery may have the impression that all members in this Chamber speak at the same level.

Hon. A. A. Lewis: You are reading your speech.

Hon. D. K. DANS: I am quoting from notes and Hon. A. A. Lewis may look at these notes if he wishes. However, I do not think he could follow my speech from these notes.

Several members interjected.

The PRESIDENT: Order! I remind honourable members about interjections. I suggest that the Leader of the House ignore them and address his comments to the Chair. Perhaps then we shall not get so many.

Hon. D. K. DANS: Mr President, you know that I dislike interjections. I hate them because they are unparliamentary and they reflect on the Chair. I would be happy to accommodate you if the members would desist from interjecting.

The exercise of discretion presupposes the utmost integrity on the part of the person in the legal system exercising that discretion. Will anyone challenge the integrity or legal knowledge of the Attorney General?

Hon. P. H. Lockyer: It was never in question.

Hon. D. K. DANS: What is in question? Every point I have made in relation to the censure motion does not appear to be in question. What is in question?

Hon. P. H. Lockyer: The stupid decision he made.

Hon. D. K. DANS: I have yet to hear what is in question and this has been confirmed by interjection. Is anyone calling into question the knowledge or integrity of the Attorney General?

Several members interjected.

Hon. G. E. Masters: I call it.

Hon. D. K. DANS: If members do not believe him, I cannot convince them. However, there is no way, as I have outlined the facts, that members

can get away from the point that Leishman was used as a wheelbarrow to carry this to prominence.

Several members interjected.

Hon. D. K. DANS: Hon. Margaret McAleer has backed me up that the statements in this morning's issue of *The West Australian* were blatant lies. That can be seen from *Hansard*. I have said that the Attorney General is held in high esteem by his peers. There is only one reason that the Opposition is moving this censure motion; that is, because of its blinkered hatred of the trade unions and their officials.

Several members interjected.

Hon. D. K. DANS: Members opposite grind their teeth when they see unions.

A member: Sack the Attorney General.

Hon. D. K. DANS: There is no chance of our sacking the best Attorney General that this State has ever had. He will be Attorney General for many years to come. We have a majority of 11 in the Assembly. Would members like to flip a coin?

The PRESIDENT: Order! The House must come to order. I have already indicated to Hon. A. A. Lewis that he is out of order with his constant interjections. He is closely followed by Hon. G. C. MacKinnon, Hon. Philip Lockyer and so on. The next time I mention those names in the House it will be prior to their making an exit as a result of some motions which I trust will be carried. More importantly, the Leader of the House is enticing them to interject by addressing his comments to them. I have already indicated to the Leader of the House that he should properly address his comments to the Chair and to no-one else.

Hon. D. K. DANS: I do not bow to your requirement, Mr President, because I am trying to do as you ask. However, it is difficult to do so when I am sniped at even though I am facing you.

The PRESIDENT: Ignore them.

Hon. D. K. DANS: Yes, I will do that.

The Attorney General made the decision in accordance with his duty as an Attorney General. There is no argument with that. There is not a peep from members. The decision was not made on behalf of the Government. The police and the Attorney General have carried out the respective roles expected of them. No-one is arguing with that. No-one has been compromised and that point should be remembered. The Solicitor General advised that he would not have proceeded with an indictment in this case. I make those comments because, as I said earlier, for one reason or another earlier in the piece my offer to travel to Geraldton to see Leishman was not taken up. That was long before the police came into it.

Hon. Margaret McAleer interjected.

Hon. D. K. DANS: The member means 11 May. I think the member may be in front of herself there. However, I do not make an issue of that. I was annoyed to read the paper this morning and I considered the article was a slanderous attack on my integrity.

I suppose that everything in *Hansard* may not be correct but *Hansard* was available to the person who made those statements for him to check his facts. If he had done so he would have discovered how wrong he was. I think I am entitled to some redress for that kind of performance.

In my experience in this Chamber nearly all members with whom I have been associated may argue, debate, and even lose their tempers. However, I have never known any member to get out of hand and to make deliberate statements that are not true. I could have said tonight when talking about the police that in the debate Hon. Phillip Pandal suggested by a slip of the tongue that the police had whitewashed the case. But what would be the use of that? It has been and gone. The facts are as I have outlined. Members on this side of the House have nothing but admiration for Joe Berinson whom I consider to be the best Attorney General the State has ever had. That opinion is not just held by Labor Party members. I expect Mr Berinson to be Attorney General for many years to come.

Personal Explanation

HON. MARGARET McALEER (Upper West) [10.10 p.m.]: I seek leave to make a personal explanation.

Leave granted.

Hon. MARGARET McALEER: In the course of the debate the Leader of the House misquoted me and I should like to clarify the position. I understood him to say that I had agreed with him that everything in the newspaper this morning was a pack of lies, when in fact that was not the case.

Hon. D. K. Dans: If you got that impression, that is wrong. I just referred to the statements which were attributed to me.

Hon. MARGARET McALEER: In that case, I misunderstood. Mr Leishman wrote to the Leader of the House. He knows the Leader of the House was away and that Mr Parker was acting on his behalf, but he did write to the Leader of the House.

Hon. D. K. Dans: But I did not receive that letter.

Debate (on motion) Resumed

HON. V. J. FERRY (South-West) [10.12 p.m.]: I support the motion. Despite what has been said as to the allegedly good intentions of the Attorney General in this case, the action he took has sullied the office which he holds, along with the Government's reputation, because the people we represent are incensed at this seemingly political judgment made in the so-called course of justice.

It has been said frequently that the decision was made by the Attorney General in his personal capacity. Given that as being the case, it is strange that the Attorney General should take this stance, particularly as a member of the ALP. One would have thought that the ALP, meeting in Caucus, would have something to say about this. I am surprised that it has been said that this was not a decision made by the Government. If it is not the decision of the Government, the Cabinet could well censure the Attorney General for the predicament in which it finds itself because of his actions. There is no question that the Government is in a predicament in the minds of those in the community, and the Government is aware of that.

Government members have said that the case has been distorted. If, indeed, distortion has occurred, it has certainly spread far and wide throughout the community, because mention has been made in the media by members of the legal profession and others as to the unhappy situation in which Western Australia finds itself as a result of this decision.

We have been told by the Attorney General and others that the Premier and the Attorney General had a conversation on Wednesday, 27 February, the night before the Attorney made his astounding statement in this place. If one is to accept the proposition that that was the first knowledge the Premier had of this case, it is passing strange that he did not suggest a Cabinet meeting be held to clarify the position as far as the Government was concerned.

It would seem to me there is doubt as to who is leading this Government. Does the Attorney General tell the Premier how to run the State? Is that the case? It would seem to me that the Attorney General has unlimited, unfettered power and, by the action he has taken, he has tampered with the justice system by interfering in a court action. That is a sorry state of affairs.

What is the position? Certainly the Attorney General has obtained advice from the Solicitor General and, according to the Attorney's statement, he sought the opinion of the Solicitor General. The Solicitor General did not proffer the advice voluntarily to the Attorney General.

Hon. J. M. Berinson: What is wrong with that course of action?

Hon. V. J. FERRY: It seems to me that the Attorney General was trying to find a way out. He was seeking advice, as he was entitled to do, but he engineered it himself with the objective of getting somebody off the hook and in order to make a political judgment to the detriment of our judicial system.

In this case, the gentleman was committed for trial, as I understand it, and he should have taken his chances under the law of the land. Obviously the public see this as political interference in the judicial system of this State and they are very concerned.

It has been said that it is unhealthy to have interaction of criminal law and industrial relations. Now we have the prospect of all sorts of things happening in the community and, in his own statement, the Attorney said that, had his decision not been made, widespread industrial unrest would have occurred throughout Western Australia.

What about the people themselves? Are they not entitled to the protection of the law, along with the unionists, whoever they may be, who are allowed to run riot, do as they please, and hold the rest of the community to ransom? Is that justice? If it is, it has a hollow ring.

The Attorney has said that it is important to maintain public confidence in the administration of justice. The public of this State do not see it in that light in respect of this decision. It is justice administered politically and not impartially, and impartial justice is a concept I have guarded most jealously in the past and will continue to support in the future.

If criminal law has no place, whether in industrial disputes or anywhere else, it is open season for everyone.

Hon. J. M. Berinson: I have never said that. In fact I have said the contrary.

Hon. V. J. FERRY: The Attorney may have said that.

Hon. J. M. Berinson: It is in fact the case, and it would be under our Administration. I said tonight that would certainly have to be the case so far as I was concerned.

Hon. V. J. FERRY: The decision we are discussing tonight renders the Government capable of taking action of this nature for political purposes, and it may well do that in the future. Mr Berinson will not always hold the office of Attorney General. Indeed, he should resign now. However, whoever holds that position in this

Government will, as a result of this example, be capable of changing the course of justice to suit his political whim. We shall have open season.

Hon. J. M. Berinson: It is not open season. Why do you keep ignoring whatever is said? Why do you ignore the facts?

Hon. V. J. FERRY: The Attorney is extremely touchy. He has had ample opportunity to say what he cares to and I shall say what I believe to be the truth. It is open season. Even the ducks have a closed season; but now, of course, all the workers in this State are sitting ducks for the use of industrial muscle.

Hon. J. M. Berinson: That is untrue.

Hon. G. E. Masters: That is dead right.

Hon. V. J. FERRY: They are sitting ducks for strongarm tactics and intimidation by bully boys or bully girls. We have equal opportunity now, so who is to say females will not enter into strongarm tactics? I understand they all go to gymnasiums these days in order to be strong.

There may be the prospect of standover tactics being used by criminals—who knows? I do not have the records of any union officials, so I would not know the position, but that is a possibility. It is possible some have criminal backgrounds and, under this Government's superintendency, they will be protected by the Attorney General and his office. That is what it is all about.

Hon. J. M. Berinson: Did you hear the argument that my decision changes nothing in respect of actual practice in the history of this State? What do you have to say about that?

Hon. V. J. FERRY: I shall continue with my contribution. This was a political decision to protect a union official. The decision was made for reasons of political patronage. It is "justice" with a political bias. We now have a new term for rough justice. It used to be called a kangaroo court. Some people in the community are now calling it "Berinson's bullring". That has been quoted to me by members of the public.

Hon. J. M. Berinson: Very droll.

Hon. V. J. FERRY: It may be, but that is the situation this Government has got itself into.

The DEPUTY PRESIDENT (Hon. John Williams): Order! I remind Hon. Kay Hallahan that if there are any more interjections I shall use the power of the Chair to some effect.

Hon. V. J. FERRY: Precedent exists for the Crown to appeal against seemingly unreasonable judgments and inappropriate fines or sentences imposed by the courts. Our Statutes provide for an appeal when a judgment is considered inappropriate for the misdemeanour involved. I submit that

the people of WA are now demanding an appeal against the Attorney General's action in this matter. If it is good enough for the Crown to be able to appeal, it is good enough for the people to be able to appeal. They see this case in that light.

Since the Attorney General made his astounding statement to the House last Thursday, I have moved a great deal throughout the south-west, and everywhere I have been people have made approaches to me on the matter. I was approached by housewives, young people, even trade unionists, and others, all of them very concerned because they saw this as a weakening of law and order in the community, just as we do. Perhaps the ALP does not see it that way.

If, as the Attorney says, the decision was his own, ALP members here should censure their own Minister. If this was not a Government decision, they should vote for the motion, because the decision is against their best interests. Obviously it was not discussed in Caucus and given approval. It was not reported to them in the proper way. Apparently the Premier was the only Government member to whom the Attorney General referred his decision; all other Government members were in ignorance of it, so for that reason they should support this censure of the Attorney General.

In fact, they should rebel. This is one occasion when they could make history and strike a blow for justice by voting in favour of this motion, by crossing the floor and standing up for their principles. They are great on rhetoric about their principles and this is one occasion when they can put their principles on the line and cross the floor to support the motion.

The Government has been brought into contempt and the Premier has been shown to have double standards. As is mentioned in the motion, the Premier said last week, and this is recorded in *Hansard* of Tuesday, 25 September 1984, that there was no role for The Government in this matter. He said, "We do not see a role, we do not seek a role, nor will we play a role". Yet the Premier has backed the Attorney's decision. He cannot have it both ways. The Premier is speaking with forked tongue and no-one can deny that. He is having his money each way. He is contradicting himself and showing that his principles are wobbly indeed.

Because of the Attorney's decision we will see more disruption in the workplace, whether it be in an office, a building site, or on the roads or highways. The licence has been given, and it is backed by the Government, for union officials to step in on the highways and disrupt public transport operations, whether a vehicle is carrying livestock,

wool, wheat, or anything else. The unions can disrupt the community by whatever means they think is appropriate, whether it be strong-arm tactics or whatever. The Government will not protect the people on the roads.

I finish on this note: A hearing was conducted for the committal of Mr O'Connor. That is on public record. If my memory serves me correctly, a large number of trade unionists demonstrated outside the court building on that day; there was a public demonstration of support for Mr O'Connor. I do not blame those people for supporting their own man, but I do object to their taking action in a public place when that action resembles the rule of the mob.

I have here a pamphlet handed to me in a shopping centre in metropolitan Perth several weeks ago. It is dated 3 October, the day the public demonstration occurred. It contains a picture which I presume is of trade unionists and other people who supported Mr O'Connor with banners and flags, presumably outside the courts of law in Perth. It is headed, "Extra: O'Connor Tribune: The Journal of Truth: November 1984: Trades and Labor Council of Western Australia". Then comes the heading, "Union Leader charged with Extortion". It asks, "What would happen to you if, every time unions and union officials take action on your behalf, they are charged under the Criminal Code?" I quote as follows—

WHAT YOU SHOULD DO

Ring Parliament House and protest to your Member of State Parliament. Insist that John O'Connor is innocent of extortion. (Telephone 322 1344).

Sign the TLC petition.

Donate to the Campaign Fund.

Demand that all of the facts be made public.

For further information ring the TLC Campaign Organiser on 328 7877.

JOHN O'CONNOR IS INNOCENT

The pamphlet was authorised by the Trades and Labor Council of WA. This is the rule of anarchy, the rule of the mob in the street demanding that their man, who has appeared before a properly constituted court in this State, be declared innocent by a mob in the street. The man may well be innocent, but the courts are the only place for that to be put to the test; it is not a matter for mobs in the streets of WA. This is an official TLC pamphlet.

Hon. Tom Stephens: You think universal franchise is mob rule.

Hon. V. J. FERRY: This Government is backing mob rule and anarchy. It is not concerned for law and order. Yet that is what concerns the people of this State. That is what concerns the people I represent. The Government stands censured for its actions.

HON. I. G. PRATT (Lower West)[10.28 p.m.]: There is one sad thing about this debate and the statement made last Thursday by the Attorney General: He seems to believe that he has acted correctly and in the best interests of the people of Western Australia.

I can understand this, because the action is in line with his party's philosophy, which is to the effect that unions can do no wrong and that any law which is broken during an industrial dispute has nothing to do with our legal system and is wholly an industrial problem. We do not accept that and neither do the people of this State.

Channel 7 conducted a telephone ring-in to get the opinion of members of the public. Over 14 000 people phoned in to say they disagreed with Mr Berinson's decision while 3 000 said they agreed with him. That is a massive majority of people prepared to ring a television station to express an opinion against his decision.

One very clear point that can be made is that when Mr Dans was Minister for Industrial Relations he said quite clearly that he would not use the industrial law. That cannot be disputed.

The second matter which is quite clear, and again cannot be disputed, is that Mr Dans told this House that if there were cases of breaking criminal law on an industrial site, or in an industrial dispute, the police should take up the case.

Another matter that cannot be refuted is that representing the Government in another place Mr Pearce said that the police will follow this matter to a full conclusion. I might add that the police have been prevented from following this to a full conclusion by the actions of the Attorney General.

Another thing which has been rather unfortunate in this debate has been the way we focussed on discussions between the Attorney General and the Premier. The Attorney General has told us that he did not discuss his decision with the Premier; he just told him of it. I believe that was on the Wednesday night. I accept that. Possibly some members who have spoken in the debate have been a little off the track on that and they have considered Wednesday night as the big date of the discussion.

It is my understanding that the Premier was under severe pressure from the Trades and Labor Council. That has been admitted tonight by mem-

bers of the Government. It is my understanding that the Premier approached a senior member of the Department of Industrial Development, and discussed this matter with him. He discussed the political and industrial implications of the case. I am waiting for someone to say that did not happen.

It is my understanding that following that discussion the Premier told the Attorney General to sort it out.

Hon. J. M. Berinson: Not so.

Hon. I. G. PRATT: My understanding is that that is so.

Hon. J. M. Berinson: I presumably would have been there. I am telling you it is not so.

Hon. I. G. PRATT: Let us use one of the Prime Minister's favourite words and let us look at the scenario which exists.

We have a prominent trade unionist, under a criminal charge, the trade union saying it will not accept the fact that he is being charged; and we have the Government facing an election somewhere between whatever is the prescribed time, from today if the Government wished, and next March. The Government is sitting on a tinderbox.

What way can it go? The police can be allowed to proceed with the charge and the Government will be in big trouble with the trade unions, but there will be massive industrial disruption, so something has to be done about that. If the Government is seen to be acting directly as a government, and stopping the charge, there will be massive public reaction, so it has to be distanced from the Government.

Now, how is it distanced from the Government? It is distanced from the Government by setting up the Attorney General and saying, "Okay, you have to take the responsibility". That is my understanding of how it happened, from the things that I have been told.

We then have the Attorney General doing the dirty work and stopping the proceedings against this prominent union member. So the trade union is happy; there will not be national disruption in the months leading up to a State election.

Hon. Tom Stephens: You are disappointed about that.

Hon. I. G. PRATT: I will come to the member in a minute. The other thing that we have is the Government has been distanced from this Act. Then of course to protect the Attorney General, the Government raced into another place and moved a motion of confidence in the Attorney General, an unprecedented occurrence in such a situation. I do not know of that happening before

in the history of the Western Australian Parliament.

I do not know of a Government, of its own volition, moving a confidence motion in one of its Ministers. The Government had to try and prop up poor old Joe Berinson who was left holding the cake; to get it out of trouble with the trade union system. Unfortunately for the Labor Party it has not worked. Mr Berinson is a member of the Government, he is a holder of a Cabinet portfolio and the public sees him as that.

It is no good Mr Burke saying that the Government did not decide, and that it was only one of his Ministers. The public are not fools; they are quite aware that Mr Berinson, as Attorney General, is still a member of the Cabinet. The whole Government is culpable when it stands with the Attorney General on this issue. I refer again to the vote of 14 000 against and 3 000 for the Attorney General's action. That indicates a strong expression of public opinion.

I promised Mr Stephens that I would come back to his interjection. I would be quite happy to see Mr Burke calling a snap election on this particular affair. The public are sick of it. I am not speaking about Liberal people only. I am not a silvertail, as some people around here describe Liberal members. I am an ordinary guy and I live in an ordinary community with ordinary everyday people.

Many of my friends do not vote the way I do, but there is overwhelming shock and astonishment among them at what this Government has done in this situation. I say "this Government" and not just the Attorney General, because the Government has to wear it, and wear it in the elections it will.

I hope Mr Stephens is delighted with that effort. The election can be called next month or next March. I am quite sure that we would be happy as an Opposition to go to an election on this issue any time the Government wants to pull one. The Government has not got out of it; its members have left themselves on very thorny seats. Wriggle as they may, all they are going to do is to put those thorns further into their tails.

Perhaps when they get off the Government seats, after the next election, they will have time to pull those thorns out, while they walk across this Chamber to take their seats in Opposition. As sure as the sun rises tomorrow morning, this Government will lose the next election. This matter is one of the nails the Government members are hammering into their own coffins. I support the motion.

HON. G. E. MASTERS (West—Leader of the Opposition) [10.37 p.m.]: Firstly I want to refer to

some of the comments made by the Leader of the House, obviously acting the buffoon. I would suggest that he was attempting to turn this motion into something of a comedy.

He said there were no real charges laid against the Attorney General. Let me remind him of my second reading speech. I said, "The motion that the Opposition is moving today is the most serious charge and censure motion ever levelled at an Attorney General in the history of the Western Australian Parliament, or indeed of an Australian Parliament". I went on to say further—

Hon. D. K. Dans: I disagreed, as I did not believe you.

Hon. G. E. MASTERS: In my comments I said, "... the charge of taking the law into his own hands and subverting the course of justice for political reasons". That is how I commenced my speech and that is how important the Opposition believes this motion to be. It is unfortunate that the Leader of the House has treated the motion in the fashion he did. When the Leader of the House was making a comment he said, "Why didn't Mr Leishman go to the police instead of going to the Opposition?" The man either has not been in the House tonight or he has not listened. Does he not understand that Mr Leishman did better than go to the police? He went to the Minister for Police and Emergency Services, his own local member, twice.

Miss McAleer read out a letter from Mr Leishman expressing his disappointment to the Minister for Police and Emergency Services.

Hon. Lyla Elliott: As his local member, not as Minister for Police and Emergency Services.

Hon. G. E. MASTERS: Oh, come on! Who is the member kidding? The member is being as ridiculous as Mr Berinson who stands up and says it was his decision, and no-one else's.

I suggest that when Mr Leishman went to his local member, the Minister for Police and Emergency Services, Mr Carr, and said "I need help, I have a problem", the Minister would have said, "Look, it is a problem which could be a criminal matter. Go and talk to the police about it". He did not do that. He waited until the Minister representing him in the Assembly made that offer in Parliament. Mr Carr did not offer himself. Members opposite talk about Mr Leishman going to the police, but he went one better. He wrote twice to Mr Dans who was away but whose portfolio was being handled by an Acting Minister and he rang the Premier's office. Sure, I said in the debate earlier that Mr Leishman rang the Premier's office on 9 April. In fact, two deliveries of lambs were involved, and the first time he rang

was not on 9 April, and I apologise for that, but at 9.00 a.m. on 26 March.

What more could he do than ring his local member, the Minister for Police and Emergency Services, write twice to Mr Dans, and ring Mr Burke, the Premier? Mr Dans has the audacity to ask why Mr Leishman did not use the Trade Practices Act. Does he understand how much it costs and how long it takes? The man would bleed to death in the meantime. Does the Leader of the House realise the man had been black banned and would have gone broke? If the Minister for Police and Emergency Services and the Premier could not help him he had no alternative but to go to the Opposition and see what it could do. He tried the Government of the day first, and that is the important point.

When we follow the matter through we see that the Acting Minister for Police and Emergency Services, Mr Pearce, made this statement to the Leader of the Opposition on 8 May 1984, and it is recorded on page 8184 of *Hansard*—

If the Leader of the Opposition will not go to the police, the police will go to the Leader of the Opposition. I have had discussions with the Minister for Police and Emergency Services and the Minister says that in the morning he will ask the commissioner to send two detectives to the Leader of the Opposition to take from him ... what proof he has of these allegations—

What more could the man do than go to his local member and do the best he could to protect himself and his future? I am astounded that Hon. Des Dans let himself down in that way.

Hon. D. K. Dans: That was after he paid the money.

Hon. G. E. MASTERS: Mr Dans does not understand the situation. Do members know what the Premier's office told Mr Leishman? He was told by the Premier's secretary, "The Transport Workers Union is too powerful; pay up". That was the advice from the Premier of this State, "Pay up; you have no alternative".

Hon. Tom Stephens: Was it from the Premier or his secretary?

Hon. G. E. MASTERS: From his secretary after talking to the Premier. The secretary would hardly make that statement without talking to the Premier. If Mr Dans is going to buffoon around and make this motion a comedy he will do more harm than good to the Attorney General.

Hon. D. K. Dans: You have kept the motion going since 4.30 p.m.

The DEPUTY PRESIDENT (Hon. John Williams): Order!

Hon. G. E. MASTERS: Hon. Des Dans made this statement on 10 May—I was not going to refer to it but as he is getting excited I will read it and he may settle down.

Hon. D. K. Dans: It is in front of me.

Hon. G. E. MASTERS: I am going to read it to Mr Dans. I like to shove it down his throat. The statement said—

Persons who are subjected to intimidation, threats, violence, or interference in contracts have available to them legal action either through their common law rights or under their rights granted under the laws of this Parliament; that is, the Criminal Code and the Police Act.

Hon. D. K. Dans: I have never denied saying that, and I said it again tonight.

Hon. G. E. MASTERS: The Minister in his reply before the tea suspension said what we expected. He tried to explain away the decision by referring to the application of the Criminal Code to industrial relations. That is the issue he has referred to all night and which he says people have forgotten. He said the full force of the Criminal Code should not apply, or something like that. Then he referred to the possibility of Mr John O'Connor being sentenced to 14 years' imprisonment. That is a load of codswallop. We all know that penalty would not apply; that is the maximum penalty and not the minimum. The penalty would have been nowhere near that, if any penalty was imposed at all had the law been allowed to take its course.

That is a smokescreen which puts a grave suspicion on all the comments Mr Berinson made. Why should Mr O'Connor face a court and a jury with the prospect of 14 years' imprisonment? That is what Mr Berinson said. It is ridiculous and no-one believes it, least of all him, and it makes a lie of other statements he made. He asked why previous Governments did not do something about black bans. We did. One difference between this Government and our Government is that we applied the industrial law wherever possible.

Hon. J. M. Berinson: But not the criminal law.

Hon. G. E. MASTERS: There was no need to at that time because we were frightening people off; they were backing away. Mr O'Connor would never have taken that action had we been in Government.

Hon. J. M. Berinson: No black bans in your time?

Hon. G. E. MASTERS: Yes, there were and the Minister knows it.

Hon. J. M. Berinson: How many criminal prosecutions?

Hon. G. E. MASTERS: We were pretty successful in overcoming some of the problems.

Hon. J. M. Berinson: Some of them!

Several members interjected.

The DEPUTY PRESIDENT: Order! The hour is late and the debate has gone on for some time. I will not hesitate after this to name members if interjections continue.

Hon. G. E. MASTERS: When we were in Government and a complaint was made I as the responsible Minister responded immediately by sending industrial inspectors to investigate, not in one or two days, but in an hour. It was very effective. If I had had a complaint about Mr O'Connor's conduct and I had been in Mr Carr's position, I would have had the matter investigated. If the Industrial Commission could not do anything or it was not effective I would have referred it to the police. We would have used the industrial law where possible. Mr Dans said in his statement he would refuse to use that filthy legislation. He is at fault. He refused to use the industrial laws and the police had to act in other circumstances.

Hon. D. K. Dans: Come off it! You don't believe that.

Hon. G. E. MASTERS: Mr Dans said, "I refuse to use that filthy legislation". Those are his words, not mine. He said he would not use that legislation and pointed out there was an alternative—the Criminal Code and the Police Act. What does he mean?

I suggest it is sheer humbug and hypocrisy. Mr Dans made such a muck up of the portfolio before he was shifted sideways and he put Mr Berinson and the Government into this terrible position where someone like O'Connor was able to apply pressure to blackmail and extort. He was put into court and charged with that offence, and the proceedings should have taken their course. We as an Opposition when challenged on this issue were asked to present the evidence and proof, and we did. The police interviewed our leader and decided they ought to investigate the matter. The police said they would act and they did. I suppose as far as they were concerned the proof or evidence was sufficient to satisfy them that they should go forward with the prosecution. Do not let us have this rubbish about there being no proof and insufficient evidence to justify the proceedings going on.

Mr Berinson then decided, even though Mr Burke, Mr Dans, and Mr Pearce said there would be no interference in the court proceedings, that he would make a non-political decision and in all the circumstances the Criminal Code should not apply in full force in the industrial area.

Hon. J. M. Berinson: In these circumstances.

Hon. G. E. MASTERS: In these circumstances be damned. It will be in any circumstances.

Hon. J. M. Berinson: In these circumstances.

Hon. G. E. MASTERS: It is an open go for those people who have been and are still using standover tactics in the workplace. Not one policeman will now be prepared to take action. No militant trade union leader will be worried about the prospect of being charged. That is a fact of life. The public know it and we all know it. Mr Berinson knows it as well; he is not stupid.

How does the Minister and the House think the police feel about this matter? The Minister for Police and Emergency Services, who handled this matter in his own electorate, asked detectives to come into this Parliament and interview Opposition members in their investigations. How does the Government think they feel? They took the case to court and the magistrate said there was sufficient evidence for the matter to go to the District Court. The police fought hard to gain that evidence. How will the police view the Minister's decision? They will view it with horror. They will certainly view it with doubt about ever carrying out that sort of investigation again.

How does the Government think small-business feels about the issue? Those little people are being stood over daily in certain circumstances. I am not saying that the whole trade union movement includes standover merchants, because I know it does not. I have a high regard for genuine trade union leaders. There are many who are good. However, there are a number of people I mentioned earlier who employ standover tactics, and many people come to us daily and ask us for help. I know this bores the Government, but it is a fact of life.

If Mr Berinson does not understand what we are talking about, he should get out in the real world and talk to people and see the damage he has done. The public perception of this matter is that, as a result of union pressure, there is one law for one group and one law for another. I wonder what would happen if a member of the public were charged with extortion. Would the Minister come to his or her aid? Would he or she have any type of protection? The public are entitled to say that, after this decision, there is a group of people who are above the law.

No-one in his wildest dreams would believe that Mr Brian Burke was not involved. No-one would believe that the Australian Council of Trade Unions and the Trades and Labor Council were not involved. I asked the Minister if he was prepared to table correspondence he had received from the ACTU and the TLC. We know that he received that correspondence, but he has flatly refused to table it. He has given no information. Is he prepared to table that correspondence now? There is no answer, so I assume that he will not and we can reach our own conclusions.

This was a political decision beyond any doubt. There was absolutely no advice and no recommendation for the Minister to drop the charge. If ever there was a condemnation of the Minister it had to be in his admission tonight. I feel the information was deliberately concealed until questions dealing with advice from the Crown Prosecutor were asked. We have been told tonight, five days after the announcement in Parliament, that the Crown Prosecutor said that the case should continue. The Attorney declared that information as a result of probing by the Opposition.

Hon. J. M. Berinson: I volunteered it as soon as the question was asked. I also indicated its limitations.

Hon. G. E. MASTERS: It is interesting that the Attorney said he volunteered the information. It is also interesting that in another place tonight the Government refused the Opposition the opportunity to debate the issue. It turned down the Opposition's request.

What is the Minister, the Premier, and the Labor Party frightened of? The threat of industrial action from now on is overwhelming. The obvious risk to the Labor Party was calculated. That risk was that there would be industrial action which would jeopardise its electoral chances in the future. The Attorney General has debased his position. He has given an open invitation for union standover tactics to be employed in the workplace. He has frightened the living daylights out of the public. They are stunned. He now has no credibility and no standing in the legal profession or in the community. He holds a position of trust and I suggest he will not be trusted any longer. The processes of law should not be subverted by political considerations or by pressure by the Premier or the Attorney General.

I ask all members to consider these facts and to support the motion.

Question put and a division taken with the following result—

Ayes 16

Hon. C. J. Bell	Hon. I. G. Medcalf
Hon. E. J. Charlton	Hon. N. F. Moore
Hon. V. J. Ferry	Hon. Neil Oliver
Hon. Tom Knight	Hon. I. G. Pratt
Hon. A. A. Lewis	Hon. W. N. Stretch
Hon. P. H. Lockyer	Hon. John Williams
Hon. G. C. MacKinnon	Hon. D. J. Wordsworth
Hon. G. E. Masters	Hon. Margaret McAleer

(Teller)

Noes 10

Hon. J. M. Berinson	Hon. Kay Hallahan
Hon. J. M. Brown	Hon. Robert Hetherington
Hon. D. K. Dans	Hon. S. M. Piantadosi
Hon. Graham Edwards	Hon. Tom Stephens
Hon. Lyla Elliott	Hon. Fred McKenzie

(Teller)

Pairs

Ayes 16	Noes 10
Hon. P. G. Pandal	Hon. Garry Kelly
Hon. P. H. Wells	Hon. Mark Nevill
Hon. H. W. Gayler	Hon. Peter Dowding

Question thus passed.

The PRESIDENT: Order! It being 11.00 p.m. no further business can be transacted except the receipt of messages.

DENTAL PROSTHETISTS BILL

Assembly's Further Message and Request for Conference

Message from the Assembly received and read notifying that it—

- (a) disagreed to the Legislative Council's further amendments Nos. 1 to 3 in message No. 95;
- (b) continued to disagree to amendments Nos. 1 to 5, 9 to 16 and 18 to 46 insisted upon by the Legislative Council; and
- (c) requested the Legislative Council to grant a conference on the amendments insisted upon together with further

amendments Nos. 1 to 3, and advising that the managers for the Legislative Assembly would be the member for Balcatta, the member for Kalamunda, and the Minister for Health.

QUESTIONS WITHOUT NOTICE

Point of Order

Hon. G. C. MacKINNON: Mr President, as questions without notice were mentioned earlier and were postponed to the conclusion of the previous debate, and as I understand them to be not new business, would it not be reasonable to take them now or do you classify them as new business?

The PRESIDENT: I would suggest that it would be classified as new business. The relevant Standing Order clearly states as follows—

No business shall be transacted after 11 p.m. except:

- (a) business under consideration;
- (b) the receipt of messages and, in the case of a Bill received from the Assembly, the moving of its second reading by the Minister or member in charge;
- (c) a motion to adjourn the Council to a date or time or both that is different from that already ordered;
- (d) a motion to adjourn the day's sitting.

It is quite clear to me that there is no room for any further business, albeit that the earlier resolution was that questions without notice be postponed until after the conclusion of a particular motion. The fact that the motion went on until 11 p.m. prevents that from occurring.

House adjourned at 11.03 p.m.

QUESTIONS ON NOTICE

GOVERNMENT REGULATIONS: REVIEW COMMITTEE

Report: Recommendations

499. Hon. P. H. WELLS, to the Leader of the House representing the Deputy Premier:

- (1) What action has been taken by the Government in connection with the recommendations of the report of the Government Regulations Review Committee of February 1983?
- (2) How many, and which of the recommendations, have been acted on?

Hon. D. K. DANS replied:

- (1) (a) The Government released the report for public comment;
- (b) Ministers referred the report to their departments and instrumentalities for appropriate actions and to report back.
- (2) (i) There were 11 major recommendations made by the Government Regulations Review Committee. Four of the first five are interrelated and concern the drafting of guidelines for instructing officers on the introduction of new legislation. GRRC discussed them under the headings—

Guidelines for drafting legislation

Regulatory Flexibility

Inconsistent legislation

Economic Impact statements

The Small Business Development Corporation is currently considering these recommendations for necessary action.

- (ii) Action has been taken by the Government to introduce sunset legislation.
- (iii) The Small Business Development Corporation is actively involved in minimising the red tape impact of new legislation, e.g. Commercial Tenancy (Retail Shops) Agreements Bill.
- (iv) GRRC identified among key issues, the need to review the Factories and Shops Act. Government action in that area has led to the introduction of enabling legislation for the Occupational Health, Safety and

Welfare Commission and to appointment of Chief Industrial Commissioner Kelly to report on trading hours.

Another of the key issues was town planning and related matters which attracted critical comment by GRRC. The recently released report of the committee of inquiry into statutory planning in WA has addressed that issue.

The Commercial Tribunal Bill has been introduced in order to group 15 occupational groups under the Consumer Affairs portfolio.

- (v) A parliamentary working party was established to consider matters relating to the State's north-west as it affects industry and commerce.
- (vi) To ensure that there is a mechanism to action the Government's ongoing commitment to reduce Government red tape, the former Executive Officer of the GRRC has been stationed in the Small Business Development Corporation.
- (vii) Action has been taken by departments on many specific issues summarised from submissions made to GRRC.
- (viii) The Premier sought co-operation from the Prime Minister to action Federal issues identified by GRRC.

MEMBERS OF PARLIAMENT: OFFICES

Photocopiers: Repairs

547. Hon. TOM McNEIL, to the Minister for Employment and Training representing the Deputy Premier:

Would the Deputy Premier advise—

- (1) How many photocopiers have now been installed in electorate offices of members of Parliament?
- (2) How many have broken down since installation?
- (3) Who has the contract for servicing the machines?
- (4) In the event that no company has the contract to service the machines, who is responsible for the cost of repairing any of these machines?

Hon. PETER DOWDING replied:

- (1) 76.
- (2) Six.
- (3) There is no service contract on these machines as the cost was considered to be too high. In addition a great many of the machines are located in the country where maintenance can be effectively carried out by local companies.
- (4) Funded from CRF.

GOVERNMENT INSTRUMENTALITIES: JOONDALUP

Establishment

566. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Planning:

- (1) Are there any moves to establish Government departments or sections of departments in the Joondalup area in the foreseeable future?
- (2) If so, which departments, and when is this action expected to take place?

Hon. PETER DOWDING replied:

- (1) Yes.
- (2) (a) Community Services, regional office in the 1985-86 financial year;
- (b) Police/Crown Law Department, regional office and facilities in the 1986-87 financial year.

In addition, I have initiated a study of decentralisation of Government departments to subregional areas.

PRISONS: PRISONERS

Fremantle: Heatwave Conditions

574. Hon. MARGARET McALEER, to the Minister for Prisons:

Is it correct that during the current heat wave prisoners have been released into exercise yards at the Fremantle Prison for long periods during weekends without any provision for protection against the sun?

Hon. J. M. BERINSON replied:

I am advised that no change occurred to the normal routine at Fremantle Prison during the recent hot weather. Shelter is provided in the exercise yards and has existed for a number of years.

COMMUNITY SERVICES: DOMESTIC VIOLENCE

Family Court Act: Review

578. Hon. I. G. MEDCALF, to the Attorney General:

- (1) Has the committee considering amendments to the Family Court Act with particular reference to the question of domestic violence under the Chairmanship of Judge Anderson yet completed its work?
- (2) Has any report, tentative or otherwise, been made by the committee and, if so, when?
- (3) Has the committee made any recommendation in relation to compulsory blood tests for putative fathers or parents in paternity or affiliation cases?

Hon. J. M. BERINSON replied:

- (1) Yes.
- (2) A report was provided in December 1983 and has been made available to the domestic violence task force which was recently established by the Government.
- (3) No.

PLANNING: REZONING

Service Station: Wanneroo

580. Hon. P. H. WELLS, to the Minister for Employment and Training representing the Minister for Planning:

- (1) Did the Minister, in giving approval to Lot 314 (Lots 4 and 5) Wanneroo Road/Balcombe Street for rezoning to enable a service station to be built, take into consideration the present problem of the proliferation of service stations and the difficulties they are experiencing?
- (2) Was it demonstrated that there was a justifiable need for another service station in this area?
- (3) If so, who provided the information, and was it checked before approval was given?
- (4) What is the situation regarding planning approval for service station sites?

Hon. PETER DOWDING replied:

- (1) Yes.
- (2) and (3) This amendment was dealt with in accordance with the statutory planning process. This requires the submission of a supporting report from the local authority and examination and recommendation by the Town Planning

Board. The decision to grant final approval to the amendment was made after due consideration of all relevant information.

- (4) In order to obtain planning approval for a service station, the landowner must now submit a development application to the local authority. In addition, since the land abuts Wanneroo Road which is reserved as an important regional road, by the Metropolitan Region Scheme, the application must also be forwarded to the Metropolitan Region Planning Authority for determination.

HEALTH: HOSPITAL

Wanneroo: Radiologist

584. Hon. P. H. WELLS, to the Leader of the House representing the Minister for Health:

Further to question 529 of Tuesday, 26 February 1985, concerning radiologist at Wanneroo Hospital—

- (1) How many are employed at the Wanneroo Hospital?
- (2) How often were they called out after hours during the last six months?
- (3) What is the current work load of the radiological staff?
- (4) How often in the last six months have persons been sent home and told to come back later because a radiologist was not available?
- (5) Has the Government reviewed the need to appoint another radiologist to Wanneroo?
- (6) What was the outcome of that review?

Hon. D. K. DANS replied:

- (1) One.
- (2) No out of hours radiologists call backs between 1 July 1984 and 31 December 1984 took place.
- (3) The radiologist has performed 65 screening and other specialist radiological procedures between 1 July 1984, and 31 December 1984.
- (4) To the best of my knowledge no patient in need of the service of the radiologist was turned away.
- (5) No. This is a matter which normally would be brought to attention by a

recommendation from the Medical Advisory Committee.

- (6) Not relevant.

HEALTH: HOSPITAL

Osborne Park: Radiologist

585. Hon. P. H. WELLS, to the Leader of the House representing the Minister for Health:

- (1) How many radiologists are on permanent call at the Osborne Park Hospital?
- (2) How many radiologists are available on a part-time basis at the Osborne Park Hospital?
- (3) What is the current work load for radiologists at Osborne Park?
- (4) Is the Government reviewing the radiological needs at the Osborne Park Hospital?
- (5) Are radiologists available on a 24 hour basis at the Osborne Park Hospital?

Hon. D. K. DANS replied:

- (1) A private radiologist has undertaken to provide an emergency call service on a locum basis until a permanent appointment is made.
- (2) One radiologist.
- (3) The radiology service is provided two half-days a week for screening and ultrasound services plus a daily film reporting service.
- (4) Yes.
- (5) Answered by (1) above.

POLICE: LIQUOR AND GAMING BRANCH

Visits: Country Race Meetings

586. Hon. N. F. MOORE, to the Attorney General representing the Minister for Police and Emergency Services:

Further to my question 543 of Tuesday, 26 February 1985, will the Minister advise—

- (1) Is it normal procedure for the Liquor and Gaming Branch to send officers to country race meetings?
- (2) What "duty" was performed by the officer?

Hon. J. M. BERINSON replied:

- (1) Yes, where Liquor and Gaming personnel are attached to regional offices, they attend country race meetings at the discretion of the regional officer.

- (2) Observation of liquor outlets, conduct of patrons and general surveillance for detection of unauthorised forms of gambling.

PASTORAL INDUSTRY: LEASE

Mt. Anderson Station: Mr John Watson

587. Hon. N. F. MOORE, to the Leader of the House representing the Minister for Lands and Surveys:

Further to his answer to my question 541 of Tuesday, 26 February 1985, will the Minister advise if Mr John Watson, Chairman of the Kimberley Land Council, is resident at Mt. Anderson Station?

Hon. D. K. DANS replied:

Advice from the Aboriginal Development Commission indicates that Mr John Watson does not permanently reside on Mt. Anderson Station.

I should point out that information of this nature is not of concern to the Lands Department in relation to the operation of a pastoral lease and future questions should more properly be addressed to the Minister with special responsibility for Aboriginal Affairs.

HEALTH

West Australian Trachoma and Eye Health Association

588. Hon. N. F. MOORE, to the Leader of the House representing the Minister for Health:

What has happened to the West Australian Trachoma and Eye Health Association?

Hon. D. K. DANS replied:

The West Australian Trachoma and Eye Health Association has been in abeyance since Federal funding to the Royal College of Ophthalmologists was discontinued in March 1984.

The Health Department of Western Australia has continued to provide a screening and treatment service through its own infrastructure and its medical coordinator for trachoma.

Eye specialists from the College of Ophthalmology continue to participate in the Health Department of Western Australia's programme and Aboriginal communities in affected areas give full co-operation.

ABORIGINAL AFFAIRS

Coonana Village: Site

589. Hon. N. F. MOORE, to the Minister for Employment and Training representing the Minister with special responsibility for Aboriginal Affairs:

- (1) Who chose the site for the new Aboriginal village at Coonana?
- (2) Is there sufficient water at this site to supply the new village?
- (3) If so, where is the source of this water?
- (4) Is there a proposal to establish an outstation separate from Cundeelee and Coonana?
- (5) If so, who proposes to set up this outstation and where will it be located?

Hon. PETER DOWDING replied:

- (1) The Coonana Development Planning Committee in consultation with the Upurl Upurlilia Ngurratja (Cundeelee) community.
- (2) and (3) The WA Country Water Supply (PWD) has examined this matter and reported that there will be a reasonable water supply. This matter is still being explored in more detail.
- (4) I am advised that the Commonwealth Government has allocated more funds for the provision of a bore and windmill so that a small encampment area, for cultural and transient purposes, can be established at Loonganna.
- (5) As above.

ABORIGINAL AFFAIRS: ABORIGINAL MEDICAL SERVICE

Health Department Responsibilities

590. Hon. N. F. MOORE, to the Leader of the House representing the Minister for Health:

- (1) Has the Minister written to Health Department employees advising them that the Health Department wishes to transfer certain State Health responsibilities to Aboriginal Medical Services?
- (2) If so—
 - (a) will the Minister table the letter; and
 - (b) what services are to be transferred, and to whom?

- (3) Has the Minister received the views of any Aboriginal organisations on this matter and if so, what are their views?
- (4) What is the reason for the Minister's decision to transfer services?

Hon. D. K. DANS replied:

- (1) Yes.
- (2) (a) Yes; copy of letter enclosed;
- (b) submissions from the Aboriginal Medical Services in the Kimberley are awaited;
- consideration of what services are to be transferred will be given when submissions are received.
- (3) Yes. Some organisations request greater responsibility in management and delivery of health services.
- (4) It is this Government's policy to give greater responsibility to Aborigines in the management and delivery of health services to Aboriginal communities.

Dear Staff Member

I would like to advise you of some changes that are presently being contemplated in the delivery of health services to Aboriginal communities.

As you are aware, the Western Australian Government's policy is to give Aborigines a greater degree of participation and a greater say in the provision of health services. Mr Holding, Minister for Aboriginal Affairs, the Aboriginal Medical Services and I have decided that agreed health services, currently being provided by the State, may be undertaken by Aboriginal community-based organizations.

It is proposed that arrangements for the Aboriginal community-based organizations to undertake these services will be phased in by Regions, commencing in the Kimberley Region. Accordingly, the Aboriginal Medical Services in the Kimberley Region have been invited to make submissions to the Government by March, 1985 on the services which they wish to provide and in what communities. Proposals will then be discussed as fully as is possible with all concerned.

In order for the Aboriginal Medical Services to provide effective services, they may seek to employ some personnel currently working in the Community

Health Services. It is my intention to include in the negotiations for the transfer of these services, discussions on the wages and security of conditions of employment for those staff who elect to work for the Aboriginal Medical Services. I give my assurance, however, that the Department will redeploy staff members who do not wish to transfer.

I have also written to your representative Unions and Associations, advising them of these arrangements and I have assured them that full consultation will take place.

I seek your co-operation to achieve this goal and request that you assist the Aboriginal Medical Services with the preparation of their submissions if such help is requested.

Yours sincerely
BARRY HODGE,
Minister for Health.

591. *Postponed*

EDUCATION: PRIMARY SCHOOLS

Class Sizes: Collie Area

592. Hon. A. A. LEWIS, to the Minister for Employment and Training representing the Minister for Education:

What are the class numbers, including pre-primary, in each of the following primary schools in the Collie area—

- (a) Allanson;
- (b) Amaroo;
- (c) Fairview; and
- (d) Wilson Park?

Hon. PETER DOWDING replied:

- (a) Allanson
Pre-Primary/Year 1=13*, 12=1 class
Year 2/3/4=9, 8, 2=1 class
*4 year olds
- (b) Amaroo
Pre-Primary (on-site)=50 (2 groups)
Pre-Primary (off-site)=22 (1 group)
Pre-Primary (off-site)=20* (2 groups)
*4 year olds
Year 1=28, 24, 26=3 classes

Year 2=31, 31=2 classes
 Year 3=34=1 class
 Year 3/4=14, 18=1 class
 Year 4=35=1 class
 Year 4/5=16, 17=1 class
 Year 5=33=1 class
 Year 5/6=13, 20=1 class
 Year 6=33=1 class
 Year 6/7=17, 18=1 class
 Year 7=31, 29=2 classes
 Junior Ungraded=12=1 class
 Senior Ungraded=10=1 class

(c) Fairview

Pre-Primary 27, 27=54 (2 groups)
 Year 1=33, 33=2 classes
 Year 1/2=8, 24=1 class
 Year 2=34=1 class
 Year 3=28, 29=2 classes
 Year 4=29, 27=2 classes
 Year 5=31=1 class
 Year 5/6=19, 6=1 class
 Year 6=31=1 class
 Year 7=38=1 class

(d) Wilson Park

Pre-Primary 16, 15=31 (2 groups)
 Year 1=27=1 class
 Year 1/2=20, 8=1 class
 Year 2/3=13, 16=1 class
 Year 3/4=16, 13=1 class
 Year 4=27=1 class
 Year 5=30=1 class
 Year 5/6=8, 19=1 class
 Year 6/7=8, 20=1 class

HOUSING: RENTAL

Extension Programme: Nannup

593. Hon. A. A. LEWIS, to the Minister for Employment and Training representing the Minister for Housing:

Further to question 558 of Thursday, 28 February 1985, will the on-going programme extend to the provision of rental homes in Nannup?

Hon. PETER DOWDING replied:

The tentative programme for 1985-86, and I emphasise it is tentative, does not include provision for housing at Nannup.

As previously indicated the extent of the final programme is dependent on availability of funds and these are allocated in accordance with demand throughout the State.

**IMPERIAL HONOURS:
RECOMMENDATIONS**

Future Governments

594. Hon. I. G. MEDCALF, to the Attorney General:

With reference to the current residual constitutional links exercise between the Commonwealth and States and the United Kingdom Government, which includes the question of Imperial Honours, is the Attorney prepared to assure the House that the present State Government will not agree to any proposal which will deny to a future State Government the entitlement to recommend State citizens for the award of Imperial Honours should it wish to do so?

Hon. J. M. BERINSON replied:

Yes.

FISHERIES: TRAWLING

Carnarvon: Permission

595. Hon. P. H. LOCKYER, to the Leader of the House representing the Minister for Fisheries and Wildlife:

Is trawling for wet fish in waters adjacent to Carnarvon to be permitted?

Hon. D. K. DANS replied:

No. The Department is currently liaising with the Australian Fisheries Service in Canberra to introduce a closure to trawling in both State and Commonwealth waters off Carnarvon.

FISHERIES: SCALLOPS

Boats: Licences

596. Hon. P. H. LOCKYER, to the Leader of the House representing the Minister for Fisheries and Wildlife:

(1) How many boats are licensed to fish for scallops in the Shark Bay and Carnarvon fishery?

(2) What is the duration of the season?

Hon. D. K. DANS replied:

(1) 49, made up of 14 scallop vessels and 35 prawn trawlers.

(2) The month of March, and also the months of July to October inclusive.

HOUSING: MARBLE BAR

Applicants

597. Hon. P. H. LOCKYER, to the Minister for Employment and Training representing the Minister for Housing:

- (1) How many people are seeking housing at Marble Bar?
- (2) How many SHC houses are being built this financial year?
- (3) Is the Minister aware of the extreme problem that exists in Marble Bar with regard to Aboriginal housing?
- (4) Is the Government considering increasing the number of State Housing houses at Marble Bar?
- (5) If not, why not?

Hon. PETER DOWDING replied:

- (1) Commission records indicate that as at 5 March, 1985 there were 22 applicants listed.

(2) There are no houses being constructed this financial year at Marble Bar.

(3) The Housing Commission has recently completed a survey of the Punya Aboriginal people living at Wine Free Creek and I will be provided with a report.

(4) Tentative programmes have been prepared for 1985-86 which will be subject to the availability of funds. The programme includes four units of accommodation for Commonwealth/State Rental applicants and four units of accommodation for Aboriginal grant fund housing applicants. Construction for the Punya people will be contingent upon further discussion with this group and suitable land being available.

(5) Answered by (4).
