Odd things still continued to occur in the local courts. In 1960, on a cold July day at the Richmond Court House, a smart-arse barrister hereinafter referred to as an SAB, was endeavouring to demonstrate to the magistrate that the female witness of an assault had not had the opportunity that she claimed to identify the accused. The witness, Dulcie Dawson,* said that she had had the accused under observation for almost two minutes and had seen a number of blows struck. The SAB then ostentatiously took a stopwatch out of his pocket and asked Ms Dawson to indicate when two minutes were up after a given signal.

'Now'! said Ms Dawson.

The magistrate, a Mr Gloster, said, 'Witness, that's two minutes to the second – that's quite remarkable.'

'Not really,' said Ms Dawson, 'I can see the clock on the Richmond Town Hall through the window behind him.'

One day a fairly battered-looking individual found sufficient room to seat himself in my office. His complaint was that he had gone into the small grocery shop close to the corner of Powlett Street and Wellington Parade to purchase a bottle of methylated spirits, but due to an error he had been sold a bottle of linseed oil and he wanted to sue for damages. I was dismissive and said, 'Look, if you take the linseed oil back and tell them they've made a mistake, they'll give you another bottle of methylated spirits and everything will be okay.'

He looked at me in disbelief and said, 'Have you ever tasted linseed oil?'

At East Melbourne, I learnt for the first time that you shouldn't believe everything your client tells you. A Mr Green* made an appointment to see me in connection with a charge of driving in a reckless manner. He was to appear at the Frankston Court the following day. The circumstances, as he described them, were that he was driving towards hand-operated railway gates at Cheltenham when a railway employee moved across in front of him to bar his progress because a train was coming. He said that he knew that the train was a long distance off and as the gates were not closed he drove around the railway employee, and was very surprised indeed to ultimately receive a summons.

I asked him if he had had any prior offences and he said, 'No.' I asked him whether there had been any danger to the railway employee and he again said, 'No.' I told him that I wasn't available to go to Frankston to appear for him, and to get a barrister at short notice was likely to cost anything up to 40 pounds. I said that based on what he told me it didn't appear to be a serious charge, and it wasn't worth his while being represented. These were words that I would regret.

Off went Mr Green. I charged no fee for that consultation and for all I knew that would be the last I would ever hear from him.

It was late the following day that I received a telephone call and it was Mr Green. 'Hello, I said, 'how did you go?'

'Not too well,' he replied.

'Why, where are you?'

'I'm in the Frankston Police Station, I've been locked up and I want to make application for bail.'

I said, 'You couldn't possibly have been given a prison sentence on what you told me. Let me speak to the sergeant in charge.'

A very courteous policeman came to the phone.

'Hey, what's been going on down there? What's happened to him?' I asked.

The policeman warmed to his topic. 'I'll tell you what's happened to him. He's been sentenced to six month's imprisonment. The evidence was that he drove towards the railway gate, which was being closed, with the red warning light on, and tried to squeeze his vehicle through. The railway attendant stood in front of him with his arms outstretched trying to stop him when your client (somehow I'd assumed responsibility for his actions) put his foot on the accelerator, and the next thing the railway employee was straddled across the bonnet of his car clinging onto the windscreen wipers. And your client didn't stop then. He accelerated further and drove for nearly a mile with the railway attendant sprawled like Spiderman all over the front of the car screaming, "Stop, stop, I want to get off!" That's why he got six month's imprisonment.'

Just how does one respond to this revelation?

What followed was inevitable. A solicitor in Frankston made a successful application for bail on behalf of Mr Green pending his

appeal. He in turn blamed me for his plight, for not listening to him and giving him bum advice. He followed up that complaint by writing to the Law Institute, a letter to the effect that I was incompetent, lazy and shouldn't be allowed to practise. I suppose the lesson I learned was this. Before you tell your client to go and represent himself, at any level, get something in writing from him as to his version of what he has done.

That, I suppose, was the magic of the place. Everyone from down-and-outs to the very elegant and rich residents of Cliveden Mansions could be seen in Powlett Street from time to time. In summer we were close enough to hear the crowd roar when a wicket fell in a test match at the Melbourne Cricket Ground. A Brownlow Medallist lived up the street, as did Melbourne's largest SP bookmaker, and a professional hitman.

During my time in East Melbourne I built up quite a large Chinese clientele. They were great clients, men mainly, who had built up good businesses around the Richmond and Prahran area.

In the criminal area, the Chinese were never a problem to anyone much because they used to settle their own disputes and the courts were seldom troubled. Illegal gambling was rife, but the courts only heard about it when someone failed to pay up. However, there were times when Chinese tradition and the legal system found it difficult to come to grips. I have one recollection of an elderly Chinese client of mine who was involved in litigation to recover a debt in the Supreme Court of Victoria. At that time, and perhaps still, in the Victorian Supreme Court the Tipstaves' Handbook sets out oaths to be administered to Chinese, Mohammedans, Buddhists and those of 'strange religions'. The Chinese oath was:

> If I do not tell the truth, the whole truth, or if I tell anything but the truth in this case, may the Great God extinguish my soul hereafter as I now extinguish this light.

The Tipstaff then lit a match and held it up for the witness to blow it out.

When my client who had lived in Prahran for almost 80 years and carried on business for more than 60 of those was confronted

with the wavering lit match, almost wide-eyed he blurted out, 'Are you fair dinkum?'

The shortcoming of practising in East Melbourne was the distance out of the city and the necessity to get a tram or a taxi for the lodgement of documents, briefing counsel, attending conferences and the rest. Selborne Chambers was the hub of activity for barristers in Melbourne, and during my university years I had become friends with Gerry Nash, later Dean of the Faculty of Law at Monash University, who shared a room in Selborne Chambers with Hartog Berkeley (later Victorian Solicitor-General).

I also continued to maintain my friendship with Frank Walsh, who because of juvenile polio was also obliged to use a walking stick to get around. Frank had obtained articles with a city firm and later had gone to the Bar. Walsh and I had developed a routine where, upon seeing each other, we would take up a fencing position and exchange cracks with our respective walking sticks. This happened quite frequently, and depending on the company we were in, the exchanges took place to the amusement or consternation of others. Now the other relevant factor is that I had been aware for some years that I was markedly short-sighted and required my glasses to see in the distance. Vanity frequently precluded me from wearing them. On this occasion, Nash and I were walking through Selborne Chambers in mid-winter and it was extremely dark. From the opposite direction I saw Frank Walsh approaching me, limping along on a stick. As we came into close proximity I veered across and rammed my walking stick into his stomach. The recipient of the blow did little to protect himself, and indeed Don Campbell QC, who was also obliged to use a walking stick, was amazed at this assault upon him. He staggered back clutching his midriff and was heard to mutter, 'Mad bastard.' Realising that I'd made both an error of identity and judgment, I muttered something about being very sorry and kept walking.

'Mad bastard' were the only words that Don Campbell ever actually uttered to me, as I never briefed him and never got to meet him socially. However, he must have been a great character, and there are many anecdotes about him which I have included in a later chapter.

Mills, Oakley & McKay were agents for several country legal practices, among which was Melville and Miller, a firm practising in Hamilton, Victoria. Melville and Miller had been involved in a particularly messy maintenance action, which had been initially lost before the local magistrate in Hamilton, and then went on appeal for consideration by His Honour the late Judge Moore of the County Court.

It was the opinion of counsel appearing on behalf of the unsuccessful husband in the Magistrates' Court, Mr Gillespie-Jones, that he was getting less than a fair go from Judge Moore during the hearing of the appeal. His Honour seemed besotted by the female respondent and it was the general view of those present that even if Gillespie-Jones had made an observation that the weather was nice, His Honour would not have agreed with him.

In the end (and ultimately it proved to be anything but the end), after a bitter altercation between Gillespie-Jones and the judge, Gillespie-Jones packed up his bags, took his papers, ordered his instructing solicitor to follow him, and walked out of court. His Honour, undeterred, continued to hear the appeal without representation on behalf of the appellant husband and confirmed the order made by the magistrate.

For the first time in one hundred years, the Hamilton solicitors took out a prerogative writ, in which they joined His Honour Judge Moore as a party, and effectively asserted that His Honour's conduct of the appeal had precluded their client from getting a fair go. An innocent package arrived at Mills, Oakley & McKay addressed to me, and in effect it contained all the documents and supporting affidavits relating to the prerogative writ with a request that I effect service of the documents upon His Honour Judge Moore. This I thought would be a straightforward task as I assumed that service could be effected by taking the documents to the court and leaving them there with a clerk at the front counter. Full of confidence because of this unsupported assumption, the next day I travelled to the County Court and went to the Registry counter. When I proffered the documents, which in effect asserted that His Honour had behaved most unfairly, the Bench clerk said, 'Yes, His Honour is expecting you, I'll take you up to his chambers.'

With shaking knees I followed him through the catacombs of the Supreme Court building to a rarefied area where I had never been before – where the judges lived. I was ushered into the room and formally shook hands with His Honour. I stuttered out that I had been instructed by the Hamilton solicitors to serve the documents upon His Honour. His Honour took the documents and in friendly fashion put his arm around my shoulders and said, 'My boy, have you read the supporting affidavits in this matter?'

Foolishly I said, 'Yes.'

He said, 'Do you believe a word of this arrant nonsense?'

Showing all the courage for which I was well known, I looked His Honour straight in the eye and said, 'No, not a word of it.' This sort of stout-heartedness was to prove a real feature of my legal career.

So that you will know the end of the story, the matter came on for hearing before the Full Court of the Supreme Court, where it is duly recorded in the Victorian Reports as *R v Chairman of General Sessions at Hamilton; ex parte Atterby (1959) VR 800*. The Full Court said, in effect, that His Honour should not have had so much to say, should have stayed out of the proceedings, and furthermore – and I was to learn a lesson myself in this regard in later years – should not have put in an affidavit himself and become involved in the subsequent challenge to the manner in which he had conducted the proceeding. Oddly that is still the situation. All sorts of allegations can be made about the manner in which a judge conducts a case, but the judge is by tradition precluded from defending his handling of the matter because the prevailing wisdom is that if he puts in an affidavit, he can be called to give evidence and cross-examined on that affidavit, and that is undesirable. I can only say in one case that I heard many years later as a judge, where I was confronted with a litany of lies and misrepresentations in the affidavits filed in support of a prerogative writ, it was extremely frustrating to be limited to a report to the court which in fact was not strictly admissible rather than to be able to put the court straight as to what had really happened by swearing an affidavit.

It was also in East Melbourne that I was first confronted with a

problem involving confidentiality. A rather scruffy-looking bloke came in to see me with a question that was relatively easy to answer. He wanted to know what the maximum penalty for arson was. The question simply involved looking up the appropriate section in the *Crimes Act*. If I had left it there, everything would have been okay. But I went on to ask him why he wanted to know. And he replied, 'Because I intend to burn down Saddler's* store in Bridge Road next week.'

What to do? Here I had foreknowledge of a major crime, but the information had come into my possession in the course of advising a client. For the first time in my life, I willingly made contact with the Law Institute and spoke to the then secretary, the late Arthur Heymanson, and posed the question to him in general terms. Arthur, who had a reputation for being very gruff, may not have been right but at least he was definite in the advice he gave. He said, 'Whatever your knowledge of the matter, you have a professional obligation to maintain confidentiality.'

And so it was that ten days later precisely, Saddlers was blown sky-high and the police never apprehended anyone. I will go to the grave with the name of the bloke (long since dead) who did it. Subsequent experience strongly suggests that Arthur was wrong!

It was also in East Melbourne that I learnt for the first time that the profession was not just one happy collegiate group. Acrimony abounded, and what better medium for it than the telephone. Remember that these were the days before the mobile phone came to haunt us, but even the old-fashioned variety presented its own problems.

First, there was the rudeness. I can recall occasions during the '60s when my secretary would tell me that there was a solicitor on the telephone to talk to me. When I picked up my phone and greeted him, it struck me that he had recently had a nasty accident. His voice was falsetto and certainly much more cultured than I had ever known before. Indeed, it was not the solicitor on the telephone at all but his secretary who announced pleasantly that her employer was coming. For all I know he might still be coming, because I didn't wait. I used to wonder what mixture of ignorance and rudeness caused a caller to inconvenience the recipient of a call

by keeping him or her waiting until the maker of the call deigned to appear.

Over the telephone I found that many senior solicitors were offensive, bullying, and generally unpleasant once they realised that they were dealing with a young inexperienced solicitor on the other end. I used to call them 'telephone heroes'. It is interesting that although this group existed in the metropolitan area, I seldom encountered rudeness over the telephone when I practised in the country. Did that mean that country practitioners were more gracious and accommodating? Probably not. The real reason for rudeness over the phone stems from the anonymity of it all. Names are just names in the city, and practitioners can deal with each other almost daily without ever meeting. Behind that sort of anonymity, rudeness is easy. A present-day example is the driver of a motor car encased in his/her capsule of metal. It is easy to give a stiff finger to another driver when you know that you are never going to see them again (if you're lucky). It is a totally different situation when practitioners have to meet in the street or socially as they do in the country, and confront one another eyeball to eyeball.

I am reminded of a cartoon I saw once (I can't remember where) which depicted a manic solicitor saying on the phone:

'Do you know who you are speaking to? You don't?

Well, up yours, you snivelling little sycophantic toad.'

When I was in practice, some zealots used to streamline their office systems to an extent that they created more difficulties and inefficiencies than they avoided. Solicitors used to boast to me that they organised their working day so that they never took telephone calls between certain times, say 10 am and noon. Similarly, I met others who said that they only made telephone calls between 10 am and noon. This raised the thought-provoking question: 'What happened when a solicitor, who only made telephone calls between 10 am and noon, wanted to contact a solicitor who never took calls between those times?'

When I was at East Melbourne I first became aware of the discourtesy of some solicitors who never rang back or who, in an endeavour to avoid you, were always unavailable when you telephoned them. In those days I found that there were two useful

methods of gaining access immediately to a previously unavailable solicitor. I used to have my receptionist put through a call to the unavailable solicitor's office where she said she was ringing from Tatts and that she had very good news indeed for Mr X. Amazingly Mr X, who had hitherto been unavailable, was suddenly on the line waiting with breathless anticipation.

A mate of mine had a more subtle approach. He had his secretary telephone the office of the unavailable solicitor, and say something like this. 'This is Narelle, the receptionist at the Pink Pussycat Motel ringing, Mr X has left his wallet on a bed in one of the units, and we were wondering whether we should send it to his office or courier it to his home?' I am told that this had a 100 per cent success rate in locating the missing solicitor.

In the practice in East Melbourne we seldom received instructions to act in a Workers' Compensation claim. However, there was the case of Edna Smith,* an internationally famous classical ballet dancer who had slipped on stage during a performance of Giselle. Apart from some loss of function, Miss Smith had been left with a considerable scar on her upper thigh and had a massive claim for damages for economic loss. During the course of the hearing, it became necessary for her to demurely raise her skirt and show the extent of the scarring to the presiding judge. His response was to exclaim, 'Quite extraordinary.' I was never sure whether he was referring to the scar or Miss Smith's leg.

About this time I was instructed to act for a driver who was charged with dangerous driving. He had been driving a Porsche, which even in the '50s and '60s was a high-performance vehicle, and during the ensuing police chase, when my client put his foot down, the police car was left far behind. However, the police had done a registration check and after losing him, drove to his house.

When I was first instructed, I made contact with the police, who were extremely surly and antagonistic towards my client. It took me a while to find out the reason for this. Apparently when the police car eventually got to my client's house and the officers knocked on his door, my client answered the door in his pyjamas. The inevitable question was, 'Driver, your vehicle was observed in High Street and we pursued you for six miles during which our

vehicle reached speeds of 80 miles per hour. Can you explain how we were not only unable to catch up with you, but we have now found you ready for bed at your home?' Unfortunately my client replied, 'I must have got a better run through the traffic lights than you.'

Fortunately, my Hamilton principals never learnt of my lack of courage, and it was only a few months later that one of the partners called in at the office of Mills, Oakley & McKay. After struggling to enter my room, because that meant there would be two people in the room at once, he enquired whether there was any young lawyer that I knew who might be prepared to go to Hamilton, as one of their partners was leaving.

I agonised over the matter, because I had enjoyed my time in East Melbourne, but the hours had been long and I hardly ever saw my two young sons, except on the weekends. Although I had lived in the country, it had always been in relation to railway stations and a railway environment, and I had never visited Hamilton and the Western District. However, I had a discussion with my then wife and we decided we would go down for an interview and see what we thought of the place. The end result was that I was offered a partnership which included a clause which guaranteed me a minimum income from the partnership for the first twelve months – which was to be another story.

And so, in 1962, in the middle of winter, we packed our belongings and our kids and we went to Hamilton.