Victorian Bar News

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CHAIRMAN'S REPORT

New Chairman
Following the appointment of Marks Q.C. to the Supreme Court of Victoria the Bar Council has elected Costigan Q.C. as Chairman.

Legal Aid
The Bar Council has adopted a report prepared by Barnard Q.C., dealing with new proposals for the restructuring of legal aid services in Victoria. The proposals have been submitted to the State Attorney-General.

13th Floor Facilities
The Bar Council has authorised Architects to proceed with arrangements for the re-modelling and re-furnishing of the facilities on the 13th Floor.

Present indications are that the work will be completed by the end of the short vacation.

T.W. Smith Q.C.
Smith Q.C. who recently completed his term as Law Reform Commissioner, was entertained by members of the Bar Council in the Chairman's Room on Friday, 11th March, 1977.

"Spirex Machine"
The Bar has acquired a "Spirex Machine" which is capable of punching and binding reports and documents. Counsel wishing to use the machine are asked to contact the Executive Officer on the 12th Floor.

Social Functions for Clerking Lists
The Bar Council has resolved that it does not disapprove of a Clerking List, on the occasion of it holding a list function, inviting the Clerk of that list to attend that function.

Norris Committee
The Bar Council has adopted with more amendments a report of an ad hoc committee on Police procedures which was set up for the purpose of making submissions to the Norris Committee, which is preparing recommendations for the Government in relation to the Beach Report. The Bar Council's report and the circumstances surrounding it were the subject of some publicity in the National Times newspaper in March.

Police and Lawyers Liaison Committee
This Committee has met on several occasions since being set up, and has discussed a number of matters of mutual interest including the provision of a means of identification for lawyers visiting prisons, the problem of counsel speaking with police witnesses and the means whereby police officer law graduates may qualify for admission to practice.

Bequest by J. N. Bennett, deceased
The Bar is the subject of a legacy of approximately $10,000.00, in the Will of J. N. Bennett, deceased, who was a member of the Bar. A subcommittee has been established to investigate how the legacy may be best used.

New Honorary Secretary and Assistant Honorary Secretary
In mid April Phipps retired as Honorary Secretary of the Bar, and Wild was appointed in his place. Dane has been appointed as Assistant Honorary Secretary.

National Young Lawyers Association
The Law Council of Australia has constituted a new organization to operate as a sub-committee of the Law Council, and to be known as the "National Young Lawyers Association". The Bar's representative on the Association is Walmsley.

New South Wales Law Reform Committee
This Commission is looking into the overall structure of the legal profession in New South Wales. The Law Institute of Victoria has made a separate submission to the Commission, putting forward its proposals for re-organisation of the profession in Victoria. A number of members of the Bar Council attended an Extraordinary General Meeting of the New South Wales Bar Association which was held to discuss aspects of the Bar's attitude towards the Law Reform Commission investigation.

Ethics

After receiving a report of counsel wearing jeans underneath his robes in the County Court, the Bar Council ruled as a matter of professional conduct that informal or sporting attire is not proper dress for counsel appearing in Court or before a Judge in Chambers.

Prices and Income Freeze

Following a statement made by the Law Council of Australia relating to the proposed prices and income freeze, the Bar Council authorised the Chairman to issue a statement that the Bar Council does not propose to recommend to members of the Bar any increase in fees or make any application for an increase in fees during the period of three months comprising the period of the suggested "freeze".

Retirement of Mr. and Mrs. Brown

Mr. Brown will retire as Caretaker in Owen Dixon Chambers in July, and he and Mrs. Brown will then be leaving the service of the Bar. They have given long service to the Bar over many years, stretching back to the Bar's occupancy of Selbourne Chambers. The Bar Council has recommended to the Directors of Barristers Chambers Ltd. that on the retirement of Mr. and Mrs. Brown, in addition to their statutory entitlements, they should be given a special retiring allowance of $20,000.

Legal Services Review

As a result of discussions with the Law Institute, and the matters being canvassed by the Law Reform Commission in New South Wales, the Bar Council has given consideration to aspects of the organization of the Bar, and of standards of practice at the Bar. On 5th May, 1977, the Bar Council adopted the following resolution —

"1. That there be a Standing Committee chaired by a senior counsel member of the Bar Council to be called "The Bar Standards of Practice Committee".

2. That the Bar Standards of Practice Committee shall have the function and purpose of maintaining proper standards of practice by members of the Bar.

3. That in carrying out the said function and purpose the Bar Standards of Practice Committee may —
   (a) seek information from such sources as it may think fit including members of the judiciary, the magistracy and solicitors, as to standards of practice of members of the Bar;
   (b) consult with solicitors nominated by the Law Institute and meet jointly with such solicitors for the purpose of giving, receiving and exchanging any information or taking any course in aid of the said function and purpose;
   (c) make recommendations to the Bar Council as to any course it should take in the best interests of the Bar for maintenance of proper standards of practice;
   (d) investigate any complaint or report relating to standards of practice of the Bar and make such recommendations as it thinks fit, in relation thereto, to the Bar Council of its Ethics Committee;
   (e) consult with Leo Cussen Institute and any place of tertiary training relating to the content of any lecture or training programme involving standards of practice.

4. That the Bar Standards of Practice Committee comprise for the time being S. P. Charles Q.C. (Chairman), R. C. Tadgell Q.C., W. B. Treyvaud, R. Redlich, R. Richter and a nominee of the Young Barristers' Committee.

5. That the Bar Standards of Practice Committee be requested to consider and recommend to the Bar Council or to the Bar rules and/or guidelines relating to the following —

(i) proper presentation of cases, including applications in chambers, appeals and trials;
(ii) ensuring briefs are marked on delivery but if the same is impractical then a suitable alternative practice designed to achieve similar safeguards against touting or introduction of contingency fees;
(iii) politeness to clients including the need to explain to them and witnesses the procedures of court hearings and the nature of the exercise being undertaken;
(iv) explanation to clients of the advantages of settlement when appropriate and the obligation to communicate offers when made;
(v) the need of counsel to keep clerks and secretaries informed as to their whereabouts;
(vi) as to proper notice to solicitors of unavailability and as to when a brief should be returned on account of same;
(vii) completion of paper work within reasonable time and/or the need to return the same if it cannot be so completed;
(viii) dress and demeanour in court;
(ix) any other matters relating to standards of practice as it thinks fit.

6. (a) That the Ethics Committee be requested to consider and report to the Bar Council as to whether the Bar's Disciplinary Rules should be amended in any and what way so as to make effective any rules as to standards of practice which might be adopted by the Bar Council with particular reference to the matters under consideration by the Bar Standards of Practice Committee.
(b) Without limiting the generality of sub-paragraph (a) hereof the Ethics Committee be asked to consider and report to the Bar Council on the desirability of amending the Bar's Disciplinary Rules so as to empower it, on a reference from the Bar Standards of Practice Committee, to direct a member of the Bar —
(i) to attend any specified lecture or series of lectures relevant to standards of practice;
(ii) to do or cause to be done any act or thing to remedy what the Committee considers to have been a departure from a reasonable standard of practice;
(iii) to attend any specified course of instruction relevant to the standards of practice of a barrister;
and to make it an offence against the Bar's Disciplinary Rules to fail or neglect to comply with any such direction."

Bar Dinner

The Bar Dinner was held on Saturday, 14th May, 1977. Approximately 220 persons, including honoured guests, were in attendance. O'Sullivan Q.C. as Junior Silk proposed the toast to the honoured guests. The Dinner was successful, but there were some complaints about the acoustics, and the Bar Council is to give consideration to a different venue in the future.

Criminal Investigation Bill 1977

This Bill recently introduced into the Federal Parliament introduces wide-ranging changes concerning Police procedures, bail, and other matters affecting criminal investigations. The matters dealt with in many instances are also the subject of recommendations in the Beach Report, which is being considered by the Norris Committee. The Bar Council has not had time to present a full report on the Bill, but has written to the Federal Attorney-General asking that the Bill be delayed, in order to ensure co-ordination with State legislation.

YOUNG BARRISTERS' COMMITTEE

A meeting of this Committee was to be held on Monday 6th June 1977. Of the two Bar Council appointees and nine elected members there attended Waldron Q.C. Munz and Sparks.

No business was able to be transacted by reason of a lack of quorum.

Members who were not in attendance are required to write twenty times:

"I must attend meetings of the Young Barristers Committee", and to submit their work to the Editors. Entries will be assessed on neatness of handwriting and correct punctuation. The winner will be announced next issue.

TRIBUTE: NEWTON J.

In his public tribute, the Chief Justice described the late Mr. Justice Newton as one of the State's greatest Judges. This is an opinion shared by the Bar. However, it is not with His Honour's professional attainments that this note is primarily concerned.

In an ere of standardized personalities, Richard Newton stood out as a character both rich and rare. His somewhat forbidding appearance and manner were wholly deceptive. Although his shyness usually prevented him from taking the first step, His Honour delighted in people, and was particularly amused by their foibles and idiosyncracies. He often said that it was the parade of witnesses through the Court which provided judicial life with its flavour, thus rendering it bearable.

Apart from the contentment that His Honour derived from his closely knit family, his only other relief from the rigours of professional duty lay in the golf course.

Possessing little natural ability in the sport, His Honour, with characteristic application, made himself into a very good golfer. Until the fading of his eyesight began to play havoc with his putting, he played from a single figure handicap. He was always very hard to beat. If defeat did come his way, he did not enjoy the experience.

To play golf with His Honour was a singular experience. If he narrowly missed a putt, he would bend his knees, arch his back, throw back his head and emit a blood curdling roar which sometimes caused birds to rise from the trees. This remarkable sound, although utterly spontaneous, was a compound of rage, frustration and despair. It vividly illustrated His Honour's view of the gross injustice of the event. It was usually followed, after a short pause, by a burst of laughter as the comical aspect of the matter was borne in upon him.

In Court, His Honour hardly even uttered a word of depreciation of any member of the legal profession. On the golf course, no such compassion was practised. Some of his mordant observations concerning judges, barristers and solicitors were worth going a long way to hear. But on these occasions, His Honour was merely letting off steam. No man was ever more kindly and considerate, particularly to those placed in a subordinate or humble position in the profession.

Around the haunts of lawyers, His Honour's voice will be missed, both in the physical and metaphorical sense. This voice, although loud and harsh, was extremely attractive to the ear. His outbursts of laughter came with a startling suddeness which tended to provoke laughter in others.

Richard Newton was a product to which the Bar can well be proud. He was a man to have known and his friends will treasure his memory.

I.G.

FAREWELL: NELSON J.

On 10th June, 1977 the Victorian Bar gathered to farewell Nelson J.

His Honour was in 1954 appointed a Judge of the County Court and for twenty three years he graced that bench and then after 1969, the bench of the Supreme Court.

His judicial life has been characterised by the exhibition of great gifts for precise expression, incisive perception of issues an extensive knowledge of the law and a courteous court room demeanour. Particularly in the area of criminal law where His Honour's expertise dates back at least as far as his days as Crown Prosecutor, the State of Victoria owes him a great debt of gratitude.

The Bar wishes His Honour a long and satisfying retirement.

WELCOME: MARKS J.

On the 14th June 1977 Kenneth H. Marks, 52, ceased to be Chairman of the Bar Council. On that date also he was sworn in as a Judge of the Supreme Court of Victoria.

Admitted to practice on 1st September 1950 His Honour wasted no time in signing the role of counsel. He brought to the bar a wide experience of the world which had been forged at Melbourne Grammar School and tempered in the RAAF during the War.

His Honour's brother the late Charles Marks was a well known member of the Bar for many years. He has recently become the brother-in-law of Judge Lazarus.

He practised in many jurisdictions during his seventeen years as a junior with a particularly high reputation in the common law fields. Notwithstanding this, he had one reader only — Willshire.

He spent the last decade as a Silk having been granted Letters Patent on the 28th November 1967 — the same day as the late Griffith J. This period has seen his forensic capacities ranging from murder trials to Enquiries. Indeed, his appointment interrupted for him, a lengthy and at times spirited Enquiry into the recent Bushfires in Victoria, in which His Honour held aloft the flaming banner of the S.E.C.

The Bar, and particularly its younger members, will remember his active role as a member and latterly as Chairman of the Bar Council. His skills as a conciliator with an eye on the long term future of the Bar together with a great administrative efficiency have been greatly appreciated in times of difficulty — times when the Bar has been beset with pressures from within and without. His Honour has been ready to recognise the need for change where that has been seen necessary, and also the necessity above all, to maintain standards. It remains to be seen whether his efforts in the fields of legal education and ethics will bear fruit as did his work in the area of motor accident compensation and in the area of compensation law generally.

The Bar welcomes this appointment and looks forward to the application in this new field of His Honour's qualities of compassion and humanism.

WELCOME: MASTER BARKER

Peter Anthony Barker, 50, was educated at De La Salle College in Malvern and at the end of his schooling joined the Navy. He saw service during World War 2 on a mine sweeper in Australian waters and at the end of the war commenced the Articled Clerk's Course at Melbourne University.

He was admitted to practice in 1950 and shortly afterwards in 1951 he set up his own practice. He founded the firm which now carries on

practice as Barker, Harty & Co. He remained the senior partner of that firm until July 1975. He built up a substantial reputation and practice as a commercial lawyer and in recent years he was involved in a number of the major tax cases which were litigated in the High Court.

In July 1975 he retired from his partnership and came to the Bar and read with Goldberg. He still regards it as a matter of significance that his first major commercial brief was against his Master. The speed of his accession to judicial office, while not unique in recent times, has been spectacular in that after only a few short months he has moved from pup to Master.

He was married in 1952 and has 5 children. He is frequently found at Lorne when not engaged in his professional duties. The Bar is confident that he will bring to his new position considerable practical experience acquired over thirty two years of practice in all branches of the profession.

WELCOME: JUDGE READ

John Leonard Read, 45, has recently been appointed a judge of the County Court. Careful readers of this journal may recall that the late Judge Read was his father; and the late Griffith, J. was his cousin.

After secondary schooling at Melbourne Grammar he attended Melbourne University where he was admitted to the degree of LL.B. He was admitted to practice on February 2, 1954 — the same day as Keely J., Brooking J., O'Bryan J., Waldron Q.C., Rendit Q.C., Abraham & Tinney.

He came to the Bar at the end of 1954 and read with Lush. Then followed a period as associate to Sir Owen Dixon.

His Honour is a keen sailor. In his younger and more physically adventurous days he was on occasions fished out of the Bay by his late father. Nowadays his style and craft reflect the greater caution becoming a man of marriage, children, and increased responsibilities.

John Read is remembered by most at the Bar as having a wide practice in the common law jurisdictions, particularly running down. For many years he was in great demand on the Wangaratta circuit. His work on the bench will be assisted by his early experience in criminal work, and by his appearances in the Court of Criminal Appeal as the junior to the then Solicitor General H.A. Winneke Q.C.

His Honour's quiet manner and cheerful disposition made him popular among his colleagues and much sought after as a master. Five pupils sought and obtained ready access to his considerable knowledge of the law — R.M. Johnstone, Sharp, Gorrie, Faris, Hillman and Wheelock.

The County Court and those who practise there will greatly benefit from these talents. The Bar welcomes his appointment and wishes His Honour much satisfaction in his new task.

FOR THE NOTER UP

Supreme Court of Victoria

Judges

Delete:

Newton J. (deceased 2.6.77)
Nelson J. (Retired 10.6.77)

Add:

Marks J.	52	10. 9.24	1977	1996

Master

Add:

Barker	50	15.11.27	1977	—

County Court

Add:

Judge Read	45	11. 7.31	1977	2003

DISCIPLINE WITHIN THE MEDICAL AND LEGAL PROFESSION

The following is an edited transcript of an address by Charles Q.C. to the Medico Legal Society of Victoria on 26th March 1977.

When I was asked to deliver a paper on "Discipline within the Medical and Legal Professions", it was not made clear to me whether my subject included appropriate rules of conduct in the professions and their enforcement, the ascetic devotion to duty and rigorous working hours of professional men, or the incidence of flagellation among practitioners. There are other possibilities, of course. Bacon is recorded as having said that "Certainly wife and children are a kind of discipline of humanity". In any event my only riding instructions from Douglas Graham were: "It need only be an informative paper. You don't have to be funny". The somewhat unpromising title does at least leave a degree of latitude and I propose to use it.

Within the legal profession, the disciplinary tribunals to which one is subject differ, depending upon whether one practises as barrister or solicitor — although since all are admitted to practise in both capacities by the Supreme Court, control ultimately resides there. For solicitors, the disciplinary tribunals are prescribed by the Legal Profession Practice Act and consist of the Statutory Committee which has 6 members who are appointed by the Chief Justice the Council of the Law Institute or the Supreme Court. Any person who is aggrieved by the alleged misconduct of any "practitioner" may make a charge thereof in writing to the Statutory Committee. The Law Institute Council may itself refer any question of misconduct to the Statutory Committee. If after inquiry the Committee is of the opinion that the practitioner has been guilty of misconduct, it may transmit a report to the Supreme Court, which may make such order as it thinks fit, including an order striking off. The alternative process, much more frequently employed at the present time, is that the Secretary of the Law Institute is authorized to cancel, suspend or refuse to issue a practising certificate. The Secretary may refer any such case to the Council of the Law Institute (consisting of the Attorney-General, 18 elected members, and the Presidents of sundry regional Law Associations). The practitioner affected may require the Council to hold a full inquiry into the matter. The Council has a like power to refuse, cancel or suspend the certificate, but may, as an alternative, fine the person concerned up to $1000. Any person thus penalized may appeal to the Supreme Court. For certain offences the Council may fine a solicitor not more then $200.

Members of the Bar on the other hand are subject to the jurisdiction of the Ethics Committee (consisting of 7 members appointed by the Bar Council) which is entitled to deal summarily with various disciplinary offences and impose a fine of not more than $500. The Bar Council deals with more serious disciplinary offences and is entitled to impose a fine of up to $1000, to reprimand or suspend the barrister concerned or to direct that the person's name be struck off the roll of barristers. Until recently the only right of appeal was to a general meeting of the Bar (somewhere over 650 members). There is, so far as I am aware, only one recorded instance of such an appeal. As an appellate tribunal, the general body of the Bar was corpulent, hypertensive, and subject to recurring bouts of epilepsy and flatulence. It was also incontinent, since there were persistent leaks to the Press. Fortunately it is now moribund because provision has been made for an alternative appellate tribunal of 7 barristers. There is no statutory basis for the Bar's procedure. The Victorian Bar consists of a voluntary association of barristers-and-solicitors who undertake to practise only as barristers. There is actually no definition

of "practitioner" in the Legal Profession Practice Act and there is no obvious reason why the Statutory Committee should not have jurisdiction to deal with a barrister if a complaint of misconduct is made by a member of the public or is referred to it by the Law Institute Council. So far as I am aware, the Committee has never yet dealt with a charge against a barrister, but I have no doubt that many solicitors would relish the chance to fix a basilisk stare on errant members of the Bar in such circumstances.

I now turn to complaints against solicitors and how they are processed. It may be helpful to bear in mind at the outset the qualities a good solicitor should have. These are set out in a work published in 1669 called "The Compleat Solicitor" as follows —

> *"First, he ought to have a good natural wit.*
> *Secondly, that wit must be refined by education.*
> *Thirdly, that education must be perfected by learning and experience.*
> *Fourthly, and, lest learning should too elate him, it must be balanced by discretion.*
> *Fifthly, to manifest all these former parts, it is requisite that he have a voluble and free tongue to utter and declare his conceipts."*

The author adds various moral requirements such as patience and prudence, a calm content, and "a certain stayed and settled manner of living".[1]

The most notorious complaints against solicitors relate to allegations of misappropriation of moneys belonging to the client. One of the significant differences between barristers and solicitors is that the barrister never handles his client's money, whereas solicitors usually have large trust accounts in which clients' funds are retained for various purposes. I for one have always been profoundly thankful that barristers do not have this responsibility. In any case, since such pastures are forbidden to the barrister, I will not trespass further upon them in this paper. The Law Institute receives some 70 to 120 complaints a month, averaging slightly over 1000 per year. This does not include the additional inquiries caused by the vagaries of the Telecom system. The Secretary of the Law Institute recently picked up his telephone to be asked by an aggressive questioner whether he had finished spaying her Basset Hound. He replied that he hadn't started and the caller became quite threatening. Complaints are required to be put in writing, which is not always helpful. The longest known complaint was 404 pages. In the main, complaints relate to matters such as delay, lack of communication, dissatisfaction with the handling of a matter, excessive bills of costs, and lack of courtesy. Some solicitors find the direct approach an aid to communication with their public. One began a letter to his client "You rude illiterate Teutonic peasant". The same man commenced a letter of demand to the proposed defendant after a motor car accident "You rat, you worm, you disgrace". The abuse is by no means one-sided. The Secretary of the Institute recently replied to a letter of complaint with a detailed explanation. The response came in the following terms —

> *"Dear Mr. Lewis, you bastard,*
>
> *Thank you for your weaselling double-talking buck-passing two-faced chiselling letter. You, sir, are a pusillanimous prick. How dare you write such rubbish to me?"*

After 6 more pages of the same, the writer concluded on a Delphic note, "So you bastard, drop dead."

I note that the Law Society in New South Wales receives some 6600 complaints a year. The contrast must be a compliment to the conservatism of Victorian solicitors.

1. Confessions of an Uncommon Attorney. Reginald L. Hine 110

Partly because the Bar does not handle clients' moneys and partly because barristers are to a considerable extent insulated from the public, there are fewer complaints relating to the conduct of barristers. Last year there were in all some 14 complaints by members of the public to the Bar Council about barristers' conduct. There were 5 complaints by solicitors and 4 by barristers against their fellows. In the main the matters alleged related to conduct of cases in court, breach of confidence, negligence or delay.

Those of the medical profession who have smarted at the insistence by certain judges upon timely attendance at court will no doubt be glad to know that lawyers also are subject to discipline if they should arrive late. One well-known occasion occurred when Martin Ravech (now Judge Ravech) and Sam Gray (now Judge Gray) were opposed in a trial before Sir Oliver Gillard. Judge Ravech had arranged to give Judge Gray a lift to the country town where the trial was to take place. When Judge Gray was being picked up, he was slow putting his bag into the car, and in his exasperation, Judge Ravech slammed the door, removing the top of Judge Gray's right thumb. Various other distressing occurrences followed including a minor accident and a near escape from a rabid Alsation after which their Honours limped into Court 45 minutes late. At 10.30 Sir Oliver Gillard had a discussion with the instructing solicitors, the general nature of which related to penalties for contempt of court and certain of the more extreme forms of Eastern torture, after which Sir Oliver had required the solicitors to conduct the case themselves.

Misconduct by barristers is particularly likely to be related to their conduct in Court and their preparation for it. When a barrister trangresses in Court he may be disciplined both by his domestic tribunals and by the Court itself for contempt. In past times, any barrister who so far forgot himself as to hurl a missile at a judge might expect to be severely dealt with. Most lawyers are familiar with the occasion in 1631 when at Salisbury a disgruntled litigant threw a brickbat at a judge, because of the quaint old law French in which the decision was couched. [2] The half-brick narrowly missed. What is not quite so well known is that the litigant's throwing arm was promptly amputated and nailed to a gibbet in the Court. The Judge must have received a considerable fright because to underline his sense of outrage the prisoner was himself immediately thereafter hanged from the same gibbet. Only Vlad the Impaler would not have been impressed. By the 19th century judges had either become more civilised or they had reluctantly accepted that they were appropriate targets for airborne projectiles. When a second jaculatory litigant removed a dead cat from a paper parcel and hurled it inaccurately at a County Court Judge, he merely remarked "I shall commit you for contempt if you do that again". The case is chronicled in Megarry's Miscellany-at-Law.[3] One of the delights of this book is the Index. The incident is there recorded in diverse ways such as "Contempt of court — dead cat — one throw allowed" and "County Court Judge — contempt to throw dead cat at twice".

Prolix lawyers have always been at risk. In the case of Mylward v. Weldon[4] in 1596 the plaintiff employed his son Richard to draw the Replication. This might have been completed in 16 pages if the hapless pleader had confined himself to matters barely relevant. Instead his effusion occupied some 120 pages. The infuriated judge committed Richard to the Fleet upon the express condition that a hole was to be cut in the Replication, and Richard's head passed through the hole, and

2. (1631) Dy. 188b (1688 ed.)
3. Miscellany-at-Law R.E. Megarry 295.
4. (1596) Spence's Equitable Jurisdiction, Vol. 1 (1846) 376.

he was then to be paraded bareheaded and barefaced around Westminster Hall, whilst the Courts were sitting, and shown at the Bar of each of the three Courts within the Hall with his head thus framed.

In American courts, matters are conducted in somewhat more freewheeling fashion but it has nevertheless been said by their Supreme Court that "Lawyers owe a large, but not an obsequious, duty of respect to the court in its presence".[5] In Offutt v. United States[6] the Supreme Court set aside a judge's summary committal of a trial lawyer for 10 days for contempt of court.

One of the interchanges cited was as follows —

"The Court: Motion denied. Proceed.

Mr. Offutt: I object to your Honour yelling at me and raising your voice like that.

The Court: Just a moment. If you say another word I will have the Marshal stick a gag in your mouth."

The judge had really warmed to his task, by the time he came to discharge the jury, with these comments — "I also realise that you had a difficult and disagreeable task in this case. You have been compelled to sit through a disgraceful and disreputable performance on the part of a lawyer who is unworthy of being a member of the profession; and I, as a member of the legal profession, blush that we should have such a specimen in our midst".

A lawyer's finest hour often occurs when he is acting fearlessly in defence of his client. That occasion frequently coincides with his most perilous hour. Most of those present will know E.D. (Woods) Lloyd Q.C. The case of Lloyd v. Biggin[7], reported in 1962, demonstrates some of the difficulties which may occur when a determined advocate is confronted by an equally determined magistrate. Lloyd had been asking the magistrate to rule whether he would determine the admissibility of some evidence of a witness then under cross-examination. The magistrate intimated that that was for somebody else to decide. The report continues as follows —

"Mr. Lloyd said: 'But your Worship must determine', and that statement was interrupted by the magistrate saying 'Carry on with your case'. Mr. Lloyd said: 'Your Worship with great respect, I wish your worship to determine whether your Worship proposes to rule . . .'. The magistrate said: 'Carry on with your cross-examination'. Mr. Lloyd said: 'I cannot carry on with any cross-examination unless your Worship informs me whether this . . .'. The magistrate said: 'I have had enough of your impertinence. I have put up with it for two days. You're . . .'. Mr. Lloyd said: 'Would your Worship just hear me?' The magistrate said: 'You're fined £5 for contempt of court. If you do anything more I will commit you'. Mr. Lloyd said: 'Your Worship if you would just hear . . .'. The magistrate said: 'You're committed. Constable remove that man and place him in the watch-house for three hours'. "

The constable concerned had recently been cross-examined by Lloyd to some effect and removed him with pleased alacrity to the police station next door, where a second constable — better disposed to Lloyd — gave him a cup of tea. The first policeman then asserted that Lloyd was supposed to be in the cells. The place was Kaniva, the time was mid-summer and the temperature was over 100°F. The cells were a small contraption in the backyard, in full sun. The accommodation proposed was roughly comparable in standard to that offered by the Tiger Cages of Con Son Island. Lloyd flatly refused to

5. Fisher v. Pace 336 U.S. 155 at 168 (1948)
6. 348 U.S. 11 at 12 (1954)
7. [1962] V.R. 593.

enter the cells. The affronted constable returned to the Court and complained to the magistrate that Lloyd wouldn't go into the cells. It required the intervention of an inspector from Horsham to calm matters down, and later Mr. Justice Smith set aside both the fine and the committal as having been wrongly imposed.

The atmosphere of an Irish court has a somewhat different flavour. At the turn of the century an advocate called Sir Francis Brady, who had a passion for music, was conducting a prosecution before Lord Justice Fitzgibbon. The case is instructive, among other things, for what may occur when a barrier commits the cardinal sin of not reading his brief properly. As recalled in Maurice Healy's splendid book, The Old Munster Circuit, the story goes as follows —

> *"Sir Francis, debonair and heedless of all around him, opened his brief, probably for the first time, as the witness was sworn, and the following somewhat unusual scene occurred. 'Your name is Marmaduke Fitzroy?' 'It is not'. 'And you live at Rocksavage, on the Douglas Road?' 'I do not.' 'And you are a retired Army officer?' 'I am not'. Fitzgibbon had by this time recovered from his laughter at the first answer, which was hardly a surprise from the somewhat rough lips that had spoken it. 'Sir Francis, Sir Francis!' he cried, 'the witness doesn't agree with a word you are putting to him!' Sir Francis lowered his brief, and for the first time caught sight of the coal-heaver who had been answering his questions, if questions they might be called. He looked at the ceiling, whistled a few bars of 'Let Erin Remember', looked at the witness again and said blandly: 'Then who the deuce are you? And what are you here to swear?' "*[8]

8. The Old Munster Circuit. Maurice Healy 56-7.

The Irish had their own methods of disciplining unruly judges. The Lord Chancellor in Ireland was at one time Sir Ignatius O'Brien. His Court of Appeal was a disaster and counsel were usually unable to make the simplest statement without interruption. O'Brien insisted upon informing counsel of the way his mind was operating. According to Maurice Healy,[9] Serjeant Sullivan once interrupted such a soliloquy by sweetly suggesting that the operation of what his Lordship was pleased to call his mind, would become relevant if his Lordship would first listen to the facts of the case. Quite a lot of progress was then made during the remainder of the day. It was another Irish counsel, Curran, who offended Mr. Justice Robinson, to the point where that judge cried out, "If you say another word, sir, I'll commit you". Curran responded 'Then, my Lord, it will be the best thing you'll have committed this year'.[10]

The Irish traditions have not entirely disappeared from the Melbourne Bar. Tom Doyle who died in 1961 was on one occasion cross-examining a New Australian. He had driven him into a corner and, moving in for the kill, asked: "If that is so, then why did you say this to the plaintiff?" The witness cowered back into the box and said: "I no answer da quest". Doyle leaned forward and said: "If you no answer da quest, da judge, he make for you plenty of troub!" He then turned to the judge and said: "I must apologize to Your Honour for parading my linguistic abilities in this way". The Judge replied: That is quite all right, Mr. Doyle, you said exactly what I was about to say myself".[11]

Sex has never been a problem for lawyers. This is not necessarily because all lawyers are derelict hulks. Nor, by contrast, are all medical men entitled to parade the red-blooded image

9. Op. Cit. 129
10. Curiosities of Law and Lawyers. Croake James. 159-60.
11. A Multitude of Counsellors. Sir Arthur Dean. 233

of sexual success. The lawyer, of course, has much less opportunity for the laying on of hands. In consequence the Law Institute takes the view that a solicitor may be over-sexed but not dishonest, while the reverse applies to doctors. One woman actually wrote to the Law Institute complaining that her solicitor persistently looked at her with lustful eyes. The Secretary of the Law Institute has also on occasion undertaken the function of sexual counselling. A lawyer recently rang the Secretary to inquire whether it was permissible to have sexual intercourse with his client. The man was plainly in a state of barely contained ardour and his client must have been waiting on his couch for the answer. The Secretary informed him that it all depended on the professional relationship and was pointing out that he was not entitled to take advantage of his position, particularly in matrimonial cases, when there came an agitated interjection: "But I'm a conveyancer!"

There is, so far as I am aware, only one Australian case bearing upon the sexuality of legal practitioners. In Bar Association of Queensland v. Lamb,[12] the applicant solicitor had had extramarital intercourse with his client in a matrimonial cause, after decree absolute but before questions of custody and maintenance had been determined. The solicitor sought admission as a barrister, against the opposition of the Bar Association. The report does not make clear whether the applicant desired to change the nature of his practice, because, as a solicitor, he had found the demands of his clients to be excessive or because, as a barrister, he hoped to increase his scoring rate. In any event, the High Court merely observed that his conduct though "improper" and "unprofessional", fell short of amounting to unprofessional conduct which would render him unfit to remain a solicitor or become a barrister.

We live in difficult times. Our professional numbers have increased enormously. In 1966 the number of barristers on the Practising List barely exceeded 300. In the year ending 31st August 1976, 103 persons signed the Bar Roll. The Practising List had then grown to 654. The consequences for the Bar have been serious. Standards have clearly declined. Ethical rules which used to be unquestioned and regarded as fundamental, have been flouted by people who blandly asserted that they did not know that what they were doing was wrong. In 1966 it was possible for most of the Bar to be housed in one building. The Bar is now scattered over more than four. This has itself resulted in a lessening of the collegiate atmosphere which once existed and may account in part for the growth in ignorance, incompetence and downright dishonesty among barristers. In the same period the number of solicitors in practice in Victoria has nearly doubled to approximately 4000. The amount of money held in trust accounts has vastly increased and, inevitably, temptation and opportunity have combined to produce numerous cases of misappropriation. It is probably not coincidence the highly critical — indeed hostile — attention from the Press and the lay public has focused on the legal profession in recent years, demanding change. One of the areas where change is most sought after, is the composition and conduct of the tribunals which enforce discipline among lawyers.

The Law Institute and the Bar Council are both very well aware that if they do not enforce acceptance of rigorous standards and the highest ethical practices by their members, the maintenance of discipline will forcibly be taken from them and imposed from outside. Both bodies are reacting to demands for change, the more impressive response coming from the Law Institute which has recommended to its members and the Government the creation of a new Solicitors' Disciplinary Tribunal. In stark contrast to the past, this new Tribunal would include a lay member and its hearings would be open to the public unless otherwise ordered. Decisions would be published in the Law In-

12. [1972] A.L.R. 285.

stitute Journal and given to the media. The Law Institute has also recommended that the Ombudsman be given jurisdiction to investigate complaints by the public of any alleged failure to act on the part of the Institute.

The problem remains that the public, the Press and to an extent, our legislators basically dislike and distrust the law and lawyers. As Alan E. Kurland has pointed out,[13] the inferiority complex of lawyers is constantly being fed by survey results that rank them in public esteem at a level with morticians and just below butchers and above hairdressers. In this respect our medical brethren are in a significantly different position. Notwithstanding the inroads of Medibank, the doctor remains, I think, a valued friend to his client and an object of respect in the community at large. The public opinion of lawyers is aptly summed up in the following verse —

"The law the lawyers know about is
property and land;
But why the leaves are on the trees,
And why the waves disturb the seas,
Why honey is the food of bees,
Why horses have such tender knees,
Why winters come when rivers freeze,
Why Faith is more than what one sees,
And Hope survives the worst disease,
And Charity is more than these,
They do not understand."[14]

In this day and age it may be as well for both solicitors and barristers to bear in mind the suggestion Shakespeare placed (as long ago as 1591) in the mouth of Dick the Butcher talking to Jack Cade the Rebel —

"The first thing we do, let's kill all the lawyers".[15]

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13. Journal of the American Bar Association. January 1976.
14. The Devil's Devices. H.D.C. Pepler 38.
15. Henry VI, Part II, Act IV, scene 2.

AN INFORMAL LOOK AT SPORTING ATTIRE

"A thoroughly mistaken stand", declaimed Bigwig perusing the Ethics Committee Statement on Sartorial Sin. "First they should have stamped out Transvestism".

His Reader looked shocked.

"Fifty percent of counsel hate the law. They only continue to practise because they enjoy dressing up in the wig and the black drag". He fixed his eyes searchingly on the Reader.

"I've only got a Magistrates Court Practice" stammered the latter nervously.

"Good! You kept out of Robing Rooms. Some of the offers made in them are scandalous".

Reader nodded.

"And they should stamp out all this court bobbing and curtseying — make men of these people I say! No application can be any the worse for having been made in a pair of sturdy blue yakkas".

Reader nodded.

"Or if you really want to flatter the Bench what better way than to wear Harris Tweed or Lush Green".

"Or Murray Grey or Dunn Brown" interposed Reader timidly.

"Or Just Jeans!" returned Bigwig.

"Or go Starke naked".

"Don't get carried away boy" growled Bigwig, "or you'll end up wearing sackcloth and Asches."

J.C.

READERS WORKSHOP

The Bar Council has recently been concerned with reports which suggest that there is some basis for the perennial view among senior members, that the standards of competence among their more junior brethren are perhaps declining. It is felt in some quarters that the reading system is no longer adequately fulfilling its traditional function of educating young counsel.

Whether this suspected decline is the result of an inadequate preparation of applicants to sign the roll of counsel in the rather specialised areas of activity peculiar to barristers, is difficult to know. Some have observed that the recent change in the seniority distribution of counsel, together with increasing specialisation among the middle bar, means that masters are less able to spend time in instruction, or to offer the breadth of experience which have traditionally been the great advantages of the pupillage system.

Other observers have become increasingly aware that barristers engage in part only of the whole area of practice which is the everyday concern of a solicitor. The public is, therefore, entitled to expect from even the most junior at the Bar, a considerable competence in that specialty – the drawing of documents for litigation purposes and the conduct of litigation.

The Bar Council has adopted the submission of the Reading Subcommittee which included a proposal that a course be established. The following are the outline features –

(i) The content of the course would be determined by the Bar in consultation with persons such as David Ross who are experienced in teaching.

(ii) The course would be a two weeks course held twice a year preferably at the end of one month when there were few court days and at the beginning of the following month.

(iii) The teachers would be barristers who would be remunerated at the usual Leo Cussen rates.

(iv) The course would be paid for by a fee of, say $300 paid by students and by funds made available to the Leo Cussen Institute by the Victoria Law Foundation.

(v) The administration of the course and the engrossment and dissemination of written material would be attended to by the Leo Cussen Institute.

(vi) The course would seek to give a training with respect to matters both of practice and of ethics and would probably concentrate on Magistrates Court and County Court problems. It would include training in procedure and evidence as well as practice.

(vii) It is not presently necessary that a satisfactory completion of the course be a qualification for signing of the Bar Roll. It is proposed, however, that attendance be compulsory unless dispensed with; and that failure to attend or failure to attain a satisfactory standard be a breach of counsel rules.

It directed the Reading Subcommittee with the assistance of co-opted members to consider whether and how a course of practical instruction for readers might be established.

This augmented subcommittee comprises Charles Q.C., Cullity Q.C., Ormiston Q.C., Meagher, Loewenstein, W.R. White, Hobson, D. Byrne, Henshall and D. Ross.

The subcommittee is presently considering the establishment with the assistance of the Leo Cussen Institute, of a workshop in Courtcraft, Ethics and Bar Practices. Courtcraft is thought

to include the preparing of cases for trial and the conduct of the trial. Ethics and Bar practices include the many rules traditions and practices which characterise life at the Bar. These vary from serious moral precepts whose breach may attract disciplinary action to those courtesies and customs which, though often unwritten, are expected to be known by all.

The course will be in addition to the existing course of lectures and the present period of pupillage including the two month briefless period.

The members of the subcommittee are conscious of the importance of this proposed step. It would be a great advantage if interested members would assist by indicating their views on any aspect of this matter.

MOUTHPIECE

The Chairman is dead. Long live the Chairman. Out with the old and in with the new. I pondered the personnel changes in the heady upper echelons. It would be strange with Marks over the road, he of the conciliatory nature and stylish pen. He'll have to move out all his personal effects from the office of the Chairperson to make room for young F.X. Costigan.

Then it struck me. Now is the time for a raid. I sneaked into the Chairperson's Chamber after 6 o'clock, confident that in the event of being discovered, I could outbluff Mr. Brown's successor, whoever he was. Mr. Brown will probably be on his way to the Cote d'Azur with that 20 grand we gave him. Briefing the new caretaker about me would be the last of his worries.

I gained the filing cabinet. Just riffle through the papers, I promised myself. I went to "P" —Poems. I read the last entry. It was like a limerick.

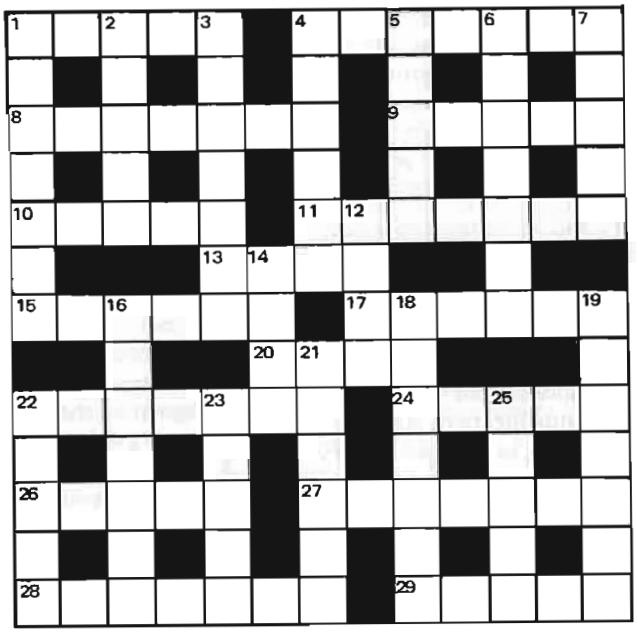
> "They say that they ain't got a lot,
> But their carping at rent is all rot.
> Ten a foot should be right
> Plus carpets plus light
> Plus three grand per man for the pot."

I winced. Not his usual style, I thought. My fingers raced to "R". Racecourses, Radford, Radicals, Raiskums . . . Randwick, Rattray, Read . . . At last. Rent. The very file. A report from Berkeley with indecipherable hieroglyphics at random in the margin. And at the foot, it looked like a telephone number, and beside it "Rachman Enterprises".

BYRNE & ROSS D. D.

CAPTAIN'S CRYPTIC

No. 20



ACROSS:

1. Conclude not imply despite C.O.D.'s urging. (5)
4. Sounds like an inclination towards leasehold. (7)
8. It is not vile to consent. (7)
9. Erect (5)
10. To plant again a less good seed (5)
11. In the eye of every beholder (7)
13. Race for the old square measurement (4)
15. I smile at the comparison (6)
17. Boyer (6)
20. The cash register makes sweet music (4)
22. Incorrect designation of the paragraphs of s.51 of the Commonwealth Constitution (7)
24. Native family (5)
26. Formerly Defender of the Faith and Empress of India (5)
27. Bulwark in boast (7)
28. Unreasonable demands out of negligence (7)
29. To beset an old fashioned seat (5)

DOWN:

1. Topsy-Turveys (7)
2. Any ruthless feller does it in the hills (5)
3. We learn afresh (7)
4. Not a lily of the field (6)
5. Doctor's foster (5)
6. You needn't be black to be lousy (7)
7. Swiss yell (5)
12. Swiss yodel (4)
14. Man with a kilt for a cult (4)
16. East men are lowest (7)
18. He swears at the cricket (7)
19. Love story is always fiction (7)
21. Poetic metre (6)
22. It might be a huffy French mountain top
23. Close enough to bull (5)
25. Nonsensical gut food (5)

NOTANDA

Leo Cussen Institute

Applications are invited for appointment to the position of Executive Director of the Leo Cussen Institute for Legal Education.

Duties will include supervision of the planning and administration of expanding continuing legal education programmes, control of finance, secretarial functions, liaison with other bodies concerned with legal education, and preparation of discussion papers and submissions.

Legal qualifications and administrative ability are essential.

Conditions of employment will include salary in the range of $24,000 – $26,000 but negotiable, with annual review, and superannuation.

Confidential written applications containing details of experience, qualifications and relevant personal information, or any preliminary inquiries, should be addressed to:

The Chairman,
Leo Cussen Institute for Continuing Legal Education,
601 Lonsdale Street,
Melbourne. Victoria. 3000

A series of Lectures on matters of practical information to the profession will be given at the Leo Cussen Institute between 5 p.m. and approximately 7 p.m. on the following topics

14th July 1977 –
Small Claims tribunal.

28th July 1977 –
Probate Duty Act Amendment.

11th August 1977 –
Magistrates' Court Appearances.

8th September 1977 –
Law of Meetings.

29th September 1977 –
Historic Buildings Act.

The registration fee is $50. Application for Registration should reach the Institute by 7th July. Applications will be accepted in order of receipt.

Applications and enquiries should be directed to the Executive Director at the Institute.

Victorian Council of Professions

The Victorian Council of Professions is conducting a seminar under the general title "Improving our Welfare" at Clunies Ross House, 191 Royal Parade Parkville. Topics are –

1. Estate Planning – Outline some of the existing alternative ways in which personal taxation and probate duties may be minimized.
2. Economic Policy – Dealing with the philosophical role of the government in regulating the levels of inflation, employment and incomes.
3. Educational Philosophy – Dealing with the growing need for professional people to keep abreast with developments outside their speciality in a dynamic society.

Registration fee is $12. Registration forms are obtainable from O'Sullivan Q.C. Room 624, Owen Dixon Chambers.

University of Melbourne

A history of the Melbourne Law School 1857-1973 by Ruth Campbell (174pp) has been recently published. The price is $3.50 (plus 75 cents postage if required). Mail orders should be directed to Law School History, University of Melbourne Laws School, Grattan Street, Parkville 3052. Cheques payable to Faculty of Law, University of Melbourne.

Members of the Bar may be aware that, in recent years, the University of Melbourne has named Chairs in Law after former Deans of the Faculty Sir W. Harrison Moore, Sir Kenneth Bailey and Sir George Paton.

The Faculty, through the kindness of various members of the profession, has unearthed photographs of Harrison Moore with Final Year students taken in 1895, 1902, 1914 and 1925. It would be delighted to be able to copy other photographs of historical interest, particularly those of former Deans with students.

Professor Sandford Clark, the present Dean, would be pleased to hear from members of the profession who can help in this exercise.

Legal Resources Book

The much awaited second impression of the legal Resources Book published by the Fitzroy Legal Service is now available.

Members will recall that this compendium covers such arcane mysteries as the law relating to narcotics, arrest and interrogation procedures, consumer protection law plus a valuable guide to the sources of legal aid and other social agencies.

Price $10 (44pp.) loose leaf format with an updating service at $6 per annum.

Enquiries: Clerk W.

LAWYERS DEBATE COURT ADMINISTRATION

The Law Council of Australia announced on 17th June that it had invited to Australia a distinguished authority on court administration. He is Dr. Ian Scott, the Director of the Institute of Judicial Administration at the University of Birmingham in England. Dr. Scott is a law graduate of the University of Melbourne.

The President of the Law Council, Mr. David Ferguson of Sydney, said that Dr. Scott's visit would draw attention to the need of courts to receive adequate support from governments in the provision of funds and facilities. "It is vital that modern laws be administered in a modern setting", said Mr. Ferguson. "It is long recognised that justice delayed is justice denied and the cause of many delays is the inadequacy of the resources of courts".

Mr. Ferguson said that he hoped that Dr. Scott's visit would highlight the great need for adequate court facilities throughout Australia, in order that the public can receive justice in an efficient manner.

Mr. Ferguson also said that Dr. Scott's visit at the initiative of the legal profession demonstrated the interest of Australian lawyers in court administration. Many lawyers spent their lives in daily involvement in the work of courts. They were acquainted at first hand with the effect of inadequate court facilities and staffing. They were familiar with the improvements made to court facilities overseas. They shared a desire to eliminate inefficiency in court facilities and procedures in Australia.

Dr. Scott will attend the Law Council's 19th Australian Legal Convention in Sydney, following which he will visit Brisbane, Canberra, Melbourne and Tasmania. His visit is being supported by the Attorney-General's Department and he will be hosted by the Law Societies and Bar Associations in the states.

In Sydney, Dr. Scott will meet with the Commissioners of the Australian Law Reform Commission and also the Directors of the Australian Institute of Judicial Administration.

RECENT RULINGS OF THE ETHICS COMMITTEE

1. Except in very exceptional circumstances, once a brief is delivered to Counsel, he is entitled to mark a proper brief fee notwithstanding that the matter is subsequently settled either by him or between solicitors,

at a time prior to the hearing for which he was briefed.

2. Counsel was given permission to attend the offices of his instructing solicitors in order to take part in a telephone conversation with persons in the United States in circumstances where the relevant call had been prebooked and had to be taken in those offices.
3. The Committee recently refused to grant permission to Counsel who wished to visit the offices of his relative's solicitors so that he could assist that relative in perusing documents prepared by that firm.
4. Counsel was fined the sum of $100 for having spoken certain words whilst in robes in a public place in the precincts of the Court in circumstances which amounted to improper conduct in a professional respect.
5. Counsel was fined the sum of $200 for failing to attend compulsory lectures in circumstances which amounted to a failure on his part to adhere to an undertaking given by him in connection with his application to sign the Roll of Counsel.
6. Counsel was fined the sum of $100 for having infringed a rule of professional conduct in that he had failed within a reasonable time after completing his brief to return it to his instructing solicitors after being requested so to do by them.
7. Counsel may not appear in Court (whether before a Judge or a Master) on the basis that his instructing solicitor would take Counsel's place during his absence.
8. A lounge suit is not part of the robes of junior Counsel appearing in Court in Victoria; the proper coat to wear in those circumstances is a bar jacket.
9. The Ethics Committee has also been concerned in the following correspondence.

27th April, 1977

The Chairman,
Ethics Committee,
The Victorian Bar.

Dear Mr. Chairman,

It has been brought to my attention that a senior member of counsel insists on bringing into chambers one small dog, namely, Bess, a pedigree border collie which defecates on the carpet of a senior junior member of counsel and underneath the chair upon which his secretary sits.

I have the honour to inform you, that when I last visited these chambers, together with most important clients of mine, we were overwhelmed by the pungent aroma of urine and faeces (poops and wees).

It occurs to me that this conduct is not befitting a senior member of counsel and we would be most obliged if some action could be taken forthwith against said senior counsel.

An early reply would be appreciated within 24 hours because gas masks are now unobtainable in Melbourne.

Yours faithfully,

8th June, 1977

Dear

Your letter of 27th April, 1977 to the Chairman of the Ethics Committee was placed on its agenda and was considered by it in great depth at its meeting of 26th May, 1977.

For the sake of the record, it is desirable to point out that the members of the committee sacrificed their usual culinary delights enjoyed during lunchtime and instead munched sandwiches at their lunchtime meeting. It was in this context that your letter was considered and to say the least, it did not increase the members' appetite.

There was sharp and deep division amongst members as to what course of action should be taken in relation to the very serious issues raised by you in your letter. It was felt that the issues you raised typify what is happening at the Bar on so many occasions and that is, silks are getting away with absolute murder! However, since senior counsel outnumbered junior counsel at that meeting by two to one, this aspect of your complaint was not taken any further.

The committee ultimately resolved that it did not have sufficient material before it to accept your proposition that gas masks are now unobtainable in Melbourne and unless you are prepared to place further material before the committee in this respect, I regret to say that it is unable to take the matter any further.

Yours faithfully,

CHERNOV
Secretary
Ethics Committee

SPORTING NEWS

The annual Golf Match between the Bar and Bench versus the Law Institute held at the Metropolitan Golf Club on the 29th April 1977 was narrowly won by the Bar and the Bench for the second year in a row. Sweeney J. accepted the Sir Edmund Herring trophy with great pleasure and it is confidently expected that we will be the recipients and not the donors of this trophy next year.

* * *

Good to see David Martin's filly "Gold Melody" notch up another win on a Metropolitan track at Flemington recently. Ridden by Mick Mallyon and carrying the support of several members of the legal fraternity, this horse is obviously the destined for the big time in the spring.

* * *

An increasing number of members of Counsel will be attending various law conferences in the near future. Needless to say, their principal objective in leaving our shores is to further their education and some, including Hedigan and Hanlon will be presenting papers on various topics. It is believed that Spry and Allan Myers are heading for the U.S.A. and others, including Nixon, Danos and Rozenes, flying to Edinburgh for the International Conference. In the meantime, Merkel, an extensive traveller, is in India and it is hoped that we can publish details of his observations and experiences in the next issue.

* * *

Hicks is the part owner of a pacer named "Estoppel" which has been showing good form recently. He is confident that Estoppel can handle the "issue" next start.

FOUR EYES

LETTER TO THE EDITORS

Dear Sirs,

The Bar has been quite fussed lately over publicity in the National Times. It is worth recapitulating the events so far.

Beach Q.C. early in 1975 was appointed to make certain investigations into the police force. The inquiry was a lengthy one. It took some 18 months for the evidence to be heard and the report to be completed. That report has not been published. But apparently its contents were sufficiently available for a substantial part of the findings and recommendations to find their way into the Prahran Institute of Technology newspaper, the National Times, and perhaps then every major newspaper in the land. And every policeman seemed to know what it said.

From what we read in the papers, it would seem that the findings went largely against

the credit of the Police Force. It would also seem that the Force would have found most of the recommendations against what it perceives to be its interest. It would further seem that the State Government found at least some of the recommendations either inappropriate to implement or just downright politically embarrassing.

So the Government set up a further committee. It was within the Chief Secretary's department. It was to have the function of recommending to the government which of the Beach recommendations if any should be implemented, and how. The chairman of that committee is Norris Q.C. (formerly Mr. Justice Norris) and the members are:— Norris Q.C., Mr. R. Jackson, the Chief Commissioner of Police, Mr. R. Glenister, the Secretary to the Law Department, Mr. R.L. King, the Under Secretary; Counsel assisting is Mr. P. Mullally and the Secretary is a Mr. McPherson a Public Servant.

In the meantime the Bar with the Law Institute had set up a joint standing committee with the Police Association to inquire into "areas of common interest". (Bar News March 1977)

The findings of the Beach report implicated a number of members of the Police Force. Some were proceeded against in the Magistrates' Court and others by way of charges before the Police Disciplinary Board. The court hearings were analysed in the National Times of March 14-19, 1977. It was there said that of the 17 police who had appeared in committal proceedings, only two had been sent to trial. On the remaining 15 the Crown had not made out a case.

The Bar asked a sub-committee to advise it on what submissions it ought to make to the Norris Committee. It turns out that the sub-committee comprised M. Kelly, Lopez, Taylor and G. Evans.

In fact that sub-committee drafted the advice. It would seem that when it received that advice the Bar Council had some pruning done on it before accepting it. Then it sent off the amended version.

The first that most members of the Bar knew of any of these matters was when the National Times broke the story. Unfortunately, the version that was published was the unexpurgated sub-committee's advice. It was wrongly said to be the Bar Council's submission to the Norris Committee.

The then Chairman acted promptly. A letter was shot off to the National Times deprecating its journalistic standards. No attempt was made to conceal this broadside, for copies were apparently sent to the Chief Secretary, The "Australian" and other newspapers, Norris Q.C. and others.

The following week the National Times defended its stance and its standards. It published correspondence which was said to have passed.

This is an episode which has caused all members of the Bar Council acute discomfort. It would seem that the Bar Council's view of the matter is —

(a) the National Times should not have published the wrong version
(b) the National Times had no right to publish anything of this nature because it is confidential
(c) if the copy came into the hands of the National Times through a member or members of the Bar, then a breach of Bar rules is involved.

This view is not shared by all members of the Bar.

The National Times was in error in attributing to the Bar Council what was the sub-committee's advice. But if the newspaper did get hold of the views of the Bar on a matter patently of public interest, why shouldn't it be published? The Bar Council's argument may be that it would prejudice the submission. Does it mean that the Norris Committee would pay less

heed to heed to it because the community was in a position to know as much about how the Bar felt as did the Norris Committee? We can understand a certain feeling that the Bar Council may have felt upstaged, but why was our first knowledge of the contents of the Sub-Committee's advice obtained from a newspaper? Why was the existence of the Sub-Committee not made known to enable those of us who are interested in such matters to make representations and suggestions to it?

Does the Bar Council have the right of privacy it claims for itself? One effect of its actions has been to prevent members of the Bar from having access to a document which purports to set out their views.

What would have prompted a member or members of the Bar to supply the information to the press is anyone's guess. One can do no more than speculate about the motive. It is a matter of concern, though, that Marks Q.C. (as he then was) said that such an action is a breach of ethics. Any member charged for a breach of ethics in this way could argue that he did not know he was in breach. The ethics rules have not been in print for more than 10 years. In any event, does such a rule exist?

The whole issue has raised disquieting questions. How does a Chairman have the power to say what is and what is not a rule of ethics? How does he purport to make statements on our behalf without consultation.

We were informed by Marks' letter that the authorised version of the submission can now be inspected at the Office of the Executive Officer. But it was pointed out that it is a "Bar Council document" and as such it's contents cannot be communicated to anyone outside the Bar without "a serious breach of Bar Rules".

If a Chairman can, pursuant to the Rules, declare actions to be breaches of Ethics, or make public statements or agreements on our behalf without any prior consultation with either the Bar in general meeting, or the Bar Council as a whole, then perhaps it is time that the Rules were changed. Perhaps in future the Chairman should be elected by the Bar as a whole and not just by the few who happen to be members of the Bar Council.

The Rules which bind us should be printed in up-to-date form and issued to all members, so that we may know what the Rules are, and decide for ourselves whether they require any amendment.

Yours sincerely,
Stratton Langslow

MOVEMENT AT THE BAR

Members who have signed the Roll (since 10/3/77)

A. Moshinsky (Mrs.)
J.P. McNamara
M.R. Einfeld N.S.W.
J.R.V. Williams
A.R. Stockdale
R.M.C. Nankivell
W.M. Toohey
G.A. Crawford N.S.W.
M.G. McInerney
G.J. McEwen
J.I. Rowlands (Mrs.)
D.A. Stevens
I.R. Miller
E.L. Stafford
R. Greenberger
N. Good

Members who have transferred to the Non-Practising List

P.A. Barker (now a Master of the Supreme Court)
P.J. Cahill
M. Alexander

Member whose name has been removed at his own request

L. Glickfeld

Deaths

D.S. Sonenberg 31/3/77
R.D. Bristol 14/5/77
J.X. O'Driscoll Q.C. 19/6/77
C. Turnbull 18/4/77
R.H. Newton J. 2/6/77

SOLUTION TO CAPTAIN'S CRYPTIC No. 20

I shouldn't worry if I were you. It's been going on like that here for quite some time

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