Victorian Bar News

Published by the Victorian Bar Council,
Owen Dixon Chambers, 205 William Street, Melbourne, 3000. Summer Edition, 1978

CONTENTS: Page

HIGH COURT — 75 YEARS OLD

At a special sitting at Melbourne on 6th October 1978 held to mask the 75th anniversary of its first sitting in the Melbourne Banco Court, Chairman Costigan addressed the High Court of Australia in the following terms:

"If the Court Pleases

I appear today on behalf of the Australia Bar Association.

If the Australian Bar Association had been in existence in 1903 its then President would have addressed the Court on behalf of the Bars of New South Wales, Victoria and Queensland for in those states alone was there an active independent bar. With the growth and development of the country over that period and by way of recognition of the undoubted public need for a separate bar with its specialised skills and training in advocacy independent bars have now been established in South Australia, Western Australia and the Australia Capital Territory and a nucleus of a bar has been formed in Tasmania and the Northern Territory. I am therefore now in 1978 able to join with your Honour the Chief Justice and my learned friends in honouring this significant occasion on behalf of the Bars throughout Australia.

Your Honours are of course aware of the close association which the Bars of this country have maintained with the Court. Not only has the Bar provided a reservoir of talent available for judicial office but the day to day encounters (if I might use that word) between Bench and Bar have, I suspect, matured in fire many an innocent advocate; and in turn I would like to think the Bar has played its part in maintaining the very high standards which have earned the Court its High place both in the world of law and beyond it.

Often speakers have referred to the role and achievements of the High Court in Australia. May I adopt those remarks without repetition. The Australian Bar Association welcomes the opportunity to be associated with this important birthday; it looks forward to the celebration of the Court's centenary."

As a matter of interest, of the 34 Justices which have been and are members of that Court eleven (not including interstate members) have been members of the Victorian Bar:

Sir Isaac Isaacs.
Sir Hayden Starke.
Sir Owen Dixon.
Sir Frank Gavan Duffy.
Sir John Latham.
Higgins J.
Sir Wilfred Fullager.
Sir Frank Kitto.
Sir Douglas Menzies.
Sir Ninian Stepher.
Sir Keith Aickin.

BAR COUNCIL REPORT

Since the last publication of Bar News, the Victorian Bar Council has met formally on occasions. The following matters of interest have come before the Council.

The New Bar Council

Following the recent election the new Council is as follows:

H.C. Berkeley Q.C.
G.R.D. Waldron Q.C.
J.J. Hedigan Q.C.
J.E. Barnard Q.C.
P.A. Liddell Q.C.
B.J. Shaw Q.C.
J.H. Phillips Q.C.
J.L. Sher Q.C.
G. Hampel Q.C.
F. Walsh Q.C.
P.D. Cummins Q.C.
E.W. Gillard
A. Chernov.
P. Mandie.
M. Rozenes.
R.C. Webster.
P.J. Kennon.

The following office-bearers were elected:

Chairman:	Frank Costigan Q.C.
Vice-Chairman:	H.C. Berkeley Q.C.
Hon. Treasurer:	F. Walsh Q.C.
Asst. Hon. Treasurer:	A. Chernov.
Hon. Secretary:	Rex Wild.
Asst. Hon. Secretary:	P.C. Dane.

Representation of Women Barristers

The question of representation on the Bar Council of women barristers has been referred for the consideration of an ad hoc committee.

Negotiating Fees

Having regard to the functions of the Barristers' Clerk it was resolved that it is desirable (especially with regard to Counsel under five years' call) that Counsel should not discuss fees directly with his instructing solicitor but should engage his Clerk to perform this task. Nevertheless it is not a breach of etiquette for counsel to negotiate fees directly with his instructing solicitor.

Allocation of Clerk

A motion that, notwithstanding the provisions of the Clerking Rules, the child of a barrister or former barrister may engage his parent's clerk was lost.

National Bank House

The decision of the Directors of Barristers Chambers Limited to lease the twelfth floor of Capital House was approved.

ALAO Fees

The Clerking Committee has been requested to enquire of the Clerks whether or not fees payable to Counsel by the ALAO have been paid to any and what solicitors but not forwarded to Counsel.

Australian Legal Directory

The Law Council of Australia in conjunction with the Australian Documentary Exchange is to publish a Law Directory to replace the Butterworths Law List discontinued in 1975.

Centenary of Victorian Bar

The question of when and in what manner the forthcoming centenary of the Victorian Bar should be celebrated has been considered by the Bar Council. See Page 8.

Bar Dinner 1979

The Bar Dinner is to be held at Leonda on Saturday 12th May, 1979. A motion that counsel may invite spouse or companion to the Bar Dinner was lost.

Air Travel Concessions

The Chairman reported that he had met with an officer of Ansett Airlines to discuss concessions in air travel for delegates of the Australian Bar Association. He was informed as a result of such discussions that Ansett is prepared to give the Australian Bar Association a 50% reduction for its members travelling to and from two meetings per year. He has discussed with Ansett the opening of an account in the name of the Victorian Bar Council on the basis taht they will give the Council a 10% credit on all air travel.

TRIBUTE: JIM FOLEY

On 7th November 1978 former Barristers' Clerk Jim Foley died.

He was engaged as such in 1947 to act in Selborne Chambers in succession to the late Mr. Muir, father of Doug Muir. He so acted until his retirement in 1973.

This period of twenty-six years saw a great number of barristers receive the benefit of his advice and services. Many of them have subsequently attained high judicial and political office.

The respect and esteem which he enjoyed was demonstrated by a large number of Judges, former Judges, barristers, solicitors and other clerks who attended his Requiem Mass at St. Ambrose's Church at Alphington. A moving panagyric was delivered by Costigan Q.C.

The Bar mourns the passing of a respected helpmate and offers to his son Ken Foley and his family their warmest sympathy.

WELCOME: JUDGE BLAND

John Ewen Reginald Bland, aged 51 years was appointed ot the County Court bench on 11th of October, 1978.

After a University course culminating in a Law Degree, an Arts Honours Degree, a Full Blue and a National University Championship to his credit, he was admitted to practice in 1953 and signed the roll of counsel in 1956. AFter spending time in the criminal jurisdiction, his services were sought after generally in the Supreme Court. In addition, he developed an extensive circuit practice at Ballarat and held the retainer of the Medical Defence Association.

In later years, he spent much of his time in the Industrial Law Courts of Australia, representing Unions and Union members throughout the Commonwealth.

His Honour was a member of the Bar Council from 1960 to 1965, during the years of clerking crisis and the move of the Bar from Selbourne Chambers to Owen Dixon Chambers. His Honour read in the chambers of V. Belson and, in turn had three readers, Knappett, Robinson and Perkins.

There is another side to the man. Since 1956, he has lived at Gisborne, building up a property from a lush and viable property with magnificent views of Mt. Macedon. Since his appointment, His Honour has purchased an adjourning property owned by the trainer Hore-Lacy) containing a ten furlong training track and homestead classified by the National Trust of 40 squares with apparently even better views of Mt. Macedon and its surround.

Queensland has been fortunate to have tasted His Honour's farming talents because, since 1966, he has owned large grazing properties carrying many head of cattle, also with magnificent views of the Noosa Heads National Park. During each legal vacation, at Christmas and July, the Bland family are regular visitors to the Noosa Heads beaches where His Honour enjoys the sun and is a keen body surfer. Many of the fitter men at the Bar know what a fitness fanatic he is as they run with him through the National Parks — few can claim to have beaten him home.

In 1970, and again in 1971, he travelled to China as part of a Trade Delegation in an attempt to open a market for Australian wool. It was during these visits to China that a deep interest was awakened in him for Chinese art and culture. Subjects about which His Honour can speak with some authority.

It may not be a mere coincidence that His Honour is a Director of the Australian Art Exhibitions Corporation, which was responsible for the Chinese Exhibition and more recently, the Columbia Gold Exhibition, regarded by many as among the most successful art exhibitions ever held in Australia.

In the past, he has been convener of the Gisborne A.L.P. Branch, and a Gisborne Shire Councillor.

Any resume of Judge Bland's life and interests would be incomplete if it did not include the fact that he is through and through a family man. He will gladly talk to you about the law, politics, farming, his H.D. Holden, art exhibitions, Australian History, and fitness and with genuine delight and animation, but ask him about his family . . . The fervour with which he will hold forth on these other matters is pale and anaemic compared with the enthusiasm with which he will tell you about his wife Janie, and his three children's latest achievements.

His Honour brings to the County Court Bench a breadth of experience and knowledge that few can claim. The Bar wishes him a long and satisfying career on the Bench.

WELCOME: JUDGE DYETT

A large body of practitioners and members of the public recently attended the No. 2 County Court to welcome Frank Dyett on the occasion of his appointment to that Bench.

The speeches of welcome referred to His Honour's forbears and his education at the Marist Brothers College at Bendigo and later at Xavier College and Newman College in the University of Melbourne. His Honour graduated with honours in the Faculty of Law in 1955 and was admitted to practice on the 1st March, 1956. He signed the Roll of Counsel on the 3rd of February, 1958 and read in the Chambers of Kevin Anderson. Further discreet enquiries reveal that he was a director of Doxa Youth Welfare Foundation for underprivileged children for approximately 4 years.

His practice was both wide and varied. On the civil side he was much concerned in general common law work both before juries and before judges sitting alone. He also in recent years acquired a practice in the fields of local government and environment protection. On the criminal side his services were sought in caes of white collar crime.

He was known by his fellow practitioners as one of the last of the "good all rounders". It is this width of experience which will now stand him in good stead both in the present and future.

His Honour had three readers, Hinchcliffe, Gorrey and Luke.

All who have come into contact with His Honour during his years at the Bar can testify as to his great courtesy, patience, and application at work. He is recalled for the considerable assistance given to the new and not so new members of the Bar on law unfamiliar save to a few. He has practised a learned profession learnedly. In giving such assistance and advice he relied on his own resources, learning, ability and intelligence. He is remembered for his courtesy and respect given to all parties at all times. In his manner there is much to admire and imitate and once again it is evidence that the Bar's loss has become the State's gain.

The above qualities will stand him in good stead on the bench. His Honour need not concern himself unduly as to whether his judicial decisions are correct or not in that he can take comfort from the words of Lord Asquith namely —

"The function of a trial judge is to be quick, courteous and wrong. That is not to say that the Court of Appeal should be slow, rude and right; for that would be to usurp the function of the House of Lords".

Salute

FOR THE NOTER UP

County Court

Add:

Bland	51	13.8.27	1978	1999
Dyett	45	6.4.33	1978	2005

NEW SILKS

Letters Patent were recently granted to the following —

William Joseph Winter Lennon
Peter Bernard Maxwell Hase
Warren Christopher Fagan
Douglas Graham
Alan Henry Goldberg
Philip Damien Cummins
Marcus Richard Einfield (N.S.W.)
Terrence Rhoderick Hudson Cole (N.S.W.)
Andrew John Rogers (N.S.W.)
Geoffrey Lance Davies (QLD.)

The Bar congratulates them and wishes them well in their new office.

CRIMINAL BAR ASSOCIATION

An organisation aimed at collecting and expressing the views of criminal barristers, and representing them in discussions on matters as diverse as legal aid and law reform, came into existence on the 29th of November, 1978.

Known as the Victorian Criminal Bar Association, it will be modelled closely on the English Criminal Bar Association, formed in 1969 and now boasting over 600 members.

Membership is restricted to those practising at the Victorian Bar.

At a meeting in the Common Room on November 29th, attended by 76 members of counsel, all resolutions placed before it by a 19-strong steering committee, were unanimously approved.

Significantly, Hampel Q.C., a member of the Bar Council and Chairman of its Crime Practice Committee, spoke out in favour of the immediate formation of such an organisation.

The Association's Office-bearers are:

Chairman	— Kelly, Q.C.
Vice-Chairman	— Lovitt
Secretary	— Zichy-Woinarski
Treasurer	— Hassett.

Following the English lead, a committee of eight is currently being appointed by the Office-bearers.

Rules and red-tape will be minimised, the idea being to achieve positive results in many diverse areas by the use of small ad hoc committees containing a cross-section of interested counsel (including, where relevant, Silks, Prosecutors for the Queen and barristers concerned with criminal cases in Magistrates' Courts).

Approximately 85% of criminal trials conducted in Victoria are currently being handled by the office of the Public Solicitor. The forthcoming Legal Aid Commission is therefore of more concern to those barristers appearing in criminal trials, or wishing to do so, than counsel appearing in other jurisdictions.

Submissions on legal aid in criminal matters will be put before the Bar Council by the Association, developments closely watched, and members kept informed.

The Association aims to circularise its members in order to ascertain those matters of greatest concern to those practising in crime.

It is the view of the Association that criminal advocacy presents many unique and complex problems, e.g. the exercise of a Court's exclusionary discretion, the controversial unsworn statement, ethical dilemmas confronting prosecution and defence counsel.

Many counsel in the criminal jurisdiction feel that there exists an unwarranted tendency at the Bar to regard criminal advocacy as, in some undefined way, a lesser form of advocacy. The Association intends to correct any such mistaken impression.

The success of the Association depends largely upon acquiring enough members so as to speak for at least a vast majority of the Criminal Bar. It also depends on hard work.

All those interested (hard workers or not), may join the Victorian Criminal Bar Association by contacting Hassett on P.A.X. 136, Room 227, Membership fee is $5.00.

·Clerk 'B'

LEGAL PROFESSION PRACTICE (DISCIPLINE) ACT 1978

On December 1978 the Victorian Parliament enacted the Legal Profession Practice (Discipline) Act 1978. This legislation provides for the first time statutory disciplinary procedures for barristers.

"Barrister" is defined as a practitioner whose name appears at the time of the offence on the Bar Roll.

The Act establishes a Barrister Disciplinary Tribunal whose members are appointed by the Chief Justice. It comprises a Chairman being a Judge or former Judge of the Supreme Court and three barristers (two silks and one junior) selected from a panel supplied by the Chairman of the Bar Council and a lay member nominated by the Attorney-General.

Section 14B provides:—

"A barrister commits a disciplinary offence if:

(a) he is guilty of professional misconduct;
(b) he is guilty of improper conduct in a professional respect;
(c) he infringes a ruling made and published by the Victorian Bar Council on a matter of professional conduct or practice; or
(d) he is guilty of any other conduct for which a barrister could be struck off the roll of practitioners kept by the Supreme Court."

The act contemplates a three tiered system.

Ethics Committee

The Ethics Committee receives complaints or if its own motion investigates allegations of the commission of a disciplinary offence. Upon investigation it may take no further action, deal with the matter summarily or lay a charge before the Tribunal.

Summary hearings will normally be held in camera and without representation for the barrister or for the committee.

Powers on a summary hearing include the power to caution or to impose a fine of not more than $1000.

The Barrister has the right of appeal to the Tribunal within 14 days.

The Tribunal

Appeals from the Committee are in the nature of a re-hearing. The tribunal has all the powers of the Committee if an offence is established.

Where a charge is referred to the Tribunal after investigation by the Committee, the Tribunal will normally sit in public. The Bar Council and the Barrister are entitled to representation. There is power to prohibit publication of a report of the proceedings.

Where the Tribunal determines that an offence has been committed, its powers include the power to impose a fine not exceeding $5000, to suspend the barrister (without limit as to time), to direct that his name be struck off the Bar Roll, to direct that his name be struck off the roll of practitioners kept by the Supreme Court, to order that he pay the expenses incurred by the Tribunal and to order that details of parties, the offence and orders made by published in the Annual Report.

Either party has the right of appeal to the Full Court within one month.

Full Court

The Act is silent as to the procedure before the Full Court or its powers. Presumably the appeal would be brought pursuant to 0.59 by notice of motion and is not by way of rehearing.

Lay Observer

The Act establishes the office of lay observer, a non-practitioner appointed by the Attorney-General. His function is that of a watch-dog over the handling by the Bar Council, the Ethics Committee and the Tribunal of complaints against barristers.

He has power to require information from those bodies. His duty is to make an annual report to the Attorney-General who then places it before both Houses of Parliament.

Bar Rules and Ethics Rulings

S.14M obliges the Secretary of the Victorian Bar to provide to a barrister an payment of a fee a copy of the Bar Rules and of all rulings, made by the Victorian Bar Council from time to time in force upon any matter of professional conduct or practice.

PREPARATIONS FOR VICTORIAN BAR CENTENARY

With the prospect of a centenary in the next decade, the Bar Council retained Hulme and Merralls to consider and report upon the appropriate date with a view to laying down a substantial quantity of wine for the expected celebrations.

Those gentlemen, without the benefit of a junior's restraining influence delivered their report in the following terms:

"Dear Mr. Chairman,

On Historical grounds, and without reference to vintages, we recommend:

(a) That wine of 1971* be laid down for drinking in the year 1984;

(b) That wine of 1971* and/or 1984 and/or 1991 be laid down for drinking in the year 2000.

We publish our reasons.

On 20th October 1871 and 13th December 1871 there were held the first recorded formal meetings of Victorian barristers: Dean 87. (We observe that the proceedings of the second of these meetings were reported in the Argus of 14th December 1871. Not all problems are new.) These meetings did not lead to the formation of either a code of ethics or any continuing organisation. It seems improper to regard them as constituting the origin of the Victorian Bar. But it would seem proper to give their significance a nod, by choosing wine of the centenary of that year.

In February 1884 and on 17th** July 1884 took place the next known meetings: Dean 89-90. A committee was appointed at the February meeting, and at the July meeting (and a series of further meetings) there were adopted the Bar Regulations 1884. In February 1885 a new committee was elected. Dean finds no evidence of the committee operating thereafter, and suggests that its continued existence seems inconsistent with the Rules adopted by the newly formed Bar Association in 1891: Dean 93.

Dean does not say on what he founds that inconsistency. The Rules of the Association could well have been intended to provide a proper basis for a continuing ad hoc committee. They do not necessarily show that there was no existing committee. But it must be admitted that there is no evidence of the 1885 committee being active at any time after 1885.

The Bar Association formed in 1891 was dissolved in 1892. On no view do it and the Victorian Bar Council have continuity. But again some recognition of 1891 is appropriate, and we have recommended choosing wine of the centenary of that year also.

It seems to us doubtful that the Bar Regulations of 1884 were ever completely laid aside. That is not the way of lawyers. There is plenty of evidence that there did exist in the 1880's a body of persons called "the Bar", with a well-developed clerking system. It seems to us significant that as late as 1910 the Committee of the Victorian Bar (which as appears below dates from 20th June 1900) referred to one of the 1884 Rules as indicating what had hitherto been the practice in Victoria: Dean p. 105.

As just stated, 20th June 1900 is a significant date. On that day a meeting of Counsel agreed to appoint a Committee, and proceeded itself to do so. Rules were adopted. the continuity of the Victorian Bar Council from that Committee is undoubted and needs no amplification.

In our view two Centenaries emerge:

(a) The Centenary of the Victorian Bar

We fix this on 10th July 1984, in deference to the meeting of 10th July 1884 at which there were adopted Bar Regulations governing the conduct of "members of the Bar of Victoria".

(b) The Centenary of the Victorian Bar Council

This fixes itself, at 20th June 2000.

Of the two dates, we regard 1884 as the more significant. At all times since then there has existed in Victoria a definable body, known to itself and the public as the Bar, and

carrying on, pursuant to a known code of governance, functions similar to those carried on by the members of the Bar of England. That it lacked a formal representative body seems to us unimportant, when compared with the features it did have. Until that date gentlemen practising as barristers did so as individuals, regulated in the conduct of their professional affairs only by the Court that had admitted them. After that date regulation by the profession itself had begun, and "the Victorian Bar" existed.

We have the honour to be, Sir,
Your most humble etc. servants,

* Although historically appropriate, the 1971 vintage may be found oenologically unsuitable. Some regard it as the worst Hunter vintage in recent memory, and suitable wines from other areas may be found too expensive for laying down now. Though having no claim to historical significance, 1976 may be a more practical year in these respects.

** So says Dean at p. 89 and p. 92. The Bar Regulations themselves, set out at pp. 90-92, refer to the meeting as having been held on 10th July 1894. We will pursue this point further."

THE STRICT LETTER OF THE LAW

At the Dublin District Court, three cyclists were charged under Section 57(b) of the Traffic Act 1927, in that they did contravene that Section by cycling more than two abreast in O'Connell Street, Dublin, on October 6th, 1950. Garda (Police Constable 75824) gave evidence of arrest and of charging the three defendants who were naturally most abusive and denied having broken the law.

The three defendents were not professionally represented. James Allen, who was on the inside at the time the guard stopped them, said he was cycling within an inch of the kerb. He had no control over other cyclists and surely, could not be held responsible if they broke the law. Far from being abusive to the guard, he was speechless with indignation, at the charge of cycling three abreast. He had no connection with the other defendants, who where unknown to him until the three were charged.

Michael Butler, who also conducted his own defence, said that he was in the middle and had not broken the law. There was no section of the Traffic Act of 1927 forbidding a cyclist to ride between two others. He did not invite, encourage, incite or advise the third defendant Cullen, to cycle outside him.

John Cullen, conducting his own defence, denied that he was cycling three abreast and asked how one man could possible cycle three abreast. He was engaged in passing outside the other two defendants when the Guard stopped him and charged him.

He was in a hurry and had to pass the others. Was it to go forth from that Court that a man was not at liberty to cycle past two cyclists? What evidence had the Guard that they were indeed three abreast? Trained observers on the racecourse frequently had difficulty in determining the relative position of horses at the end of a race and had to have recourse to photography. Had Carda 75824 taken any photographs? And if they were three abreast of what or whom were they abreast? Was not a man always abreast of himself? Or was he ever abreast of himself?

Mr. Lawless, District Justice, appealed to Mr. Cullen to stop his defence, as he felt his head was going round. He adjourned the Court for half an hour and said he would like a word with Garda 75824 outside the Court.

After the adjournment, Mr. Lawless addressed the Court as follows: "We have here a nice problem in the administration of the law. Three men are charged with breaking a Section of the Taffic Act which forbids more than two to cycle abreast. Since one man cannot cycle more than two abreast, one man cannot break it. Since two men cannot cycle more than two abreast, two men cannot break it. Therefore, we arrive at the logical conclusion that the minimum number of persons who can contravene this Section is three. If I punish three am I punishing two innocent persons? It is regarded as an axiom

in law that the law should not only be just, but should appear to be just to all men. If I punish Mr. Allen, who was riding within an inch of the kerb, men in public houses will say, 'Lo, the law is a tyrant!'. If I punish Mr. Butler they will say, 'There is no justice'. If a cyclist who is in a hurry (and it is common knowledge that all cyclists are in a hurry) passes two others, simulataneously, these two without any volitan or act on their part, instantly become law-breakers. If a cyclist who is not in a hurry is passed simulataneously by two others, instantly all become law-breakers: momentarily, of course, but nevertheless, law-breakers. I have discussed this problem with Garda 75824 whose knowledge of the law is far-reaching and profound, and he tells me that the only legal manner for one cyclist to pass two others is by dismounting and carrying his bicycle past the others, since a cyclist who carries his machine is a pedestrian. Such a pedestrian-cyclist, however, is in danger of being stopped by the police and charged with stealing a bicycle, a matter which leads to further delay.

"Now, according to the Regulations of the Traffic Act, the law has been broken. Somebody must be fined. Three men appear before me. Somebody must have infringed Section 57(b) of the Traffic Act. The question is, 'Who broke the law?' The answer is, 'I don't know,' I must accordingly, break new ground in the administration of the law in this country. With the consent of the defendants, I shall put their names in Garda 75824's cap and the person whose name is drawn will pay a fine of 7/6, which, you will observe, is easily divisible by three."

The defendants agreed. Mr. Allen, the inside man, paid the fine.

— "Dublin Opinion." (N.Z. Police Journal)

(Contributed by Zahara)

TO STAND AND LIE

Stipendiary Magistrate:

> Defendant, I have found that you have a case to answer. The law permits you to choose one of the following courses — you may stand mute of malice; you may lie where you stand; or you may commit perjury in the witness box.

An unexpected by-product of the reforms in criminal procedure in 1977 has been the resurgence in the popularity of unsworn statements. An accused can put his story to the jury without the hazards of cross-examination but without the weight normally attaching to sworn evidence. It will be recalled that the new section 418 of the Crimes Act permits an accused to make a statement at the same stage in the proceedings as he might give sworn testimony, that is, immediately after the close of the prosecution case where no other witness is called and at any time when other evidence is forthcoming. Furthermore the cherished right of final address is not now lost if he foresakes the witness box.

This phenomenon has engendered a fresh interest in some of the procedural difficulties raised by this unique procedure available to the accused.

The Role of Counsel

Curiously the role of counsel for the accused who adopted this course has attracted some recent attention. In Victoria the accused is permitted to read his statement from the dock. It has been held in South Australia that the statement may not be read for him by counsel even where he is unable to read it himself; R. v Stuart (1939) S.A.S.R. 144. It is not surprising that Counsel regularly plays a part in settling the form of this statement before it is presented. This part has recently been criticised by the Crown. It has been suggested that the preparation of such a document, which is in effect presented to the court directly and withou the possibility of challenge, is contrary to the traditional function of counsel. In this important respect it is unlike oral evidence which is said to be given spontaneously and without leading questions. Furthermore it is, unlike an

affidavit in civil proceedings, not susceptible of exploration or challenge by cross-examination. In New South Wales the accused must make his statement spontaneously, but counsel may prompt him. On the other hand, the practice in Tasmania not only permits counsel to read the statement, but also the document may be given to the jury when it retires.

Content of Statements

The content of the statement also demonstrates its anomalous position. An accused person may attack the credit of a Crown witness or speak of his own good character without the risk of cross-examination under s.399. Furthermore since it is different in character from sworn evidence, the statement is not subject to the same extent to the rules of admissibility. This lack of the restrictions normally imposed upon a witness, imposes upon those advising accused persons a heavy responsibility to ensure that the privilege is not abused. For example, in R. v. Stonehouse the trial Judge, Eveleigh J., after hearing the accused for six days from the dock, has called into question the wisdom of retaining the right: 50 A.L.J. 437.

The jury's reaction

Finally, it has been suggested that the recent changes in procedure may confuse the jury. The accused makes his statement at the same stage of the proceedings as he would normally give sworn evidence. The prosecutor is not permitted to make comment. It is not until the Judge's charge, after all addresses are concluded, that the jury is told officially that there is any departure from the normal rule that testimony is sworn. Furthermore, even at this stage, the comment of the presiding Judge has about it an air of unreality. He may not comment upon the failure of the accused to give evidence but he may comment upon the weight to be given to unsworn testimony. R. v Bridge (1964) 118 C.L.R. 600 at 616, R. v Barron (1978) V.R. 496.

There have been from time to time expressions of dissatisfaction as to this right of an accused person from various quarters. In New Zealand and, recently in 1976 in Western Australia, the right has been withdrawn by statute. In Queensland a statement may be made only by leave of the Judge. Now, in Victoria, the Solicitor-General has asked for the Bar's views.

A less severe, but potentially dangerous proposal for an accused, is that the Jduge be given the right to comment on the failure of an accused to give evidence. Judges in England, South Australia, Tasmania and Western Australia have this right. The English law Reform Revision Committee recommends that the judge be at liberty to tell the jury that they may draw inferences from the accused's failure to give evidence leaving it to them to decide whether such inferences should be drawn. For completeness, it is worthy of note that in Queensland the prosecutor as well as the trial Judge can comment on a failure to give evidence.

Two Committees of the Bar

Two committees of the Bar have given attention to the matter. This was in response to a letter from the Solicitor-General which was concerned not only with the current practice of making unsworn statements. The letter also was concerned with the role played by counsel in the preparation of such statements.

First the Ethics Committee. Its conclusion was that it was not a breach of ethics of the Victorian Bar for Counsel to be involved in the preparation of an unsworn statmeent.

Secondly the Crime Practice Committee. Its report on the matter concludes:—

"(a) unsworn statements are a necessary and useful manner of presenting the Defence in appropriate circumstances;

(b) there has been a long established practice at the Victorian Bar of involvement by Counsel in the preparation of such statements;

(c) such involvement is desirable and necessary both from the point of view of the Defence and the Court;

(d) the rules of conduct and counsel's duty in taking part in the preparation of unsworn statements are substantially

the same as those in preparing and leading evidence;

(e) in order to make counsel's role clear and prevent possible abuses counsel should be educated in their role and obligations in respect of this part of their function."

These reports have been adopted by the Bar Council and forwarded to the Solicitor-General on behalf of the Victorian Bar.

The English Position

The recent rulings on conduct and etiquette approved by the England Bar Council and published in 52 A.L.J. 539 include the following:

> "The right to make a statement from the dock has never been anything more than the right of the accused to speak for himself and to state such facts as he may think material. Counsel may assist the defendant by advising on the matters to be included in the statement and on the emphasis to be placed on those matters, but the language and presentation of the statement must be that of the defendant, not counsel, and counsel should in no circumstances draft the statement himself (emphasis added)."

MISLEADING CASE NOTE No. 4
BONNER V BOOTS

Judge Bolt, in allowing the appeal, said:—

This is an appeal against a conviction and sentence imposed by Mr. Pope SM at Camberwell Magistrates Court. The appellant, Bruce Bonner, was there charged that on November 11, 1978 at Camberwell he did traffic in a drug of addiction to wit opium. He was unrepresented but pleaded not guilty.

The informant, Constable Boots, gave evidence before me of what took place at the hearing below, and I accept that evidence. The following is a verbatim account of the course of proceedings.

Constable Boots (after taking the oath) said "Your Worship my name is John Boots I am a Constable of Police attached to the Corroboration Squad. At the time of this offence I was attached to the Observation Squad. On Saturday 11th November 1978 acting on information received I attended in company with Constable Sheedy and Policy Dog Spot at premises we now know to be the Camberwell Railway Station, and there observed a person I now know to be the Defendant. Over a period of approximately 2 hours and 43 minutes I observed numerous persons, who we now know to be members of the public, purchase from the Defendant what I now know to be opium poppies. I intercepted the Defendant and detailed my observations to him and said What is your reason for trafficking in a drug of addiction to wit opium? He said You've got me fair and square copper but I'll deny it all in court. I said This matter will be reported. Your Worship the weather at the time of this offence was fine, the road surface was dry, there was no interference with other traffic, and the Defendant was co-operative."

In cross examination the appellant put the following questions to the informant:

Bonner: "I put it to you that I did not admit this offence, but that rather I said 'Would you like to buy a Remembrance Day Poppy Constable?' Do you agree with that?"

Boots: "I cannot remember. It is not in my notes. It may have been said."

Bonner: "I put it to you that in fact I was selling Remembrance Day Poppies, made of paper, and not opium poppies. What do you say to that?"

Boots: "I agree with that".

The case for the informant was then closed, and the appellant submitted that there was no case to answer. That submission was accepted and the information was dismissed. Had the matter rested there, this appeal would never have been. However, the prosecuting Sergeant, acting on information received, submitted that

Constable Boots had only told the truth under cross-examination because he felt threatened by the way in which the questions were put to him, and laid an oral information against the appellant for threatening a witness. The magistrate convicted the appellant, saying "there has been far too much of this recently" and sentenced him to 7 years imprisonment. It is from that conviction and sentence that the appellant appeals to this Court.

The informant was represented before me by Mr. Sample Q.C. and Mr. Lozenges, and I am grateful for their polished arguments, as I am for the more robust presentation of Mr. Nedd Q.C. and Mr. Beard, who appeared for the appellant.

The first question for me to decide is whether the questions put by the appellant to the informant were threatening, and if so whether the appellant was entitled to so threaten. it was argued on behalf of the informant that he must have been threatened because he told the truth, and I accept that.

Some years ago I would have given little consideration to a prosecution which relied upon the assertion that policemen lie and expect to get away with it. Times change however. The Beach Report has shown us that not only do policemen lie and get away with it, but that anyone foolish enough to tell the truth in contradiction can expect to be prosecuted for perjury.

As to whether the appellant was entitled to put these threatening questions to the informant, two arguments were put before me. The first, seemingly of substance, can in fact be disposed of quickly. It was argued that any defendant, personally or by counsel, has the right to put proper questions by way of cross-examination to a prosecution witness to destroy the prosecution case. To that argument I can only say that, whatever the position may have been, it is not now the law.

In a society where any motorist foolish enough to do more than turn on the ignition of his car is guilty of careless driving, where any pedestrian to whom the attention of the police is drawn is guilty of offensive behaviour, where any person who fails to assist the police with their enquiries is guilty of assaulting police and wilful damage to stairs, truncheons and telephone books, where a man is drunk if such is the charge but not if it might raise a defence, and where the mere assertion that one is known to the police ensures a conviction and increases one's penalty, in such a society how can a defendant have the right asserted: to cross-examine by questions as blunt as those used by the appellant?

The second argument put forward was that the appellant was entitled to threaten the information pursuant to s.24 of the Dog Act. This argument, at first glance somewhat oblique, has merit. It is obvious that the right to cross-examine, being given by law, makes the cross-examiner a person acting under the authority of the Crown and the Crown in right of the State of Victoria is the owner of the witness box and courtroom — clearly a place enclosed by a fence within the meaning of the Act. Whether or not there are at any time any sheep, cattle or poultry in court, the section allows the cross-examiner the right to destroy or otherwise assault any dog found at large therein. Since threats are a usual precursor to assaults, the right to destroy and assault must include the right to threaten. Therefore, if a cross-examiner believes on reasonable grounds a witness to be a dog, as for example he has been terrier-like or a bloodhound in his investigations, it seems to me that the law allows the cross-examiner to threaten that witness.

No doubt this odious and anachronistic piece of legislation will be expunged from the statute books fairly shortly, after pressure from the Police Association, but until then it remains law. I will not express an opinion as to whether the section applies to more than witnesses, or gives a right to do more than threaten, in case I am seen wolfing down my lunch in the Bar Dining Room. The appeal will be allowed.

Gunst

UNFAIR DISMISSAL: A FURTHER COMMENT

Those members of the Victorian Bar, who, together with Ryan ("Bar News" Spring 1978) are looking wistfully at the thriving unfair dismissal jurisdiction in the U.K. would do well to consider the lessons which might be learned from that country. Having spent many hours acting for both employers and employees at all levels of that tribunal system I trust I might be permitted to strike a note of caution. Consideration should be given, I feel, to the question whether the involvement of lawyers is necessary and beneficial to society whether the involvement of lawyers is necessary and beneficial to society as a whole no matter how remunerative to the profession itself. In the U.K. notwithstanding the avowed intention of the legislators lawyers are, as Ryan noted, deeply involved in the statutory protection of employees. This has been the result of ill-thought out legislation, over hasty enactment of statutes, repeated changes in political direction and the obvious importance of the rights created by such legislation for the members of the community.

From the outset the legislation was designed to discourage legal representation of claimants and respondents. Legal aid is not available until a claim has reached the appellate stage, and as appeals are based only on questions of law these are rare. The logical basis for this restriction on legal aid is difficult to understand except from the desire to keep lawyers out of the procedure. The Lord Chancellor's Advisory Committee on Legal Aid in 1966-67 gave as one reason for the refusal to extend aid that though some cases were legally complex the 'ordinary general legal practitioner' was not likely to know the law well. One might be forgiven for wondering how the lay claimant was expected to fare. As if to underline the position the right to representation by a union colleague or any other person is expressly provided for the legislation, and costs can only be awarded against an unsuccessful party in the event that a claim or response thereto can be held to be frivolous or vexatious.

However the issues involved and the rights bestowed by the legislation are so fundamental in a modern industrial democracy that even the drawback of paying for representation did not worry many claimants. Protection against unfair dismissal, provision of compensation when made redundant, the right to an itemised pay statement, written reasons for dismissal, a statutory minimum period of notice are a few of the issues which are determined by the tribunals. Furthermore the tribunals are empowered to award compensation now in excess of £11,000, or more than five times the general jurisdictional limit of the English County Court. By avoiding the trappings of a court perhaps the tribunals are more relaxed, but the lack of formal pleadings leads to hearings proceeding for many days and turning up all sorts of irrelevant evidence of past misbehaviour. The effect is a bonanza for the lawyers but of little benefit for anyone else.

The changes in political direction of successive governments have had a deleterious effect on the legislation. The present provisions are in the main contained in the Employment Protection Act 1975 which with its 125 sections and 18 schedules is a lawyers dream and a client's nightmare. In the event that a lay claimant wishes to pursue his claim the system initially designed for him fails to live up to the expectations. If he wants to discover the definition of 'dismissal' (surely as fundamental a word in this context as any) he must be familiar with the definition section of s.126 of the Employment Protection Act 1975 which refers him to Paragraph 5 of Schedule 18 of the 1975 Act itself. The well-known reluctance of the English care to read as amended by s.125(1) and Schedule 18 of the 1975 itself. The well-known reluctance of the English parliamentary draftsmen to print statutes as amended also hampers the lay claimant. If an employee wants to check whether his former employer has correctly calculated a redundancy payment he does not need a lawyer. All he has to remember is to refer to Schedule 1 of the Contracts of Employment

Act 1963 as amended by the Redundancy Payments Act 1965 and re-enacted in Schedule 1 to the Contracts of Employment Act 1972 but subject to s.13(5) of that Act and as amended by ss.120 and 122 and Paragraphs 12 to 19 of Schedule 16 of the Employment Protection Act. Even then he might be unlucky enough to be one of the few people excluded from the operation of the Act by s.79 and Paragraph 11(3) of Schedule 2 of the Race Relations Act 1976.

If the past is a guide it will be only a short time before legislation designed to protect Victorian employees is enacted here. The persuasive effect of United Kingdom example, European Community directives and United Nations' exhortations will have its influence. It ought to be possible to devise a system to provide some measure of rights and remedies at a price that society should be able to afford. The Victorian Bar should, when the legislation is being drafted, be conscious of its responsibility to the community which it serves and for whose benefit it exists. A consequence of the excessive involvement of lawyers in an industrial law context is often the disillusion context is often the disillusionment of a sizeable portion of the community with lawyers as a whole; we get blamed for shortcomigs in the system. If the legislation is properly drafted perhaps lawyers will not need to be so closely involved in its operation: in the long run that may be for the good of the Bar.

David Levin

CASE NOTE
Saif Ali v Sydney Mitchell & Co.
("The Times" 2nd November 1978)

The mid-year bonus offered last year to the English Bar by the Court of Appeal (1978) Q.B. 95 has been largely withdrawn by the Lords.

The Plaintiff was a passenger in a motor vehicle driven by Mr. Akram in 1966 when it collided with a car owned by Mr. Sugden but driven by his wife. Counsel for the Plaintiff drew a pleading suing only Mr. Sugden on the bais that his wife was driving as his agent. The Defendant put agency in issue. Counsel was asked whether the pleading should be amended. He though not. Then the statute of Limitations ran out.

Following Launchbury v Morgans (1973) A.C. 127 the claim against Mr. Sugden was abandoned. The Plaintiff's claim, originally impregnable, was now worthless. He sued his solicitors. They joined Counsel as Third Party. Later, the Plaintiff added him as a Defendant.

The Court of Appeal struck out the claim against the barrister on the basis that he was immune from action for negligent acts and omissions committed in the conduct of civil litigation, see "Bar News", Spring 1977 and Christmas 1977. Immunity with respect to criminal litigation had been established in Rondel v Worsley (1969) 1 A.C. 191.

Lord Wilberforce, delivering the principal speech allowing the appeal of the Solicitor, approached the problem in the way which has now become orthodox — at least since Home Office v Dorset Yacht Co. (1970) A.C. 1004. The question is not whether the parties were within a class of relationship which gives rise to a duty of care. The task of the Court is to see whether there is between Plaintiff and Defendant a sufficient relationship of neighbourhood such that, in the reasonable contemplation of the Defendant, carelessness on his part would cause damage to the Plaintiff. In such a case, a duty of care arises unless there is some supervening consideration which ought to negative, to reduce or limit the scope of the duty or the class of persons to whom it is owed or the damages to which a breach of it may give rise. Anns v London Borough of Merton (1977) 2 All E.R. 492 at 498. Such an approach inevitably requires that each claim to immunity justify itself.

The Barrister (and the Solicitor for that matter) is in a special position vis-a-vis his client with respect to litigation — different from other professional persons. He owes a duty to the Court as well as to his client and he should not be inhibited from performing the former by reason of a risk that he might

be sued for breach of the latter. Hence public policy erected a protection from suit, even where the barrister's conduct fell short of normal standards. The rationale for such policy must contend with the countervailing policy that a wrong should not be without remedy.

The Lords in Rondel v Worsley recognised the immunity and defined its limitation as "conduct related to the conduct and management of litigation". The majority of the lords in Saif Ali were concerned to clarify the undertainties of this concept. They adopted the proposition of McCarthy P. in Rees v Sinclair (1974) 1 NZLR 180 —

> "I cannot narrow the protection to what is done in court: it must be wider than that and include some pre-trial work. Each piece of before trial work should, however, be tested against the one rule; that the protection exists only where the particular work is so intimately connected with the conduct of the cause in court that it can fairly be a preliminary decision affecting the way that cause is to be conducted when it comes to a hearing. The protection should not be given any wider application than is absolutely necessary in the interests of the administration of justice; that is why I would not be prepared to include anything which does not come within the test I have stated."

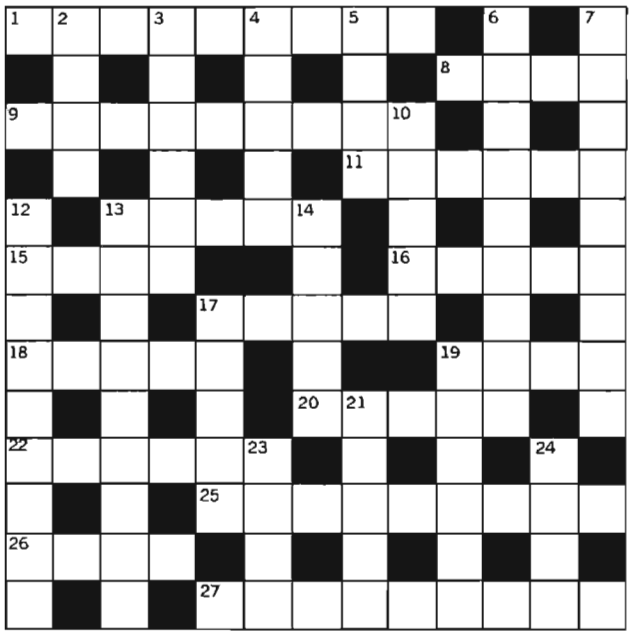
Lord Wilberforce observed that the passage, if sensibly and not pedantically construed, provided a sound foundation for individual decisions in any given case.

The report of the dissenting speeches of Lord Keith and Lord Russell suggests that they agreed with this principle, but were of opinion that the decision not to join Mrs. Sugden was one made in connexion with the conduct of the litigation and therefore immune.

Not surprisingly, Lord Wilberforce would confer similar immunity upon a solicitor performing work of the kind referred to. See too Feldman v A Practitioner (Unreported, Supreme Court of South Australia, Bray C.J. !. 12.4.78).

D.B.

CAPTAIN'S CRYPTIC No. 26



ACROSS

1. Because he fears an action for injunction (4,5)
2. Priestess of Aphrodite in Sestos (4)
9. Written evidence of secured company debt (9)
11. Roman bastards (6)
13. Beautify (5)
15. Send to those purposes (4)
16. Hindu hereditary class (5)
17. Estuary (5)
18. Otherwise a python comes from the latin mouth (2,3)
19. Bristle (4)
20. Organic chemical compound (5)
22. Roman emperor's address to senate (6)
25. prima facie right to exclusive enjoyment (9)
26. Level with Stephen (4)
27. Represent in outline (9)

DOWN

2. Employs statute 27 Hen. 8, C.10 of 1536 (4)
3. Corrects error in judicial proceedings (6)
4. Bury between (5)
5. Lent by friends Romans countrymen (4)
6. Extra fee where R.S.C. O.65 r.48 applies (9)
7. Preserver of Queen's peace (9)
10. Beginning of era in history (5)
12. Fresh dwellings (3, 6)
13. Pleaded the cause of another (9)
14. Grunt in sleep becomes Norwegian language (5)
17. Ninety words of a will (5)
19. Device giving signal for measurement (6)
21. Gaseous water (5)
23. Was under obligation (4)
24. Real ground of action (4)

MOUTHPIECE

"It looks like the big blue is over".

"D'ye mean with the solicitors? Curious how it is a cyclical thing. Happens about twice a generation that we fall out with them. Pity we're all not civilized enough to give up that sort of internecine strife."

"But it's a fact of life. The only civility that could be useful would be to lay down rules for future conflict binding on both sides."

"A sort of 1978 William Street Convention?"

"Exactly. For instance it could set down that future battles would be by champions."

"Can you imagine our boy Frank against Teague the Terrible, both in chain mail galloping their charges against each other along the tramlines?"

"If Mrs. Ungar were still here, she'd be selling balcony tickets."

"The other way would be all out warfare. And what an outfit we'd make. Spry in charge of security. On the call to arms, all those with chambers facing William Street would tip out books and shelves for barricades. Land forces under the command of Judge Vickery and D. Meagher. I can imagine acts of great bravery with total disregard for personal safety. O'Sullivan wraps the Bar flag around himself and leaps lightly over the defences. 'Come on lads', he calls carelessly, 'we'll show those blighters what for!' In the meantime a select group led by N. McPhee would gain the belvedere of the Supreme Court dome and take command of Little Bourke and Lon. Through it all, our modern and up to date airforce led by Tait in his Sopwith Camel, Biggles Duggan in his Spit and Moorfoot in his glider would be cruising the airways and dropping half calf CLR and Empire Digests on the enemy. Casualties receive the ministrations of Commissioner Kingsley Davis and his troop of readers distinctive in their woggles."

"Every corner of the battlefield would contain its own heroism and pathos. Now and again cries of 'take no prisoners'. The air full of fighting futy and flying inkstands."

The eyes of the company were glazed over, each no doubt lost in his own theatre of the conflict.

One was not quite so sentimental.

"Do you think we'd win?"

Byrne and Ross D.D.

VERBATIM

"It is a very salutary check for a judge to realise that if he does say something silly, it is liable to get in the papers".

Templeman J., reported "The Observer" 20th August 1978.

● ● ●

"Lord Wensleydale, one of the commission, told me, and my own judgment goes with it, that no Judge can do his duty who does not read the Reports. Ever since I have been on the bench I have faithfully read all the Reports . . .
Reports of cases and decisions in different courts. When I was at the Bar I did not read them, and I did not pretend to read them, and my clients knew that I did not read them, and they took me for better or for worse with notice. But I cannot serve the public in that way, and they require time. I do not mean to say that the reading of them is laborious, because from long habit and inclination, I do not say but that the reading of the Reports occasionally is rather an amusing thing."

From the evidence of Branwell B. given to the Common Law Commissioners, 1857. Reported in (1857) 1 Solicitors' Journal p. 776.

● ● ●

"People feel dissatisfied with the justice administered in these Courts. Wait until some of them have to meet their maker."

Per McInerney J.: Smith v R. — Sept. 78

● ● ●

But from another old-Xaverian:

"O'BRYAN J: What is the purpose of cross-examination of this witness? Is there something that you anticipate wanting the books for?

MR. KOMESAROFF: Well I want to test this

witness's statement as to the amount of money that has been received, Your Honour.

HIS HONOUR: Is that not a matter for the hereafter? In the sense that if there is one."

Komesaroff v O'Brien 20th November 1978

● ● ●

Judge Cullity in Chambers: 22/9/1978

"Would you gentlemen be kind enough to arrange for consent orders simply to be noted on the file. I'm not going to sit here all day writing out this muck."

● ● ●

Bramwell L.J.:

"I do not know whether I have grasped the doctrines of Equity correctly in this matter, but if I have, they seem to me to be like many other good doctrines of Courts of Equity, the result of a disregard of general principles and general rules in order to do justice more or less fanciful in certain particular cases."
AND:
"I agree that it is not necessary to reserve judgment in this matter, for I have listened attentively for two days to the learned and lucid arguments of the very eminent counsel without, unfortunately, being able to understand any of them, and I have just listened to the most profound and luminous judgments of my learned brethren with still greater attention, but I regret to say with no better result. I am, therefore, of the same opinion as they are and for the same reasons."

Quoted by J.G. Witt KC, Life in the Law, pp.118-119.

● ● ●

"As beauty is in the eye of the beholder so too is pain the experience of the sufferer.
A horse can die of pain alone . . .
A cow will not.
Peole have been known to experience pain in a limb long since amputated.
Taking all things into account I assess general damages for pain and suffering at $937.39 and of course costs."

Judgment delivered by Langford S.M. (later the Queensland Under-Secretary for Justice).

LETTERS TO THE EDITOR

Dear Sirs,

Recently I put some old uncollected fees into the hands of solicitors for collection.

One of them was a $40.00 fee earned in 1967, less than 2 years after I signed the Bar Roll, for a General Sessions Appeal.

The Solicitors concerned successfully took the defence of the Statute of Limitations at the Melbourne Magistrate's Court.

I have thought for some time that the best thing for barristers to do about fees is to get all Clerks on to computer accounting and to charge 1.5% interest per month after, say, 90 days until payment. This is similar to Bankcard. There could be exceptions programmed into the computer to cover cases such as Plaintiff paperwork in running down cases, or other special arrangements made with Counsel.

Sincerely,
R.M. Johnstone.

Dear Sirs,

Recently I read a whimsical and witty but somewhat scholarly exposition of the meanings and origins and derivations of English collective nouns, "An Exaltation of Larks" by James Lipton (Penguin, 1977).

I was somewhat surprised to note that there appears to be no recognised collective for Barristers. The nearest which could be found was "a subtlety of Sergeants".

Accordingly, I propose the following for consideration:

(i) To be used for the genus as a whole — "a posturing of Barristers";

(ii) To be used for the sub-genus of Common Law Barristers — "a bombast of Barristers";

(iii) To be used for the sub-genus of Equity Barristers (dare I put it?) — "a whispering of Barristers".

Sincerely,
T.M.O'D.

SUPREME COURT LIBRARY LACUNA

From time to time text books in the Supreme Court Library are not returned. A little considered consequence of this conduct is that the library now lacks copies of text books which are outdated. It is not possible to replace them since they are out of print. The Library Committee is of the view that it is in the interest of the profession that the Supreme Court Library have as complete a collection of legal texts as is possible.

The Committee therefore solicits from members donations a copy of any of the following books which are missing from the Library.

ANSON, W.R. Law of Contract. 23rd ed. 1969.

BOURKE, J.P. Police and summary offences in Vic. 2nd ed. 1970.

CROSS, R. Evidence. 3rd Ed. 1966.

CHITTY. Contracts. 22nd ed. 1961 Vol. 1.
23rd ed. 1968 Vol. 1.

De SMITH, S.A. Constitutional and administrative law. 1971.

FLEMING, J.G. Torts. 4th ed. 1971.

GATLEY, J.C.C. Libel and slander. 6th ed. 1967.

GRIFFITH, J.A.G. and STREET, H. Principles of administrative law. 5th ed. 1973.

HILL, H.A. and REDMAN. Landlord and tenant. 15th ed. 1970.

IVAMY, E.R. Hardy. General principles of insurance law. 2nd ed. 1970.

JACKSON, D.C. Principles of property law. 1967.

JOSKE, P.E. Partnership. 2nd ed. 1966.

LEIGH, L.H. Criminal liability for corporations in English Law. 1969.

LEWIS, A.N. Australian bankruptcy law. 5th ed. 1967.

LONIE, F.H. and GIFFORD, K.H. The Victorian Local Government handbook. 7th ed. 1970.

McKIMM, K.J. Criminal procedure and practice (N.S.W.) 2nd ed. 1972.

MAXWELL, P.B. Interpretation of statutes. 11th ed. 1962.

MESTON, D. Money lenders. 5th ed. 1968.

NOLAN and COHEN. Federal industrial laws. 4th ed. 1968.

ODGERS, J.R. Australian Senate practice. 5th ed. 1976.

ODGERS, W.B. Pleading and practice. 19th ed. 1966. 20th ed. 1971.

PARKER, A. ed. Modern wills precedents. 1969.

SALMOND, J. Torts. 16th ed. 1973.

SMITH, J.C. The law of theft. 1st ed. 1968. 2nd ed. 1972.

STOREY, H. Real estate agency in Victoria. 1967.TAPERELL, G.O. Trade practices and consumer protection. 1974.

WINDEYER, V. Some aspects of Australian Constitutional law. 1973.

WINFIELD, Sir. P.H. Torts. 8th ed. 1967.

WYNES, W.A. Legislative, executive and judicial powers in Australia. 4th ed. 1970.

ZANDER, M. Lawyers and public interest. 1968.

TIDBITS

Twentieth Australian Legal Convention

This convention is to be held in Adelaide from 1st July to 6th July 1979.

Building Disputes Practitioners Society

On 27th in the Bar Conference Room was held a meeting of 29 persons, arbitrators, building consultants, solicitors and barristers interested in forming an association of building dispute practitioners. A steering committee of ten including Furness, Patkin and D. Byrne was appointed to consider the form such an association might take and to report to a further meetings to be held in the New Year.

Monash Criminal Procedure Notes

These notes are available for purchase from the Monash Law Book Co-Operative, Law School, Monash University Clayton 3169. The price $4 (including postage).

SPORTING NEWS

It doesn't seem all that long ago that someone unkindly suggested that Crossley should apply for the role of "Norm" in the T.V. advertisements. Crossley, however, looked as fine as a Summer's day as he sped over the course in the recent Frankston to Melbourne Big M Marathon. Although he came to a halt after 19 miles, he maintains that he stopped to spare other members of the Bar the embarrassment of defeat. Vincent's long hours of training on the course proper 15 feet out at Caulfield were rewarded as he finished in front of Faris in 3¾ hours, Leckie and Paul O'Dwyer allegedly completed the course whereas Gray and Mattei watched from the sidelines. But at the finish it was all Bleechmore who was light years ahead of our next representative.

● ● ●

Kirkham was one of 60,000 shoppers who filled in a coupon after purchasing goods in the Malvern area. The "Win a Sitmar Cruise Competition", sponsored by the local retailers association, was duly won by Kirkham after his purchase of a paint brush. With hindsight it would have been better if he had completed his coupon after buying sea sickness pills as it is believed that he spent most of the cruise laughing over the side of the boat. The trip included visits to Noumea, Tonga, Fiji and New Zealand. It is significant that he flew home from the Shaky Isles.

● ● ●

Buchanan, who has competed in the Isle of Man T.T. classic, has been named "autumn leaves" following yet another fall from his racing motor cycle recently. Mees, who prepares the bike, blames incompetent riding whereas Buchanan points out that the bike has spluttered and coughed to a halt on those occasions when he felt that he should complete the course. Those wishing to see this continuing saga should visit future meetings at Phillip Island, Winton and Calder.

● ● ●

An excellent turn up of Judges and members of the Bar resulted in an enjoyable day's golf at the annual Bar and Bench golf match against the Services. Judge Just accepted the Cup with his usual modesty, and Thomson Q.C. was gracious in defeat as he handed over the MacFarlan Trophy to the Services. Jewell had 75 off the stick and excellent scores were returned by Redlich, Williams and Balfe. The last mentioned reached the turn in 37 and his handicap of 15 will be subject to immediate review.

Despite some alleged friction between the Bar and the Law Institute on matters not associated with golf, the annual match against the law Institute will certainly be held next year and the venue and date will be notified in due course.

"FOUR EYES"

MOVEMENT AT THE BAR

Members who have signed the Roll (since September 1978)

B.F.H. MILLER
M.S.R. CLARKE
J.G. SANTAMARIA
J.L. PILLEY
Z. ZAYLER
H. REICHER
A.M.J. ELLIOTT
A.M.J. LARKIN
P.D. DRAKE
E.A. KOMINOS (Miss)
J.B. GAFFNEY
R.W. MIDDLETON
E.H. CURTAIN (Miss)
L. GLICK
A.J. McDONALD
T. TOPHAM
J.I. PATMORE
P. GOLDBERG (Miss)
P.D. ELLIOTT
G.H. HALL
S.E. BROWN (Miss)
R.F. SHIPTON

Member who has transferred to the Non-Practising List

M.C. KINGSTON (Miss)

Member who has had his name removed at his own request

P.R. JORDAN

Death

Dr. E.G. COPPEL, C.M.G., Q.C. (Non-Practising List)

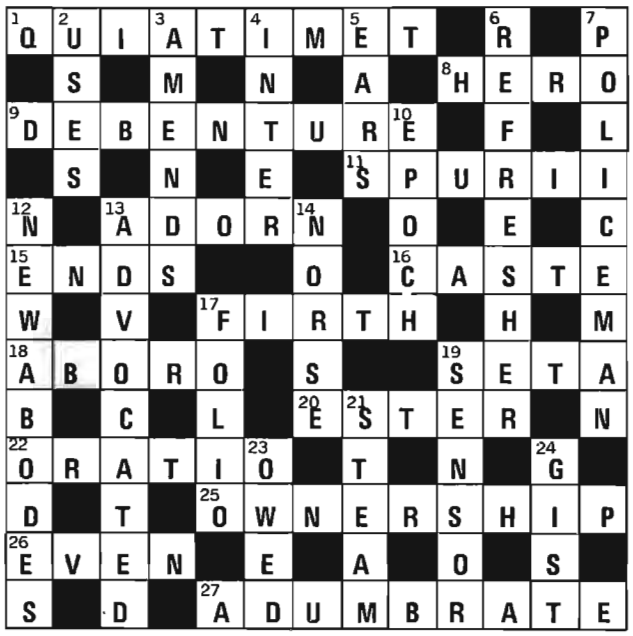
EDITORS:
David Byrne, David Ross

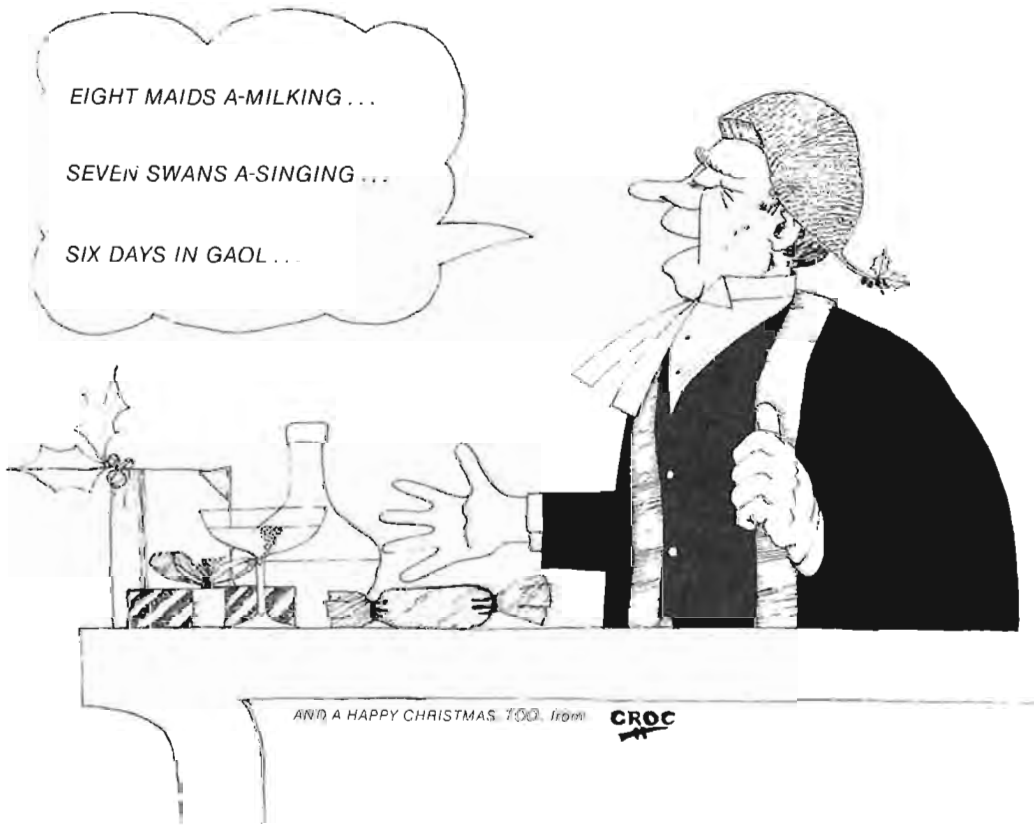
EDITORIAL COMMITTEE:
Alex Chernov, John Coldrey, Max Cashmore, David Henshall, Tony Howard, Charles Gunst.

CARTOONIST:
Crossley.

PRINTED BY:
Active Offset Pty. Ltd.

SOLUTION TO CAPTAIN'S CRYPTIC No. 26




EIGHT MAIDS A-MILKING . . .
SEVEN SWANS A-SINGING . . .
SIX DAYS IN GAOL . . .
AND A HAPPY CHRISTMAS TOO from CROC