QUERULOUS PARANOIA

AND

THE VEXATIOUS LITIGANT

(A Search for the Querulous Spectrum)

“Partial Insanity is a phenomenon so remarkable, that the more we observe it, the more are we astonished, that a man who feels, reasons and acts like the rest of the world, should feel, reason and act no more like other men upon a single point.”

Jean-Etienne Esquirol 1845[1]

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ACKNOWLEDGEMENT

My gratitude and thanks to my supervisor, with whom I have been able to share Esquirol's astonishment and who has been able to instil in me both the hope of solving mysteries as well as the fear of ever doing so.

My special thanks to two people who enabled a uni-linguist to benefit from the otherwise unreachable sources of research into the querulous:

Mrs. F. Koritnik for her translation of German texts.

Mr. H. Zimmerman for his translations of both German and French texts.
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7. BIBLIOGRAPHY
1. INTRODUCTION

"Between June 1926 and August 1929, Rupert Frederick Millane issued 56 legal proceedings against the Shire of Heidelberg, or its servants, agents, or members of the Shire Council. During the same period, 60 other proceedings were instituted by Millane in the Melbourne Court of Petty Sessions against the Shire of Heidelberg, the Corporations of Melbourne, the proprietors of leading daily newspapers, and others. So much administrative and court time was being wasted by these frivolous actions that the government considered it had no option but to intervene."[2]

Increasingly common in our society are a range of persistent complainants who disrupt the lives of complaints officers, ombudsmen, commissioners and ultimately tribunals and courts. In the process they leave their own lives in chaos. As government agencies, businesses, and professional organisations have established formal mechanisms for responding to complaints, so a small but vocal group of complainants have emerged who by their persistence and insistence consume disproportionate amounts of time and energy. In the attempt to understand and cope with what is usually regarded as a new phenomena little account has been taken of existing and venerable literatures both in law and psychiatry.

The legal discourse is around the topic of the Vexatious Litigant. The psychiatric discourse is centred on Querulous Paranoia.

In response to Rupert Millane the Vexatious Actions Act (1929) was born and Victoria created its first Vexatious Litigant, that is an individual who due to their history of instituting persistent and vexatious legal proceedings are barred from commencing any further legal proceeding without the permission of the Courts.

These individuals, driven by beliefs of injustice, persistently petition Courts and usually enjoin ever increasing numbers of people and organisations in their legal battles. Often other aspects of their life are damaged in this crusade for justice and they are at times incarcerated for threats and insults or actual violence including sexual assault or murder. Incarceration, either psychiatric or penal will often only feed their sense of grievance and injustice.[3] Suicide is not uncommon.

For example the celebrated German case of Freiherr von Hausen who prior to his suicide in 1920, had filed 152 criminal charges over the years. Out of these, 78 were against judges for perversion of justice and 22 against witnesses for perjury. He himself was involved in 48 cases, where he had been accused of grievous bodily harm, insult, menace and resisting arrest. He was
involved in 304 civil proceedings and appealed over 300 times. His grandiose motivation was highlighted by the form and content of his suicide note that read:

"...von Hausen aimed throughout his whole life to be of value to his country. But because of his ineffably severe destiny, his life was wiped away without success".[4]

Protection from such querulous (from the Latin queri to complain) behaviour has been incorporated in legal systems dating back to the Prussian legal code of 1793.[5] However by the mid 1800’s in Europe these individuals were more likely to have been involuntarily incarcerated in lunatic asylums than in prisons. Their inclusion under the rubric of Querulous Paranoia marked them as the property of psychiatrists and this ownership has waxed and waned over the last 140 years.

There is a significant but ageing body of research into Querulous Paranoia, with little recent research. From the late 1800’s, derived from the fusion of the concepts of partial insanity or monomania and paranoia, it was believed to be a discrete entity in which a single pathological preoccupation with a loss or injustice develops in an otherwise sound mind. There is complaint to authorities and Courts and a gradual but increasing network of grievances with those same authorities and Courts.

Is there evidence to support psychiatry’s continuing involvement in the management of these individuals? Or is it as Szasz proposed, that psychiatric categorisation was being used as a societal control of aberrant, excessive or rebellious behaviour and thought?[6ch2]

Is there an entity called querulous paranoia and if so, what are its characteristics and aetiology? Does it remain distinguishable from schizophrenia?

Are the querulous a heterogeneous mix of discrete diagnostic entities or do they represent a spectrum ranging from normality to psychosis and if so what lies between the extremes and where does pathology and morbidity begin?

My goal is to address these and other related questions in my dissertation and so my intentions are:

1) To review the historical and theoretical stream into which the study of the querulous was born and its subsequent course and then the meaning of querulousness.

2) To report and critically assess the diverse body of research into the querulous. I hope to be able to construct a model to better understand the querulous and that by reporting the most
robust findings of past research I will clarify the characteristics and boundaries of querulous paranoia and hence increase diagnostic confidence by providing a more coherent definition.

3) To review the ethical dangers inherent in this particular psychiatric categorisation.

4) To explore the reasons for the decline in the research into the querulous.

5) Finally to review the need for further research by identifying weaknesses and gaps in the existing research.
2. HISTORICAL AND THEORETICAL DEVELOPMENTS

On review of the psychiatric research into Querulous Paranoia, it appears that the research has been bedevilled by its reliance on the shifting concept of paranoia and its relationship with schizophrenia, arguments over the course and phenomenology of schizophrenia and the quicksand issue of defining normal beliefs, delusional beliefs and the intervening spectrum. It would seem almost unnecessary to state that as a result there has been at best an evolving consensus as to the defining phenomenology of this group.

In particular it is evident that conceptually and diagnostically the research into the querulous has floated along with the historical tides which at first moulded and then finally eroded and washed away the concept of paranoia.

2.1. PARANOIA

The history of paranoia mirrors the development of psychiatry in Western Europe over the last 2000 yrs. The words paranoia and paranoid are now part of the common tongue, focussing on misbeliefs, usually of a persecutory flavour. Yet this meaning is a mere shadow of its rich heritage in the history of psychiatry.

The term paranoia originates in the Greek language, and was used as we might use crazy or out of his mind. Hippocrates used it to describe the delirium of high fever and other writers, to describe senile deterioration. Its medical use then disappeared from the literature.[7]

It was only in the eighteenth century that it was revived. It regained significance because of the attempt by alienists to investigate insanity and to break it into classifiable component parts. Boissier de Sauvages, in 1763, resurrected the term and used it to describe the non febrile forms of dementia. Its scope was broadened in 1772, by the German R.A.Vogel to include mania and melancholia and as such referred to an entity whose main features were impaired judgement and affect without fever or hallucinations. It foreshadowed the concepts of ‘partial insanity’ and highlighted the focus on misbeliefs or delusions.[7]

The term languished until Johan Heinroth in 1818 used it in his classificatory system. Heinroth basically classified mental disorders into disorders of temperament, intellect, or will. Heinroth classed the paranoias as disorders of the intellect, and used paranoia synonymously with the German term Verrucktheit, (Emanuel Kant was the first to give Verruchtheit a scientific sense: *"the loss of common sense and the resulting logical willfulness".*[8p233])
Heinroth described both as:

"unfreedom of spirit with exaltation of the faculty of thought: perversion of concepts but undisturbed perceptions".

Heinroth had a religio-biological outlook and viewed Passion, Vice and Delusion as three stages in a progressive disorder. This was a traditional view of insanity as disorder of spirit and soul and hence psychogenic in origin.[8p236] However his view of insanity was swept away by a wave of biologism in the mid to late 1800's in Germany which emphasised the organicity of the insanities.

In the early to mid 1800's, contemperaneously with Heinroth, the Frenchman Jean-Etienne Esquirrol, a student of Phillipe Pinel, built on his master's descriptions of partial mental disorders (partial insanity); partial in the sense that only one or a few mental faculties, and not the entire mind, are affected.[8] Esquirrol emphasised the "passions" as the cause of mental disorder and stated that:

"A subject is mad or delirious when his thoughts, judgements and decisions are determined by passions, or can no longer be controlled by will."

Esquirrol first proposed the term monomania in 1810. The syndrome was characterised by an "idee fixe", which was a single pathological pre-occupation in an otherwise sound mind. He felt the abnormality could be understood as a logical consequence of a single false principle.[9p361]

He described their outcomes as generally benign but with relapses, and a subgroup who progressively deteriorated. It is interesting to note that Esquirrol's concept of monomanias was popular with his peers and supported with much enthusiasm not least because it vastly increased psychiatric involvement in the legal system as definers of sanity and criminal responsibility.

Von Krafft-Ebbing

It is the fusion of Heinroth's concept of paranoia and Esquirrol's concept of monomania, which enables Von Krafft-Ebbing to define paranoia as a systematised delusional disorder. He emphasised that the disorder was of organic origin, occurring "exclusively in tainted individuals" and classified paranoia amongst the "psychic degenerations".[9p363]

The chief characteristic was a single delusion, which became systematised and methodical. He records that persecutory delusions were most common. He noted that judgement and reason are in general intact, the intellect undamaged and neither the psychomotor or emotional spheres were perturbed. He stated:
"that on superficial observation, one is struck by the clearness and logic of such patients" [10p369] and that they appeared to be reasoning correctly from false premises. He found hallucinations to be quite common. He notes the development of the disorder reflects the affected individuals underlying personality:

"an originally suspicious, retiring, solitary individual one day becomes persecuted; a rough, irritable, egotistic person, defective in his notions of justice becomes a querulous paranoiac....."[10p382]

While emphasising that paranoia was essentially a constitutional disorder he notes that:

"the development of the disease is ordinarily gradual, growing, so to speak, out of the abnormal personality".

He felt that the delusions were most often persecutory, the course always chronic, though they had remissions with insight.[9p363]

With his interest in forensic psychiatry and subscription to Morelian Degenerative theory he collected a series of patients who persistently indulged in a series of complaints and claims lodged against authorities.[11p95] Krafft-Ebbing was one of the first to study the querulous and believed they formed a separate subdivision in the paranoia group , called paranoia querulantium. Their main unifying features were the behavioural descriptors of persistent claiming of injustice, petitioning of the authorities and associated persistent litigious behaviour. [12p338] He described them as having specific premorbid character traits, with gradually evolving and developing delusional beliefs. There were commonly accompanying hallucinations. Their reason and intellect remained intact and though the course of the illness was a chronic one of remissions and relapses there generally was no progressive deterioration of faculties of reason or intellect.[9p364]

Karl Ludwig Kahlbaum (1828-1899) used cause, course, duration and outcome to create a new taxonomy of mental illness. Paranoia described those cases whose symptoms were primarily delusions of persecution and grandeur and which followed a persistent and chronic course. They were believed to have an organic aetiology. This taxonomy was later used by Emil Kraepelin as the basis for his work however he felt that course and outcome were of overriding importance in classification.

Emil Kraepelin

In 1896 Emil Kraepelin initially felt that paranoia (progressive systematised insanity), while separate from dementia praecox, was none the less an endogenous disease process developing on
"a defective constitutional basis". It was a stable, non-deteriorating, mono delusional system, often with ideas of reference and over self-appreciation. It was without clouding of consciousness, disorder of form of thought, will or conduct. Hallucinations might be present. Kraepelin separated querulous paranoia from other types of paranoia mainly because their psychogenic flavour was more distinct than in other types of paranoia.[13] Even in the 1890’s he felt that some querulous represented a separate group of purely psychogenic origin.

By 1912, he had refined his view on paranoia to exclude those with a deteriorating course and those with hallucinations (which became the paraphrenias). He now believed that all the paranoias were uncommon and of psychogenic origin i.e. they were “abnormal developments in a psychopathic disposition under the influences of ordinary life”.[9p366].

Sigmund Freud’s contribution to the development of paranoia was mixed. His work on Schreber in 1911, addressing the essential question of the relationship between paranoia and the personality of the sufferer is felt to have to significantly influenced other workers such as Bleuler and Kretschmer. This is despite the evidence that Schreber’s diagnosis was more likely to be schizophrenia than paranoia.[7]

Eugen Bleuler in his 1920 Manual, with his emphasis on cross sectional symptomatology and underlying psychological mechanisms broadened the concept of schizophrenia. This resulted in all forms of paranoid psychosis (with the exception of paranoia) being included in the diagnosis of schizophrenia. With some reservations he agreed with Kraepelin that the paranoias were “a psychopathic form of reaction”.[8,14,78]

Ernst Kretschmer (1888-1964) was at odds with Kraepelin’s emphasis on course and outcome and Bleuler’s inclusive concept of schizophrenia. He believed, as did Bleuler, that the underlying psychopathology provided essential criteria for classification but felt that in many cases of paranoid psychosis the development of the delusions were comprehensible from a psychological perspective. Kretschmer, building on his 1927 work, The Sensitive Delusion of Reference, tried to create a classificatory system that could demonstrate how a particular psychosis may arise as a reaction in a particular type of character (personality). In a sense he attempted to correlate psychopathic types with their psychic reaction to experience.[15,16,68] Thus he believed that those forms of paranoid psychoses with understandable delusions were not disease processes but were developments in an abnormal personality subjected to a specific kind of stress. For the stress to be pathogenic it must be specific for a particular personality’s vulnerabilities.[9p566]
Emil Kraepelin and in particular Ernst Kretschmer were influenced by the work of Karl Jaspers. He described mental disorders as being of three types. These were his reactions, developments and processes. Distinguishing between the psychologically understandable delusional states and those un-understandable delusional states, he emphasised that the un-understandable must arise from an organic process.[17]

Kolle (1931) reanalysed a large series of Kraepelin’s patients with the diagnosis of either paranoia or paraphrenia and concluded that, based on the results of family studies and course, that most had a mild form of schizophrenia. In his study of the group of querulous paranoias he came to the conclusion that the majority were what he described as the “neurotic quarrellers”, who were psychopathic not psychotic, with the remainder suffering from schizophrenia.[14,18]

The French

Charles Laseque first described persecutory delusions in 1852. However it was Benedict Morel’s description in 1853 of a psychosis found in the young and which he labelled demence precoce that has had profound effect on French psychiatric classifications. From this time the French used irreversible deterioration to separate dementia precoce from the delusional disorders in which it does not occur. This created a large group of delusional states, which were viewed as distinct from dementia praecox or schizophrenia.

Equally influential was Morel’s 1856, Treatise on Degeneracies, which introduced hereditary constitution as a principle of classification. Built on by Valentin Magnan, mental disorders were divided into those which could be developed by sound stock and those which could be developed by degenerates.[19]

The term paranoia was never widely used in France, however the disorders of chronic delusions with a non deteriorating course were initially called The Chronic Delusions of Degenerates. A similar disorder but with a more severe course occurred in sound stock and was called Chronic Delusional State of Systematic Evolution. The dilemmas of incorporating a Kraepelinian nomenclature into the French system were such that by the first world war the concept of hereditary constitution had all but died out in French psychiatry and the above disorders were merged and then subdivided based upon symptomatology, or what the French describe as delusional mechanisms.

In 1909 Serieux and Capgras described a group of non hallucinatory chronic delusional state with coherent delusions, which developed gradually in vulnerable individuals and did not lead to dementia.[19] They corresponded to Kraepelin’s paranoia group of 1912. Termed Chronic Querulous Paranoia and the Vexatious Litigant. (Dr Grant Lester V.I.F.M.H.)
Interpretive Psychosis they were a systematised psychosis feeding on delusional interpretations and at their core was:

"false reasoning originating in the misinterpretation of correctly perceived fact or facts, to which logical but erroneous inferences lend misconstrued subjective meaning consonant with personal inclinations, sentiments, and preoccupations" [19p478]

A subgroup were called vindicative delusional states in which a single, relentless and patently pathological thought or thought complex, intensified by opposition, subdues and dominates all other mental activity. This group is similar to Kraepelin’s querulous paranoia.

G. de Clerambault, in the 1930’s similarly described a subdivision based on sentiment or passion driven misinterpretations. These were single, permanent, and unshakeable but erroneous convictions of either conjugal or erotic structure eg she is unfaithful to me or she loves me. He believed other Interpretive delusions eg persecutory and grandiose, developed insidiously, with suspicion, doubt and mystery slowly crystallising into delusion. Conversely, he felt that those who developed delusions of passion had reactions which were hypersthenic and expansive (as per Kretschmer) ie the delusions of passion developed suddenly with ideas fully formed, with immediate sense of purpose and goal driven activity of almost hypomanic ferocity. De Clerambault’s distinctions remained firmly entrenched in French classificatory system up into the 1980’s and his model has remained of value to those who have subsequently performed research into morbid jealousy, erotomania and querulousness. [19,20]

Post World War Two

Kurt Schneider in 1949 stated that the paranoidias were only a peripheral form of schizophrenia. [16,18,22] In the ninth edition of his work Psycopathic Personalities, (where psycopathic is taken to mean the subgroup of abnormal personalities who either suffer personally because of their own abnormality or make the community suffer because of it[15]), Schneider is at pains to point out that paranoia does not exist. Instead, taking the querulant as an example he believes they fall into either the schizophrenic group or into a group of reactive paranoid developments. [15p109] The latter develop in either a Hyperthymic or Fanatic psychopathology.

The American Psychiatric Associations Statistical Manuals from the first in 1918 till the seventh in 1945 followed Kraepelin’s classifications. However in the first edition of the Diagnostic and Statistical manual in 1952 it was evident that Bleuler’s influence was paramount with the term schizophrenia adopted and the point specifically made that deterioration only occurred in some cases of schizophrenia. [14]. Paranoia along with Paranoid State was present under the term

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Paranoid Reactions, and defined as persistent delusions of persecutory or grandiose type normally without hallucinations, or intellectual deterioration.[14,21]

Bleuler’s influence along with the restrictive content of delusions described by the American Psychiatric Association’s Statistical Manuals limited the diagnosis of paranoia and the concept went into decline from the 1950’s to the 1970’s. However research by Winokur, Kendler, Munro and others helped revive the concept.[21,54,33,80] Paranoia became what first Winokur and then Kendler described as Delusional Disorder. Kendler felt it important to separate delusional disorder with hallucinations from delusional disorder without hallucinations, which he termed simple delusional disorder. Kendler’s work supported the view that simple delusional disorder was sustainable as a separate disorder from schizophrenia and mood disorders.[21,79,54]

ICD9 of 1978 described paranoia as a gradually developing systemised delusions without hallucinations or schizophrenic type of disordered thinking. No comment as regard aetiology is made. In DSMIII (1980) Paranoia was classified under Paranoid Disorder and the delusions were either persecutory or delusional jealousy and again hallucinations could be present but not prominent. There is no deterioration of intellect.

ICD10 (1992) includes paranoia within Persistent Delusional Disorders and allows hallucinations if only occasional or transitory auditory type. The delusions may be variable in content, but are persistent and possibly lifelong. No mention of course or deterioration is mentioned. Finally in DSMIV paranoia is no longer mentioned and Delusional Disorder takes the place of Paranoid Disorder. The delusions must be non bizarre and tactile and olfactory hallucinations may be present.
2.2. DELUSIONS: PREGNANT WITH MEANING OR EMPTY SPEECH ACTS

The presence of delusions has historically been the hallmark of insanity and yet delusions have been defined in a number of ways and as yet no agreement has been reached on their nature or origins.[22,23,24]

There have been investigators who have disagreed that they even are a form of belief but in fact are:

“empty speech acts, whose informational content refers to neither world nor self. They are not the symbolic expression of anything. It’s contents is but a random fragment of information ‘trapped’ in the very moment the delusion becomes crystallised.”[22]

Many researchers however remained wedded to the general concept of delusions as beliefs.[17,25,26]

Karl Jaspers

In particular Jaspers has been influential in defining the essence of delusional beliefs. He acknowledged the Kantian theory that all experience or knowledge entails both an incoming sensation (content) and an organising concept (form). This formed the origin of the concept of form and content within his General Psychopathology.[17,27]

Jaspers describes four forms of belief: normal beliefs, overvalued ideas, delusion-like beliefs and primary delusions.

One can understand the evolution of normal, and overvalued ideas from the personality and its life events. One can understand the delusion-like idea from the personality, life events and from some other psychopathological experience but the primary delusion is something new, irreducible and non understandable. For Jaspers the major distinction is between primary delusions and the rest rather than between delusions (primary and secondary) and the rest.

Primary Delusion

Jaspers believes that delusions are always manifest as judgements and therefore arise in the process of thinking and judging. To this extent, pathologically falsified judgements are termed delusions.[27]
Jaspers felt that the external characteristics of primary delusions are that they are held with an extraordinary conviction with an incomparable subjective certainty, that there is an imperviousness to other experiences and to compelling counter argument and that their content is impossible. However these are just the external characteristics and Jaspers states clearly that they fail to account for the essential differences between the delusion and other forms of belief.\textsuperscript{[}\textsuperscript{17,99}\textsuperscript{]}

Jaspers felt that delusions were the result of a specific abnormal process whose basis was unknown but which involved a radical transformation in the way meaning became attached to events. So for Jaspers the essential criterion distinguishing between the different forms of belief lie not in their conviction and certainty, not in their incorrigibility and not in their impossible content but in their origins.

The essential distinguishing factor within the four forms of belief is the concept of understanding. Jaspers sense of (verstehen) understanding was the psychiatrist’s empathic access to the other person’s subjective experience using the analogy of his own experience. In his view it is the psychologically irreducible and ununderstandable nature of primary delusions, which separate them from other delusional forms. They are unmediated by thought and importantly there is an implied change in their personality. Jaspers describes personality as:

\begin{quote}
"the term we give to the individually differing and characteristic totality of understandable connections in any one psychic life" \textsuperscript{[17 p428]}
\end{quote}

A primary delusion intrusively creates a new meaning in that totality of understandable connections and hence distorts this totality. In the primary delusional category were delusional atmosphere (delusional mood), delusional perceptions, delusional ideas and delusional awareness’s.\textsuperscript{[25,27]}

Von Krafft-Ebbing and initially Kraepelin both viewed the morbidly querulous as having delusions. Kraepelin later believed that they were not delusions at all, falling more into the overvalued idea type. DSMIV and ICD 10 classify the morbidly querulous as having delusions.

Normal belief

Normal beliefs are understandable because of their origins in the personality's shared beliefs and meanings; they are incorrigible because of the social cohesion and shared values of the group.

Delusion like idea and the Overvalued idea
Delusion like ideas meet the external criteria for delusions but they can be traced to preceding psychopathological experiences such as hallucinations, morbid affects, fears or primary delusions. Given these, they can be seen to fit into a web of meaningful connections.

Jaspers describes overvalued ideas as isolated beliefs accompanied by a strong affective response that take precedence over all other mental activity and maintain this indefinitely. Overvalued ideas are understandable because of their origins in the strong affect of the particular personality and its situation; they are incorrigible because, although often idiosyncratic and false, they have the force of highly charged and compelling insights. Their qualities are similar to passionate political or religious beliefs and differ only in degree.[27] Jaspers in fact made little or no practical distinction between delusion-like ideas and overvalued ideas and at times uses them interchangeably in his writings.[17p592] Jaspers included the beliefs of the morbidly querulous as overvalued ideas.

C. Wernicke

It was Wernicke who first defined the overvalued idea as a solitary belief that comes to determine an individual’s actions to a morbid degree, yet remains able to be considered justified and a normal expression of the individual’s nature. He felt they tended to develop in predisposed personalities and often dated from experiences that at the time aroused strong feelings and in fact he felt that overvalued ideas were memories of some affect-charged experience or series of experiences. [15p97,77] Wernicke felt that the overvalued idea could progress to full psychosis or was occasionally a manifestation of melancholia or general paralysis.[28]

Wernicke distinguished overvalued ideas from obsessions by observing that they were never felt to be senseless by the sufferer. He included the morbidly querulous in the overvalued ideas group.

Fish notes that in the patient with an overvalued idea it is invariably acted upon, determinedly and repeatedly whereas in the patient with delusions there is often a discrepancy between the degree of conviction and the extent to which the belief directed action.[29] In contrast Bleuler 1924 took the view that action on a delusion is largely a consequence of the associated affectivity.[30]

One of the few reviews of overvalued ideas was McKenna’s 1984 review of disorders with overvalued ideas.[28] He includes the querulous paranoid state as the standard clinical example of the overvalued idea. Referring to Jaspers he emphasises the abnormal premorbid personality, the initial slight or injustice and the persistent claiming behaviour without deterioration. McKenna Querulous Paranoia and the Vexatious Litigant. (Dr Grant Lester V.I.F.M.H.)
states that the central belief "lacks a specific delusional quality" and "the accompanying misinterpretations also seem uncritical more than delusional". However he also notes that researchers have found some cases to progress to psychosis as well as some cases commencing with psychosis.[28p580]
3. THE SPECTRUM OF QUERULOUSNESS

German E. Berrios writes of the classificatory drive, which appeared in Western Society during the 17th and 18th centuries. Alienists were not immune to this movement and by the nineteenth century vigorous debates were being held about the validity of various psychiatric classificatory systems, for example those based on phenomenology versus those based on aetiology.[31] It was into this time that the initial studies of the querulous was born.

Various psychiatric researchers have attempted to describe and categorise the querulous. They were influenced by their guiding psychiatric paradigms and by a significant selection bias in the querulous patients they examined, for the querulous do not voluntarily seek out psychiatric care. In fact it is society, through its courts and other authorities who refers the querulous patients to psychiatric professionals. As a result, researchers, particularly early researchers such as Krafft-Ebbing and Kraepelin, studied those querulous who had been referred to them by the Courts or other authorities for involuntarily incarceration and observation. They were therefore usually selected not only because of their particularly persistent and annoying level of querulousness but also because of their level of dangerousness.

Krafft-Ebbing took an aetiological approach, believing the querulous to have an organic psychosis which always developed in tainted individuals.[32p363]

Kraepelin believed that querulous behaviour could occur in non psychotic individuals who were: “Very perverse, quarrelsome and under some circumstances simply weak minded people...”[32p150]

The remaining querulous suffered from a disease process. He believed this group to be a heterogeneous mix of psychotic disorders. With the concept of partial insanity or paranoia firmly in mind he initially separated them into those with dementia praecox and those with a sub group of paranoia, which he called the querulous paranaias. Eventually by 1912 Kraepelin’s prodigious struggles to categorise and sub-categorise the querulous had resulted in the querulous being separated into the discrete entities of schizophrenia, paraphrenia, querulous paranoia and the others (querulous personalities, weak minded etc).

However he could not maintain his belief in the organic psychosis concept for the querulous paranaias, for they had misbeliefs uncharacteristic of the primary delusion. The misbeliefs were ordinary and followed understandably from their underlying personality and overlaid life
experiences. Exhausted he finally relented and redefined querulous paranoia as a disorder of abnormal developments in a psychopathic disposition under the influences of ordinary life. It appears he believed their misbeliefs to have the form of overvalued ideas.

By this stage he believed those with querulous paranoia to have experienced an event, which led to the development of an ever-increasing spiral of grievance. There were delusions of grievance with an underlying strong over self-appreciation. There should be no evidence of thought disorder, emotional blunting or hallucinations. The course was chronic and fluctuating with periods of quiescence and relapse. He remained clear in his mind that those with querulous paranoia had deviated clearly from the groups with disordered personalities or as he described the perverse, quarrelsome and weak minded querulous.[7,8,33]

It was this final position of Emil Kraepelin along with his belief in the discrete entities, which has been most influential on subsequent researchers into querulousness. Kraepelin’s student Kurt Kolle reviewed Kraepelin’s querulous paranoiacs and believed most of them not to have paranoia but to be neurotic quarrellers who shared the grandiosity and desired goal of the paranoias.[189,88]

However subsequent researchers continued to search for the discrete entity, querulous paranoia. They hoped it could be isolated and studied as it came to be believed that their misbeliefs took the form of overvalued ideas which could be distinguished from primary and secondary delusions as well as from normal beliefs.[see section 3.2]

Karl Jaspers’ writings on the division of mental disorders has influenced researchers from Kretschmer and van der Heydt through to Mullen and Caduff. Jaspers wrote of mental disorders as processes, developments or reactions.[17,20]

A morbid reaction is a response to a precipitating event in which the intensity and content of the provoking event makes understandable the emergence of the disorder. Temporally there is a close link between the event, and the reaction, which should decline when the provoking event ceases.

A developmental disorder arose from the interaction of a provoking event and a specific personality structure. The evolution of the disorder is not necessarily connected to the course of the provoking situation. Ernst Kretschmer attempted to both categorise and explain the aetiology of the querulous paranoias by their underlying personality structures.[16,8] Kurt Schneider who referred to the querulous in his work on Psychopathic Personalities and believed them to be either a development from psychopathic personalities or to suffer from schizophrenia.[15]

Later still, the researcher A. van der Heydt (1952) who had a series of 34 querulous patients tried a diagnostic and descriptive categorisation:

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1. **Normal**-seeker of justice, with no disturbance of personality or psychosis. It is a reaction to injustice suffered. When the injustice is remedied the querulousness disappears.

2. **Opportunistic**-seeker of personal advantage. Personality disordered with antisocial traits whose querulousness is in order to gain financial compensation, business advantage or avoidance of punishment.

3. **Justice**-seeker of justice for justice’s sake. It initially may have appeared to be as in group 1, however it spirals into a series of complaints. They produce large volumes of written complaints, counter accusations and justifications. These become increasingly vituperative and insulting. Lasting many years, it increasingly involves previously uninvolved entities and their struggle often loses contact with the original injustice. Their life focus is on seeking justice and other areas of their life are neglected.

4. **Conjugal**-personality disordered with the overwhelming need to be right. Triggered by marital disharmony and associated legal proceedings.

5. **Irritable and peevish personality disorder**-chronically quarrelsome with an overwhelming need to be right. They have always fought against everyone and everything. These rarely go to court and do not produce the volume of written material.

6. **Secondary to Psychosis**-the querulousness occurs with an endogenous psychosis (either affective or schizophrenic). Resolution of the psychosis leads to resolution of the querulousness.[3]

Van der Heydt(1952) went some way to further describing the spectrum of the querulous. He remained firmly Kraepelinian in his adherence to the entity querulous paranoia at whose heart lay the overvalued idea. He believed Group 3 represented the querulous paranoidias. He believed their neurotic symptoms were so closely connected to their character that it is reasonable to speak of it as a “character neurosis”. He describes Group 3 as the *genuine querulant*. He is possibly referring to Recke’s *genuine querulant* whose querulousness arises from an innate tendency to querulousness which is triggered by *real* injustice.[5] Later researchers such as von Dietrich(1973) and Caduff(1995), perhaps unwilling to further muddy the water have used von der Heydt’s categorisations in their research.[4,5] The difficulties in sustaining separate categories for the querulous has led some researchers, such as Rowlands(1988) (who interviewed a group of Vexatious litigants), into quite confusing positions. In his work he states that:

"The psychopathology of the symptoms merge, and it is difficult to separate overvalued ideas"
while curiously attempting to separate the querulous into the categories of:

- Querulous Paranoia ie as per Kraepelin’s abnormal development in a psychopathic disposition.
- Paranoia ie as we would understand Delusional Disorder.
- Paranoid Personalities.
- Schizophrenia.

Thus he attempts to separate paranoia from querulous paranoia a feat that not even Kraepelin at his most optimistic attempted and a position unsupported by the accompanying case histories.[34]

Mullen, writing on the pathologies of passion believes that combining some of the characteristics of Jaspers’ reactive and developmental mental disorders best fits the development of this group of the querulous. The individuals have personality vulnerabilities or disorder which have been sensitised to specific stressors by past experience. They are then serendipitously exposed to those specific stressors which then provoke a response. However the response, while understandable in quality, is exaggerated both psychologically and behaviourally. The evolution of this reaction continues to be influenced by environmental factors such as the reception of their complaints.

Mullen espouses a continuity of querulousness without multiple discrete entities.[20]

Evidence, of the difficulty of characterising and defining querulous paranoia as well as of evolving classificatory systems, is the profusion of terms found in the psychiatric literature. They range from paranoia querulantium (Krafft-Ebbing)[7], querulous paranoia and querulent paranoia (Kraepelin)[11], querulent paranoid[2], paranoia querulans[ICD10], querulous paranoid state[34], litigious paranoia, litigious paranoid[35], litigious delusional states[36], justice seeker[3], querulous syndrome[34], morbid querulousness[37], delusional disorder; persecutory type[DSMIV] through to the compulsively querulous[5].

3.1. DEFINITION

I have used the terms querulous and morbidly querulous with the aim of using terms which are openly descriptive with a minimum of implied and historical baggage.

Querulous: I use this term to describe both a behaviour and individuals manifesting a behaviour which involves persistent complaining with no implied reference to aetiology, morbidity or course. Hence it is important to emphasise at the outset that querulousness as with any behaviour may be produced by a variety of factors interacting in a complex manner and its’ consequences
are similarly various.

**Morbidly querulous:** This describes the group of individuals whose querulous behaviour leads to negative consequences for themselves or others. The most obvious external defining characteristic of the morbidly querulous is their belief of having been wronged and their persistent pursuit of redress.

Their preoccupation with the grievance and the pursuit of redress directly causes variable degrees of collateral damage to other components of their life, such as financial viability, employment, and social and family relationships. They also cause distress to individuals or organisations through their persistent petitioning, and at times aggressive behaviour.

I use the term morbidly querulous rather than querulous paranoia because there was a significant variation through time and place of the defining criteria for schizophrenia and hence paranoia. As a result the research while aiming to describe discrete groups nominally centred on the concept of querulous paranoia, in fact have borders which merge in one direction with the perverse grumblers, personality disordered, activists and reformists and in the other with those in whom querulousness occurs alongside other phenomena that are today suggestive if not diagnostic of a schizophrenic spectrum disorder.

### 3.2. NORMALITY AND BEYOND

The task of examining the behaviour of querulousness is difficult given the universality of the behaviour and its extremes and the association with emotions and their extremes. To complicate matters further it is evident that society’s acceptance of and tolerance for the extremes of behaviour associated with various emotions historically wax and wane. Over the last century the subtle devaluing of jealousy as an appropriate response within sexual relationships is evidence of this.[20] It has been noted that this varies between emotions. For example currently we are much more forgiving and understanding of the extremes of love and associated behaviours than we are of jealousy and its associated behaviours. This increased societal tolerance moves the cut-off for normality further along the spectrum and hence may decrease the visibility of morbid conditions.[36] On review of the literature there is evidence that there has been a recent waxing of society’s acceptance of querulousness particularly since the nineteen sixties.[5,2,37]

#### 3.2.1. A Cognitive Framework

In attempting to understand the querulous it has been essential to have a framework to explore the mental processes which underlie querulous behaviour.
According to Aaron Beck human beings have a cognitive organisation which allows them to apply past experience to a variety of new situations. This means that the individual is prepared to focus on important aspects of a situation and then apply the appropriate formulas to their analysis. This advanced preparation involves the activation of cognitive structures (schemas) which orient the individual to a situation and help him select relevant details from the environment and to recall relevant data. At times the individual may be overprepared, so that he sees what is expected instead of what is actually present.[38]

These schema are grouped into cognitive constellations and the expression of the controlling cognitive constellation is called the cognitive set and provides the individual with a composite picture of a specific situation. Which cognitive set is evoked by a stimulus or event is dependent on the individual’s past experience.

When a constellation of schemas is activated it directly influences the content of a person’s perceptions, inferences, evaluations, fantasies and memories.[38]

A cognitive model described by Trower et al provides a framework to enable the teasing out of the cognitive processes underlying the querulous behaviours as well as potentially informing management.[39] It is an integration of Beck’s Cognitive Therapy model and Ellis’ Rational Emotive Behaviour Therapy model[40,41].

Essentially this model has the elements of:

1. Activating event
2. Beliefs

These are made up of the four cognitions of images, inferences, evaluations and assumptions (dysfunctional). They are felt to have their origins in the early relationships of the individual.

Images are literally the mental pictures an individual may conjure in response to an event.

Inferences are predictions or hypotheses which can be true or false e.g. she doesn’t like me. They are often made automatically, about what is happening, will happen or has happened. They may be distorted e.g. personalisation where the individual tends to relate external events to himself. One way of making an inference is by means of an attribution. A person failing an exam may attribute this to something internally about themselves (e.g. inability) or externally (e.g. an unfair test).

Evaluations are good-bad judgements. Particularly important are person evaluations which can be defined as stable, global and total condemnations of an entire person. They are made about Querulous Paranoia and the Vexatious Litigant. (Dr Grant Lester V.I.F.M.H.)
oneself or another in three ways: other to self where the other evaluates me, self to other where I evaluate the other and self to self where I evaluate myself.

Assumptions (Dysfunctional) are fundamental rules or principles which guide behaviour. They are usually implicit but may be deduced from an individual’s interpersonal behaviour.

Individuals are able to see images, are aware of inferences usually as facts rather than inferences but are less aware of evaluations and dysfunctional assumptions.

3. Emotional and behavioural consequences.

The model postulates that there are specific and predictable relationships between the beliefs and the type of emotions felt. The three primary cognition-emotion links are anxiety, depression and anger. For example beliefs about infringement of rights and negative self-other evaluations are related to anger and aggression. The intensity of anger and the expression of aggression are related to beliefs about relative status, threats to status, and revenge seeking.

3.2.2. Analysis Of Complaint And Querulousness
A complaint has as its genesis a belief of having suffered a loss caused by another. It may engender the emotions of dissatisfaction, sadness and anger.

The degree of such dissatisfaction, sadness and anger experienced is logically related to the level and nature of the judged loss.[5]

What factors may then lead to persistent complaints:

1. Characteristics of the event causing loss.

2. The meaning of the loss, ie the inferences and evaluations made.

3. Reception of the complaint by others eg Ignoring, minimising, rationalising, hostile or exaggerated response with unrealistic promises.[42]

4. Match between reparation fantasies and offered reparation.

Society assesses querulousness by its apparent motivation and the level of complaining. Attempts by psychiatry to distinguish between querulous and morbidly querulous individuals based on the same method was one factor leading to the type of abuse of psychiatric classification as was seen in Soviet Russia.[see section 5.7]

Identification of the morbidly querulous is initially made by a quantitative and qualitative evaluation of the querulous behaviour.[43,44] Further assessment of the morbidly querulous must
be informed by context, motivation and phenomenology. The case by which the querulousness is evoked, the disproportion of the behaviour compared to the loss or injury and the persistence of the behaviour in the face of resulting personal or social consequences must be assessed. As well a search for any accompanying phenomenology must be made. This includes the examination of the quantity and quality of the underlying emotions, inferences and attributions evoked by the event. These lead unerringly to the individuals evaluative beliefs of self to other, and self to self. This knowledge along with knowledge of the accompanying phenomenology allows diagnostic decisions to be made as well as providing the substance for future pharmacotherapeutic and psychotherapeutic approaches.[45]

Querulousness has the emotional combination of dissatisfaction and anger. Though in morbid querulousness the anger has a developing quality which is often described as indignation or righteous anger. This is an anger with an inherent sense that the complainant has been the victim of unworthy, unjust or base act or acts.[18]

An interaction between three factors will influence the degree of indignation:

1. Dysfunctional assumptions and the prevailing cognitive set.

2. The characteristics of the loss event:
   • Agency ie degree of personal responsibility for the event.
   • Risk ie the expectedness of the event.
   • Ramifications of the event.

3. The nature of loss. Particularly evocative of indignation are losses of:
   • Possession.
   • Power.
   • Position.
   • Prestige.
   • Rights.[4]

It is evident that the characteristics of the loss event and nature of the loss are directly interpreted by the individual’s assumptions and the prevailing cognitive set.

The evaluation of the nature of the loss along with the level of querulousness, allow the beginning of our understanding of the controlling cognitive set of the individual.
When there is a positive imbalance between the provoked querulousness and the qualities of the loss event then the cognitive set will likely be of the hostility type.[46p60] This is a primitive cognitive system with the two significant schematic elements of egocentricity and entitlement. As in a young child they view themselves as the centre of the universe, hence with a limited point of view and an inability to take the role of the other person or modify their behaviour for someone else. Their needs are pre-eminent and this is assumed to be self evident to all. They make externalising attributions. The inflexibility and absolutism of this egocentric world view leads to the moral quality of their interpretations ie rightness according to a higher authority, though in this case it is the self as that authority. Hence the loss event is now an immoral, unjust, unworthy and base act.[4,47]

The egocentricity and entitlement produce specific fantasies of reparation. Compensation, that is the simple counterbalancing, or making up for the loss is the least significant element in their fantasies even though it may be prominent in their communications. Rather, the two main themes are:

1. Vindication. In querulousness in general this means that they will be cleared from any implied or imputed charge of responsibility for the loss. Their beliefs, emotions and behaviours will be shown to be justified and this justification must be seen by and acknowledged by all involved. However, in the morbidly querulous there is a significant investment of self in their grievance and so they seek vindication of the self ie the acceptance by others of their greatness and of the wonder and achievements of that self.

2. Vengeance. There must be retributive punishment inflicted onto the perpetrators of the loss event, who must suffer in requital for wrongs done.

With a prevailing hostile and egocentric cognitive set, a developing righteous anger and fantasies of vindication and revenge the scene is set for the querulant to embark on a career of complaint. The reception of the complaint now may become a further factor. A reception which ignores or minimises the complaint and hence fails to legitimate the complainant’s right to and expression of his anger has been shown to be a significant factor in exacerbating querulous behaviour.[4] Regardless of the receiver’s response there is a significant risk that they will not satisfy the complainant. For as previously described even a simple request for compensation may misleadingly hide other more significant demands. Compounding the issue is that the querulant with varying levels of inflexibility is not able to adapt to or accept anything less than total compliance with his demands, so a partial victory is no victory at all. If he now ventures into the
legal system he finds a system with a matching inflexibility and rigidity of form. The querulant often lacks the flexibility to adapt his cause and demands to fit the legal paragraph. Delays, cost, disappointment and hurt all exacerbate the querulousness. Equally significant is the civil legal systems ability to mete out compensation but its general unwillingness to indulge even the successful querulant in his desired vindication and revenge. It is unsurprising therefore that the court room itself becomes the theatre in which the querulant exacts his vindication and revenge.

3.2.3. A Disappearing Problem?
By the 1980’s paranoia had been re-birthed as the Delusional Disorders. Querulous paranoia now resides in the categories of Delusional Disorder Persecutory Type in DSMIV and the residual category of Other Persistent Delusional Disorders in ICD 10.

There has been a significant and marked reduction in the diagnosis of querulous disorders since the late 1960’s.[4] This reduction in diagnosis has been accompanied by a reduction in published research. Why this is occurring will inevitably have its source in the individual and their society as well as psychiatry and its prevailing paradigms. Regardless of the reasons it has led to a reducing familiarity with the particular phenomenological, diagnostic and management dilemmas which have historically highlighted this group.[4,35,48]

Despite the declining diagnostic rate there is evidence that this group remains a significant problem for society. Evidence such as the increasing annual numbers of vexatious litigants over the last decade compared to previous decades.[34] Also the research which found that a significant proportion of women imprisoned for contempt of court have a long history of persistent litigiousness.[49]

Significantly the problem for the late twentieth century society does not end with the Courts or prisons. Since the 1970’s there has been a burgeoning of governmental and non governmental structures, created expressly to give individuals more rights and to make public officials more accountable. This has created a wide variety of new and free means for the expression and reception of claims. It is from these structures that there is increasing evidence that the persistently querulous have found these new avenues.[personal communication with Health Services Commissioner Ms Beth Wilson and Victorian Ombudsman Mr Barry Perry, 1999] Such avenues as politicians, especially Ministers and Attorneys-General, Law Reform Commissions, Ombudsmen, Complaint Authorities, Discrimination Commissioners and Chief Commissioners of Police are used to pursue their grievances. [43,34,48,50] Or as Ian Freckleton, who was the manager of the Police Complaints Authority of Victoria, emotionally states, “To wreak their

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mischief."[2]
4. RESEARCH FACTORS

In seeking to piece together a coherent picture of the morbidly querulous from the research, it is important to note the following general factors:

1. The nature of the querulous means that they rarely if ever self refers to psychiatric services for treatment.

2. The above factor is exacerbated by the fact that it is a behaviour which separates this group from the population. As such, societal factors play a major role in deciding what level of behaviour is acceptable and what is not. It also dictates to whom referral is made i.e to legal or psychiatric services and hence the characteristics of the population available for psychiatric investigation.

3. The research spans 130 years and derives from seven countries, though Germany predominates. These factors are responsible for the:

* Varying adherence to epistemological criteria in the early work.

* Varying levels and type of biographical and phenomenological information reported in the published literature.

* Varying and evolving theoretical base and classificatory systems over time, which causes significant variation in the phenomenological criteria set for the target population.

* Lack of correspondence of classificatory systems from different countries.

* Difficulty in translation of non English language psychiatric terminology and concepts into accurate and informing English phrase.

The following specific factors are important:

1. The earliest research was often performed by forensic psychiatrists eg von Krafft-Ebbing, and the selection bias inherent in the populations studied emphasises the features of a group whose behaviour is so severe as to contravene the laws of the time and hence require compulsory referral for psychiatric assessment and or management.

2. Von Krafft-Ebbing studied a group of querulants in whom the presence of hallucinations was acceptable and common. Kraepelin’s initial studies on querulous paranoia included those with
hallucinations, then moved to those with only mild, non frequent hallucinations and then finally excluded the presence of hallucinations altogether. Later researchers Refsum and Astrup from Norway and Johansen from Denmark accepted the presence of hallucinations. Kolle, Winokur, and Ungvari exclude those with hallucinations from their studies.[32,51,52,53,18,54,36]

3. The research literature on the querulous is primarily based on institutional and hospital based patient populations, and the criteria for admission varied eg Johansen's study was based on a University Hospital ward which was a voluntary, open unit and did not admit aggressive or absconding patients.[51]

4. Important works, such as those by Caduff and Winokur are based on retrospective case history review rather than direct patient assessment.[5,54]

5. Winokur, Johansen and Refsum performed their research on delusional disorder, paranoia and paranoiac psychoses respectively rather than the morbidly querulous specifically. While they did separate out the querulous group to some degree, it is at times difficult to derive information specifically applicable to the sub group of the morbidly querulous from these studies.[54,51,53]

6. The most recent patient series, by Pang et al was based on screening of new referrals to a psychiatric outpatient clinic in Hong Kong.[43]

7. The only researchers not to use a patient population were Rowlands who interviewed a series of Vexatious Litigants and d'Orban 1985 who reviewed a group imprisoned for contempt of court.[34,49]
5. THE RESEARCH

5.1. THE MORBIDLY QUERULOUS

5.1.1. Definition
The most prosaic yet useful definition of the morbidly querulous is, an individual who embarks on a persistent quest for restitution for real or imaginary wrongs through complaint, claims, petitioning of authorities and sometimes litigation, with resulting negative impact on their personal, interpersonal and social functioning.

5.1.2. Diagnostic Criteria
Persistent, relentless petitioning of governmental and non-governmental agencies and or the courts, with evidence of contagion ie spread of foci of grievance.

Beliefs of having suffered loss or injustice that dominates the mental life. The beliefs have been of at least six months duration.

The resulting behaviour is directed to attainment of compensation, vindication and vengeance and stay of persecution.

For a significant portion of the time since the onset of the behaviour one or more major areas of functioning such as financial management, work, or interpersonal relations are markedly below the level achieved prior to the onset and there has been significant disturbance and distress caused to other targeted individuals, organisations or their representatives.

Types

1. PRIMARY: Querulousness is the only significant phenomena. There is no evidence for schizophrenia or mood disorder. Nor is there evidence that the querulousness is due to the direct physiological effects of a substance(eg a drug of abuse or medication) or a general medical condition.

2. SECONDARY: The criteria for schizophrenia or mood disorder have been met or the querulousness is due to the direct physiological effects of a substance(eg a drug of abuse or medication) or a general medical condition.
5.1.3. Epidemiology

5.1.3.1. Incidence

Most if not all researchers have been attempting to isolate and describe the primary type of morbid querulousness (PMQ). However their research methods and inclusion criteria vary considerably and so the various rates found must be viewed with reservations.

It is important to state that there has been no attempt to assess a population incidence of PMQ.

I will commence with the group of researchers who retrospectively assessed case records of all admitted patients to a psychiatric institution. As a percentage of all admitted patients we have a rate of querulous paranoia ranging from Winokur 0.02% (in this study paranoia had a rate of 0.1%), Kolle who assessed the records of all the 30,000 admissions to Kraepelin’s clinics and found 13 with a diagnosis of querulous paranoia, a rate of 0.04%. through to Johansen 1964 who found a rate of 0.9% for querulous paranoia (paranoia had a rate of 6% in this study).[54,18,51]

Another group of researchers assessed the case histories of patients with functional psychoses only and so as a percentage of admitted patients with functional psychoses the rate of querulous paranoia ranged from Caduff 0.15% and Refsum 0.2% (paranoia had a rate of 3.5%) through to Astrup 0.7%.[5,7,52]

The only prospective study was that of Pang et al who found that of 1551 referrals to the psychiatric outpatient clinic in Hong Kong (over 1 year) 0.2% had querulous paranoia.[43]

In reviewing the overall results it is evident that the Scandinavians had high rates of both paranoia and querulous paranoia. This may be explained by their emphasis on a deteriorating course to diagnose schizophrenia. As a result schizophrenia was not diagnosed despite the patient having emotional blunting, thought disturbance, auditory or somatic hallucinations. This skews the number who are diagnosed with paranoid psychoses and paranoia. This gives a significantly wider range of phenomenology in the patient groups of the Scandinavians in general and Refsum in particular and puts them at odds with most of the other researchers.[53]

If we focus on the researchers who exclude patients with emotional blunting, thought disorder and hallucinations we are left with a range of rates for PMQ of 0.02% (Winokur) → 0.04% (Kolle) of all hospitalised patients, 0.15% (Caduff) of hospitalised psychotic patients and 0.2% (Pang et al) of outpatients.[54,18,5,43]
5.1.3.2. Age

There is surprising unanimity in the research findings that the majority developed their querulousness in their 30’s and 40’s and 50’s. The findings of Astrup and others showed that there was often a significant period of time between onset and first presentation. 70% had a period of 1-5 years of disorder prior to presentation and 30% had a period of 5-10 years of symptoms prior to first presentation.[52]

5.1.3.3. Sex

The initial studies by Krafft-Ebbing, Kraepelin and Kolle demonstrated that 70-80% of the querulous were men. This was on an involuntary and often forensic population. These figures have been supported by van der Heydt and Caduff.[55,56,18,3,5]

Astrup found that 50% were male, while Johansen found over 60% were male. Johansen’s patients were voluntary and non forensic.[52,51]

5.1.3.4. Premorbid Functioning

The major studies of Kolle, van der Heydt and Caduff paint a picture of competent individuals. Typically the elder child of middle class parents, they had a good education and middle to upper class employment levels. Winokur found 76% to have had a satisfactory work history.[18,3,5,54]

Kolle found that 63% were married, 16% divorced and 16% had never married. Astrup found a lower level of marriage with 33% married, 18% divorced and 45% had never married.[18,52]

5.1.4. Premorbid Personality

Beginning with Krafft-Ebbing’s “a rough, irritable, egotistic person, defective in his notions of justice” the researchers have some consistency in the described personality types most prone to the querulous development.[9p,364]

Kolle found their to be three main premorbid personality types. These he described as:

- **Hypertimic (39%)** as per Kurt Schneider’s Hypertimic Psychopath who is energetic, busy, restless, irritable, has a sense of humour and is sociable but have inflated self esteem and are sensitive to slights. Kurt Schneider himself called them pseudo querulants because though they tend to quarrel and complain they are easily assuaged.[18,15]

- **Fanatic (12%)** again as per Kurt Schneider’s Fanatic Psychopath, who are holders of over valued ideas which are held assertively and combatively.[18,15] Tenacious and uninhibitedly aggressive they are always right and stubborn. They may exhibit eccentricities of manner,
behaviour, dress or speech. As per Kretschmer they have a tender vulnerable core of buried inferiority feelings and when struck by loss they form an expansive reaction, being energetic, arrogant and self-assured.\[16\]

**Defiant (27%)** These individuals are "against the grain" people who are rebellious, have great difficulty with authority of any type and have histories of parental conflict.\[18\]

Van der Heydt and Caduff support this finding though Caduff using van der Heydt’s classification (see section 3) described the genuinely querulous of Group 3 to be mainly hyperthymic.\[3,5\]

Astrup and Refsum describe 75% as having self-assertive personalities and that over 30% had a premorbid criminal history.\[52,53\]

Winokur found that patients were not generally fussy or rigid but had been chronically jealous and suspicious (66%) and embittered (45%).\[54\]

Ricardo Pons describes them as having overly sensitive and mistrustful personalities, best summed up by the Spanish saying as “those who look for noon at 2pm”.\[47\]

Dietrich found them to have premorbid personalities of mainly paranoid type, with hidden hostility, over reaction to threat and sensitivity about their competence. A history of dysfunctional relationships highlights their difficulty in empathising with others and hence their inability to value societal interests compared to their own. They are suspicious, prone to misunderstandings and wrong conclusions. Their sensitivity and insecurity require rigid defences which preclude weakness, mistake or failure on their part.\[4\]

Pang et al and Ungvari describe premorbid inflexibility, difficulty with intimacy, assertiveness with hypersensitivity to criticism and distrust.\[43,36,48,50\]

Johanson felt that premorbidly they had high self-esteem.\[51\]

In summary the querulous tend to be ambitious, self-assertive and egotistical with high but fragile self-esteem. They may be irritable and anti-authoritarian and their relationships are marked by lack of empathy, distance and at times conflict.

**5.1.5. Precipitating (Key) Experience**

The original researchers such as Emil Kraepelin were impressed by the understandable quality of the development when seen as a product of the underlying personality and a key or precipitating event. Kretschmer viewed querulous paranoia as a key reaction in that only a specific key event
or experience for a given personality is able to unlock its development. Kolle found that there was a high level of identifiable significant events preceding the querulousness. In all cases the onset was preceded by a severe disturbance of living conditions, and in particular he found that 60% had a preceding stressful court case and 31% had been dismissed from work. This has been supported by van der Heydt and Caduff who in particular found a high level of legal problems preceding overt querulousness by a period of years. Other researchers have had more mixed results. Astrup found 81% had an identifiable stressor prior to the onset and of these 27% had an episode labelled acute mental trauma. He was concerned that in 18% no acute event or stressor could be identified.

Johansen was able to identify a significant environmental stressor in 50%.

Overall the process is one of slowly developing querulous behaviour commencing with an event most often legal in nature. There is no support for de Clerambault’s beliefs that delusions of passion develop suddenly and fully formed.

5.1.6. Aetiology

From the earliest research of von Krafft-Ebbing there was a belief that, though the expression of the illness was seen clearly to develop from premorbid personality and their experienced life events, they all had the underlying aetiology of organic brain disease.

Kraepelin commenced his studies of this group with the belief that they were all caused by a disease process as found in dementia praecox. However a significant number lacked the symptoms, course or family history of dementia praecox or manic depressive disorder. So that the understandability of their beliefs (given his knowledge of their personality and the precipitating events) eventually led him to conclude that this group were morbid reactions in pathological personalities.

Equally when Kolle reviewed the group of querulous he felt they fell clearly into two groups. The first were a group with a primary neurotic presentation in a disordered personality ie psychopathology. The second group were secondary to a process ie paraphrenia or schizophrenia. This split has been supported by the vast majority of subsequent researchers.

4.3.4.1 Psychodynamic Theory

Von Dietrich describes the development of the querulous as a staged process.

- Early Childhood Influences. In particular he describes a self fulfilling aspect ie a querulant has a temperament which differentiates him from others and hence is at risk of disturbed
emotional attachments. Freud believes the conflict is with same gender parent and occurs between the ages 3-5 years. The child is frightened and tormented by a hostile, sadistic, distant or absent relationship with the carer and environment. This is supported by van der Heydt's and Pang et al's observation of their harsh and emotionally cold families.[43] Von Dietrich states that they develop a sadistic super ego which impairs their identification with their same sex parent and disturbs their healthy ego development. Their early life is marked by rebellion against father and authorities. In adult life, the stressful key events cause regression, bringing the primitive, sadistic super ego to the fore. This super ego is feared, hence it is projected onto outside figures, which are perceived as attacking and condemning.[5]

- Key Events. Freudian dynamics describe the querulant as having a developed Oedipus complex driven by the conflict with the father and will therefore react abnormally towards any restrictions of the male status symbols such as prestige, position, power, property and rights. Account must be made of the age of onset which is in the 40-60 years, a time of re-evaluation of goals and perhaps the need to accept non accomplishment and to face mortality and loss of power in the future. As von Dietrich states,

"To start to hate for ever, the chances for love must appear to be disappearing".

Threats to status, lack of promotion, the humiliation of defeat or failure are all blows to a sensitive, overcompensated and defended self esteem.[4]

5.1.6.1. Cognitive Theory

Contemporary cognitive theories of paranoia are built around the concept of self, and the issues of threat and defence of self. In particular it is proposed that paranoia is a defence against low self esteem.[45p135] This theory connects to the self serving bias which notes that people have a tendency to blame someone else for their shortcomings, which enables us to feel indignant and angry rather than low and deficient.[45p160]

Bentall et al have shown that the self serving bias is exaggerated in paranoia, and that those with paranoia typically display high self esteem while having depressive self schema.[57]. He believes that at the heart of the paranoid defence is an exaggeration of the ordinary tendency to reject responsibility for negative events. This exaggerated self serving bias attempts to limit the discrepancy between the ideal and actual selves.

Others feel that paranoia is like a form of angry attributional style ie individuals perceive interpersonal negative evaluation and construe it as being unjust, and they reject the criticism and condemn the persecutor.[45p137]
Chadwick and Trower believe there are two types of Paranoia:

- **Poor Me** (Persecution)-blame others, see others as bad, see themselves as victims

- **Bad Me** (Punishment)-Blame themselves, see themselves as bad, hence others justifiably punish them

They adhere to a theory of self in which a fundamental human passion is the construction of self and that the self is a constantly constructed entity and never secure.[45]

There are three necessary and sufficient conditions for the construction of self, namely:

- An objective self-this is the product ie the most familiar aspect of self, the observed, behavioural, public self. It is the self presentation behaviour of an individual.

- A subjective self-this is the self as agent ie the one who choses the actions and monitors them and feedback from others. Has the power of action and the cognitive processes of observing, inferring, evaluating etc.

- An other-this is the other person who acts as observer.

The construction of self may be conceptualised as a series of stages. First it begins with self presentation behaviours for others ie the attempt to control images of self before the audience. Second is the perceived, anticipated or imagined evaluation by others of the self so presented. The third stage may be either evaluation of self by self consequent upon the other’s evaluation or it might be the evaluation of the other by self.

There are two major forms of threat to the construction of self:

- **The Alienated Self** in which the other (parent) is excessively present and intrusive. The other controls and may in fact construct the objective self. Hence the objective self feels imposed, almost alien to the subjective self. He feels overwhelmed by the other and he seeks to escape the entrapment. The self is experienced as flawed, bad. He fears being controlled and interprets others as powerful and himself as weak. This is exemplified by the Bad Me paranoid.

- **The Insecure Self** in which the subjective self is able to produce self representations but the other is neglectful, absent and therefore the objective self can not be produced. This failure is experienced as abandonment, emptiness, insignificance, worthlessness and emotionally as depressive ennui or anguish. The subjective self having total freedom, produces the fantasy

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self and searches for the other to objectify this fantasy or desired self. His despair is to be ignored or rejected and hence to feel the existential nothingness. He responds with a defence of narcissistic rage. The Poor Me paranoid exemplifies the trait of the insecure self. Parenting which is psychologically unavailable, uncaring, neglectful and with inconsistent affection may be associated with this group.

The Poor Me type is motivated by the need to defend against a sense of being ignored, neglected and insignificant, or rejected with associated feelings of emptiness and despair. This is highlighted by their delusional reconstruction where the persecutor's( who normally is either unaware of, or gives no thought to them) every action is aimed in some way at them.\[45,46\]

5.1.6.2. Social Factors

- Mary Douglas, an anthropologist describes changes in attribution of blame associated with tribal and pre-industrial societies versus the industrial and post-industrial society. She states that tribal and pre-industrial cultures thought in terms of danger to the community. Attribution of causation of calamities was to supernatural causes. The blame was on the individual sufferer who had in some way broken a taboo or sinned. The responsibility for the disturbance of the community remained with the individual.

In industrial and post-industrial societies there has been a marked change. The term risk, first used in the seventeenth century was a neutral calculation of probability simply taking account of losses and gains. Its use developed in tandem with technology and industry and was embraced by both as a theoretical base for decision making. In turn it became part of political and social language. Significantly risk was tied to the newly arrived and ever expanding industry. In the face of this expanding industrial system risk transformed into a synonym for loss and danger losing by the wayside the positive gain aspects. Thus risk became part of the system and risk had transformed into the danger presented by the community/system to the individual. Hence blame for negative occurrences was now attributed to the system i.e. externalised. Each individual becomes a potential victim.\[58\]

- Max Scheler in his essay on compensation neurosis spoke of the social and psychic contagiousness of suffering and the power of the prospect of benefit. By this he was describing the fact that community attitudes become reified in the psyche of the individual. This occurs in all but to an even greater extent in those with existing predispositions. While he was addressing illness and hysterical predispositions I feel it is evident that community
attitudes on victimhood could easily interact with those whom possess predispositions to querulousness.[59]

- Charles Dickens in his novel Bleak House describes the pathology of a legal system which is voracious, encouraging and then feeding on the litigiousness of individuals. There is no research which has attempted to correlate rates of morbid querulousness with legal systems. It is self evident that in certain societies litigation is more prominent e.g United States of America. While in the United States of America there is a long tradition of using litigation to bring about social change there is significant concern by social researchers that the adversarial system is shaping and distorting expectations and interpersonal communications.[60ch5]

Caduff in his discussion of the history of querulousness cites Venzlaff who states that querulousness is the product of a complicated form of law, a jungle of official regulation, which is not easily seen through or understood at first glance. He thought that the reason why the study of querulousness had begun and thrived in Germany, Switzerland, and France was because of their codified legal system. Caduff then makes the point that though there was a word for querulousness in the German (Querulanz), French (Persecutes Possesifs) and Italian (Prozessomania) languages there was not one initially in the English language. He quotes Mayer Gross who felt that this was due to the less codified legal system of the English.[5]

- Pang has noted the relative absence of the querulous paranoia diagnosis in China. He feels it may possibly be related to socio-cultural factors. He states that in Confucianism:

“filial piety requires unquestioning obedience to parental authority and emphasis on duties and obligations. The collectivist culture places personal need below country, society and family; thus individual rights are often sacrificed for the sake of a higher cause.”

This either is not conducive to the development of or suppresses the manifestation of querulousness.[43]

5.2. CLINICAL FEATURES

5.2.1. Clinical Presentations

Ungvari notes that the intensity of querulous behaviour varies from sending complaining letters to authorities to vexatious litigation.[48] Kolle found that of his patients 80% had litigated. Their behaviours however do not stop at litigation but in fact may deteriorate into threats, assaults, murder and or suicide.[18] Astrup found that less than 25% were hard core litigious cases but over 25% had history of aggressive behaviour.[52]
The psychiatrist will tend to see the morbidly querulous in a limited number of contexts. They will rarely (if ever) present for psychiatric treatment of their querulousness but do present to psychiatrists for expert opinion to certify their sanity so as to aid their court procedures.[3,5] At times they are seen at the behest of the Court particularly in issues of the Family Court pertaining to custody of children.

I have recently seen a querulant who was applying for return of his gun licence which had been taken from him after he had fired at neighbours during a long running property dispute. The court required the assessment. During the assessment he was no longer found to have the homicidal feelings towards his neighbour rather they were now redirected towards various members of the legal fraternity with whom he’d had dealings.

They may be seen in a forensic setting either as a contemnor or for criminal charges of threats or physical assault or murder. I have seen a querulant who presented as the instigator of a siege and hostage situation.

5.2.2 Mental State

The demeanour of the querulant will be dependent on the context of the interview. In the case of the psychiatrist as expert witness a querulant will present as a victim and supplicant, eager to recruit the psychiatrist to the cause. They may express concerns about the interview being bugged and they may well tape the session either covertly or overtly. The querulant will exhaustively explain that this will take some time to explain.

They will, “carry much paper and have an old suitcase or briefcase stuffed to the gunnels with diaries and documents”.[2]

In the case of the forensic or non voluntary psychiatric interview the querulant will be aggressive and dismissive of the process and will not attempt to recruit the psychiatrist. They will minimise the amount they will discuss and expect the psychiatrist not to believe them. They may refuse to give their name or personal details.

They often appear to have a positive, self confident style but remain emotional and touchy.[5]

Their current mood it is usually dictated by the course of recent life events.

According to Kraepelin there may be “a wearisome diffuseness of conversation” and it abounds in half or wholly misunderstood professional expressions. The vast majority will have emotionally charged misbeliefs of being unjustly treated and the belief in the need to restore their rights(revindication), plus or minus misbeliefs of persecution.[52,43,50,3] They will have ideas of
reference. Kraepelin describes them as ideas of grievance and over-self appreciation or esteem.[32]

The major themes of their grievances tend to be conjugal, legal, litigious and persecutory. Less commonly will be scientific breakthroughs, medical mistreatment and stolen inventions.[36]
Written Communications

Kraepelin describes the typical amount of letters as being voluminous. Their form is careless with the appearance of having been written in excitement with numerous notes of exclamation and interrogation.[32]

They are like a legal document except the querulants cover all of the surface with script (including the margins). The substance is repeated in several different ways with undue grammatical emphasis and under linings. They will often refer to themselves in a third person legalistic style, for example as the defendant.[34]

Freckleton, writing in a more modern age, describes the use of colored inks for emphasis and the cutting out of captions and quotes from newspapers. He notes their particular affinity for the star asterisk key and the use of capitalisation for especially virulent expressions of frustration.[2]
5.2.3. Vexatious Litigant
The subgroup of the querulous who take their grievances into the courts have been recognised by the legal system for centuries.

It has responded by creating in both civil and criminal jurisdictions sanctions against both particular pieces of litigation and or persons, unworthy of consuming any further public resources of the court system.

One of the earliest responses of English law was to find the individual guilty of the common law misdemeanour of "barratry". The punishment was either a fine or imprisonment.[2]

A barrator was defined as:

*A common mover and exciter, or maintainer, of suits and quarrels either in the courts themselves or in the country, as by a disturbance of the peace, or where the right to the possession of land is in controversy in taking or keeping possession by force, subtlety, or deceit, or by making false inventions and sowing calumnies, rumours, and reports whereby discord and disquiet may grow among neighbours.*

No one was adjudged a barrator in respect of one act only and the indictment charging such a person had to declare the defendant a common barrator, that is to say, a persistent bringer of vexatious actions.[2]

By the early twentieth century the prosecution for the criminal charge of barratry had become rare and the offence was eventually abolished in England in 1967.

This is not to say that the judiciary were powerless to deal with excess querulousness. The courts retained the right to prevent a plaintiff proceeding with a cause for action, if there was reason to think that its prosecution would be *useless and futile or manifestly groundless.*[2]

They could also find an individual to be a Vexatious Litigant. This is a description of those who have been found guilty of breaching legislation deriving in English speaking countries from the Vexatious Actions Act 1896 Great Britain. In Victoria we have Section 21 of the Supreme Court Act 1986 which states that:

......the person has:

*habitually; and*
persistently; and

without reasonable ground-

instituted vexatious legal proceedings in the Court, an inferior court or a tribunal against the same person or different persons.

The term vexatious has evolved in meaning with varying judicial descriptions. In Attorney General v. Wentworth (1988) 14 NSWLR 481 Roden, the judge stated that litigation is vexatious if the proceedings:

- Are instituted with the intention of annoying or embarrassing the person they’re brought against.
- Are brought for collateral purposes, and not for the purpose of having the Court adjudicate on the issues to which they give rise.
- Are, irrespective of the motive of the litigant, so obviously untenable or manifestly groundless as to be utterly hopeless.

Vexatious Litigant is a description of their status before the Courts and consequently they are banned from further litigation. They must gain the Court’s permission for further litigation. It protects the Court and the defendant’s resources as well as attempting to minimise the damage done to the litigant’s own financial and emotional resources.[34]

In Victoria, the initial legislation for the declaring of a Vexatious Litigant was enacted in 1929 as a direct response to Rupert Millane who issued 120 legal proceedings against Shire of Heidelberg, Corporation of Melbourne, proprietors of newspapers and others between 1926 and 1929. Between 1929 and 1989 there had only been 8 Vexatious Litigants declared in Victoria. In England while there were only 75 between 1925-1988, there were 6 per year between 1981-1986 making a total of 36, indicating a marked increase in the frequency in recent years.[34]

Characteristic Behaviour

In Court they will typically have fallen out with their legal counsel and so will be representing themselves. Overtly this will be due to arguments with their legal counsel about progress of the case or lack of payment of legal fees. However it is often because their counsel, restrained by the rules of Court, is unable to express the querulants demands forcefully enough to satisfy them. For they find the drama of Court proceedings addictive, and they gain maximum expression of their needs for vindication and vengeance by direct communication to the Court. In consequence they
often make claims of negligence and demand disciplinary action against their former legal counsel, who in turn may sue for non payment of fees.[2,61]

In Court, though untrained they will have developed what Goldstein describes as hypercompetency ie factual knowledge of law without understanding of the legal framework, let alone its spirit or implications for society.[14] This often results in them focussing on, and quoting from documents such as the Magna Carta, International Covenant on Civil and Political Rights, or the Constitution with little true understanding. Often they will use the concept of natural justice and its subtleties.[2,61]

Regardless of their apparent competency they will usually become overwhelmed and disorganised and will as a result spend large amounts of Court time justifying why they are out of time for instituting actions or submitting documents.

There is often transfer of focus from their original grievances to the legal processes or particular personalities in their legal world. Conspiracies are formed involving magistrates, judges, police and others.
5.2.4. Contemnors
Of direct significance for the forensic psychiatrist is that the Courts have other protective mechanisms. Contempt of Court legislation, like the fisherman's net, often brings to the surface the unexpected.[49]

In the United Kingdom those found guilty of Contempt of Court ie Contemnors, have been found to have committed a variety of offences, seen as defiance of the courts or as an interference with the administration of justice. They can be either criminal contempt (eg insulting the court, assaulting a court official) or civil contempt (eg failure to attend as witness, failure to comply with an order of the court). Up until 1981 criminal contempt was punished by fines or imprisonment for a fixed term with no statutory minimum while civil contempt was punished by committal to prison without any definite limit of time (sine die) until the contemnor purged his contempt by submitting to the order of the court.

In England and Wales non-criminal (civil) prisoners form generally less than 2% of the prison population. Most are in prison for Immigration Act offences, others for non payment of rates, taxes and maintenance. A small proportion are in prison for Contempt of Court ie Contemnors.

The case histories of 72 women admitted to prison for contempt of court in England and Wales between the year 1979-1983 were reviewed. This was 45% of all female contemnors over the 5 year period. Women comprise only 3% of all contemnors imprisoned. The contemnors were significantly older than other sentenced female prisoners, with the mean age being 41 years.

Of the 72 women, 27(37.5%) had a psychiatric diagnosis. Of these, 18 suffered from paranoid disorders (8 paranoid schizophrenia, 4 paranoid states and 4 paranoid personality disorder) and 11 of these had a history of extensive litigation, often unrelated to the current contempt proceedings and extending over many years. Some caused considerable problems for the courts as they dismissed their legal advisers and insisted on conducting their own cases, sometimes making paranoid accusations about the courts.[49]

The mentally disordered group were likely to have committed contempt in the setting of matrimonial disputes and disputes with neighbours, where as the non mentally disordered group were predominantly involved in bankruptcy proceedings. Significantly the mentally disordered group were most likely to be in contempt for breaching a court order (63%) and less likely to have caused a disturbance in court (9%) compared to the non mentally disordered group, 16%
breach of court order and 25% causing a disturbance in court. One person from each group had assaulted a court official.
5.2.5. Hypochondriacal Querulants

Hypochondriacal querulants persistently complain and petition authorities because of a preoccupation with the misbelief that they have somatic symptoms, which have resulted from either:

1. A disease entity that has not been recognised or accepted by current medical science.
2. A recognised and accepted disease that their medical carers have been unable to diagnose in them.
3. A recognised disease and the medical treatment, or lack of treatment, of that disease.
4. A disease or injury acquired as a result of their employment or caused by another’s negligence.

Their initial grievance will be with, respectively, their treating doctor, their employers or the negligent. In our society the insurer often becomes a primary target.

Hypochondriacal querulants who direct their resentment against doctors who they believe have failed to cure them have been described as one of the three major groupings of the querulous in a recent Forensic Psychiatry text.[76p355] However the specific research on querulous paranoia has not identified significant numbers of hypochondriacal querulants. There were none in the research of Rowlands or Ungvari. Both Refsum and Winokur who studied paranoiac psychoses and delusional disorder respectively, described patients with hypochondriacal themes and litigious themes but not in the same patients. Johansen in her study titled Mild Paranoia found of her eight querulous cases, one had what was described by the author as “grotesque ideas” about the results of a medical examination.[81] It was not clearly explained whether these were of a hypochondriacal nature. d’Orban has one case history of a contemnor who had a diagnosis of paranoid schizophrenia, and a number of bizarre hypochondriacal delusions for which she pursued multiple doctors through the courts before being found in Contempt of Court.[49] Neither Kraepelin, Kolle nor van der Heydt describe significant numbers of cases with hypochondriacal misbeliefs. In van der Heydt’s study the only theme specific group he identified were the Conjugal group. A 1988 paper by Opjordsmoen is one of the few on hypochondriacal psychoses. The records were reviewed on 301 patients of the University of Oslo’s Psychiatric Clinic who had psychoses with primarily hypochondriacal delusions. One hundred and eighty were followed up and yet no mention at all was made of any litigious or querulous behaviour.[62]
unable to find specific research on hypochondriacal litigants except for a recent paper by
Christopher Layne entitled "Hypochondriacs who sue: causes and correlates of somatoform
disorder". Unfortunately there was no quantification or even adequate description of their
querculous or litigious behaviour and so I am unable to relate their findings to the research on the
morbidly querculous.

Has there been research on the hypochondriacal querculant? If so, where might the research be?
The history of a recent Victorian Vexatious Litigant might give a clue. This individual had
received a leg injury at work and his initial grievance was the belief that he had received
inadequate compensation. His initial target was his employer and the insurer, however he later
targeted his treating doctor and then others.[64]

The sequelae of compensable accidents has been described under a variety of terms but was best
known as Compensation Neurosis, though it has been known as Entitlement Neurosis and
Litigation Neurosis amongst other terms.[65] They describe a group who have suffered a personal
injury in circumstances which lead to litigation. They complain of a combination of emotional
and physical symptoms which subsequently develop and which are either unsupported or
unexplained by the results of medical examination and investigation.[66] This is a complex area,
being as it is, at the intersection of physical and psychological medicine, industrial and
compensation law, theories of social responsibility and societal expectations. There is a vast body
of research unfortunately beset with major methodological problems.[67] Compensation Neurosis
is no longer viewed as a diagnostic entity and these individuals have been subsumed for the most
part within the Somatoform Disorders, Post Traumatic Stress Disorder, Factitious Disorder and
Malingering. [65,66,68] My examination of the Compensation Neurosis literature has not found
evidence of reference to or use of the research literature on the querculous, nor use of the
diagnosis of querulous paranoia.[65,67] While important follow up studies have assessed the pre
and post litigation levels of symptoms and employment, I was not able to find studies which
assessed or described the development of the litigation cascade as classically found in the
morbidly querculous.[65] It appears that what should have been mutually supportive bodies of
research have been in fact mutually exclusive. The difficulties of interpreting this body of
research may be highlighted by a recent study which has shown that attribution of the label
litigation neurosis to patients by their medical carers does not even correlate with their actual
involvement in a claim for disability nor to involvement in legal action.[69] This, along with the
general lack of quantification or description of the querulous or litigious behaviour in the
Compensation Neurosis literature, makes it difficult to relate to the research into querculousness.
Various studies have posited a number of psychological factors contributing to the development of the Compensation Neuroses. A distorted sense of justice, victim status and entitlement has been identified as exaggerating the sick role in this group.[70] This has strong resonance with the factors in the querulous and points towards the utility of the research into the querulous when addressing the subject of Compensation Neuroses and visa versa. My future goal is to perform research which may help unify these areas.[see section 6]

5.2.6. Familial History of Disorder
Kolle reported no above average levels of mood disorder or schizophrenia in the relatives of his 49 patients with querulous paranoia.[18] Van der Heydt’s, Astrup’s and Caduff’s studies all support the lack of genetic loading for schizophrenia or mood disorder in those with the primary type of morbid querulousness (PMQ).[3,52,5] There was no evidence of increased levels of morbid querulousness in the relatives of the morbidly querulous. Winokur’s study concluded that there was some evidence of his delusional disorder "breeding true in the families of the delusional patients", however this was not shown specifically for the querulous.[38]

5.2.7. Course and Prognosis
All researchers from Kraepelin to Caduff have found the PMQ to have a non-deteriorating course. Though Kolle found that the majority of his patients had spent greater than 15 years in institutions, he in fact discharged from their institutions 40 of the 49 patients in his study and described their successful reintegration into society. While not requiring long term institutionalisation, the majority do not lose their querulous beliefs completely but in fact they follow a relapsing course with periods of quiescence and recrudescence. Kolle reported that querulous symptoms had disappeared completely in 18/49 of his subjects, minor residual symptoms remained in 18/49 subjects and 13/49 subjects followed a chronic course.[18] This pattern was supported by Winokur. Astrup reported that 7/22 subjects followed a chronic course and of the remaining 15 only 2 showed a complete recovery.[54,52]
5.3. THE ROAD TO MORBID QUERULOUSNESS

Pragmatically it is now possible to characterise some of the milestones of querulousness along the road from normality to morbidity.

**Normal Querulousness**

Situationally determined grievance.

Responses can reasonably be related to the precipitating event.

Focus remains on the initial event and the course and evolution of the behaviours are understandably related to the provoking events and their subsequent development.

The feelings, desires, fantasies and behaviours evoked, broadly remain within the limits acceptable to the individual’s self concept, and within the wider cultural norms.

They seek reasonable resolution, or strive to extricate themselves from the situation if irreconcilable conflict is generated.

In short, they retain an understanding of their wider issues and the interests of society as a whole.

**Normal but Persistent Querulousness:**

Situationally determined grievance.

Associated sense of victimisation.

Over optimistic expectation of compensation.

Difficult to negotiate with and rejecting of all but their estimation of a just settlement.

Although persistent and demanding, they will ultimately settle (even though still complaining of injustice).

**Danger Signs**

When the individual begin to see their life’s meaning in terms of their grievance and the quest for reparation.
Large volumes of communications and reference to self in the third person in written communication.

When an increasing proportion of their working capacity is devoted to either thinking about or performing activities related to their grievance.

When they begin to neglect other life areas and in particular when this is recognised and complained of by family or friends.

When focus on the grievance is lost and there is evidence of contamination ie There is a multiplication of grievances with an associated increase in the number of involved parties.

There is an increasing disorganisation of the querulant's efforts to further his cause.

**Primary Morbid Querulousness:**

The initial situationally determined grievance has developed into multiple associated grievances and foci.

Sense of victimisation with overwhelming and evident egocentric ideas of reference and entitlement.

The grievance and quest for reparation dominates their mental life with consequential losses in personal, interpersonal and social functioning.

No longer seeking compensation but total vindication and vengeance.

Will not accept resolution and even if total monetary compensation is offered, their needs will not be met and they will demand some form of unrealisable retribution.

**Secondary Morbid Querulousness:**

Arising in individual with pre-existing mental illness.

Aggrieved but may not have situationally determined grievance.

Grievances arise totally or in part from either primary or secondary delusions associated with pre-existing mental illness.

Grievances may be bizarre in nature.

Nature of grievances may constantly change with varying levels of querulousness.
It may be impossible to define the grievance and the wished for compensation let alone resolve it.

Treatment of the underlying illness with resulting resolution of the mental illness is accompanied by resolution of the querulousness.
5.4. PSYCHIATRIC MANAGEMENT

Management in the earliest cases was by long term institutionalisation. As shown by Kolle this was unnecessary. Kolle's major management tip was to emphasise the importance of excluding schizophrenia or manic depression as the cause of the querulousness.[18]

Dietrich states that therapy is a thankless task and that psychoanalysis is not viable because the querulous have no pressure of suffering and hence have no motivation for therapy. He says that we should let the lawyers treat them though feels the courts should be lenient.[5]

Van der Heydt states that institutionalisation should only be used when it is necessary for the physical protection of the public and that a declaration of incompetence must only be used to protect the individual, not society. Finally he describes the bushfire of querulousness which is ignited when attempts to dominate or subordinate the querulous are made.[3]

Winokur and Astrup found the majority of querulants had received no pharmacotherapy and where they did it was with little success. On the other hand some researchers have used pimozide in low doses (2mg/daily) and recorded success. The numbers of patients cited have been very low.[36,75] Of equal importance to therapy is the attitude of the therapist which must be:

"an interested attentive relaxed and unaffectionate attitude with an unfeigned air of detachment and suspended judgement."

5.4.1. Cognitive Behavioural Therapy

Dietrich has stated, that psychoanalysis is of little value as the querulant has externalised the source of his suffering and hence has no motivation for therapy. These individuals are equally difficult to engage in cognitive behavioural therapy, in part because of the prominence of anger and the absence of conscious negative self-evaluation. The querulant is the Poor Me type paranoid, presents a significant challenge to the formation of a therapeutic relationship. For with the querulant it is difficult to express concern for him. The patient usually demands that the therapist say if he believes his story and frequently has strong expectations that he will once again be misunderstood and mistreated. Hence the potential for conflict is great and early termination of therapy often occurs.[45,46]

However Caduff identifies cognitive and behavioural therapy as being the most useful approach in the management of the querulous.[5] The central challenge is to draw out the evaluative beliefs of other-self, self-self and self-other that are associated with the delusions.[45]
Psychiatric professionals have long advised students and staff that delusions cannot be modified and that the best practice is to avoid discussing them with patients. However since 1951 there have been a number of published studies reporting attempts to weaken delusions with generally favourable results.[45] Therefore the statement that “all delusions are unmodifiable” is false. It might be more reasonable to assert that delusions are difficult to modify.

This is so because the class of beliefs called delusions varies considerably along a number of dimensions. The cognitive approach used by Chadwick, Birchwood and Trower is a conceptual position from which to view a person’s current problem and psychological development.[45] It’s aims are to help the patient arrive at the following understandings:

- First, the recognition of the delusion as being a belief and not a fact of life.
- Second, that it represents a reaction to and an attempt to make sense of aspects of their life eg anxiety reduction.
- Third, that the delusion carries an emotional and behavioural cost and that this is tied to the delusion and not an inevitable cost of the initial experiences.
- Fourth, for the patient to come to recognise the falsity of the delusion, rejecting it for a more plausible and personally significant explanation which is less distressing and disturbing.

**The Process**

It is useful to conceptualise delusions as inferences, that is statements which may or may not be true. This highlights the therapeutic approaches of:

- Reviewing evidence.
- Generating an alternative framework.
- Empirical testing through risk taking.
- Need to identify and weaken the associated evaluative beliefs of self (I’m all bad) and others (they’re all wrong).

**The Method**

1. **Verbal Challenge to the Underlying Evidence**

The danger when trying to modify delusions is that, as with all strongly held beliefs, too direct an approach serves only to reinforce the belief (psychological reactance).
The best approach is to challenge the evidence for the belief, not the belief itself and to begin with the least important evidence. The best approach would be to have the patient generate alternative interpretations for the evidence; however the therapist must be prepared to take over this role. While the aim is to encourage the patient to reject the evidence, this is initially unlikely. However its immediate and medium term value lies in imparting the insight of the connection between events, beliefs, affect and behaviour. In other words one must demonstrate how our core beliefs bias our everyday inferences and automatic thoughts.\[^{73}\]

This confirmatory bias or selective processing of information is a general tendency common to all and is not confined to interpretation of new events but also leads to reinterpretation of the past. As St Augustine said there is only the present: the past present (recollection), the present and the future present (anticipation). The therapist stresses the reliance of these misinterpretations on the influence of belief rather than on any salient features of the situation.

Affect also plays an important role in delusional thinking. Patients may assume the associated affect to be evidence for the delusion. For example in the persecuted they may view the anxiety and fear as being evidence of the actual threat, rather than being the normal physiological accompaniment of the perception of a threat.\[^{76}\]

Having considered the alternatives the patient is then asked to rate his conviction in each, regardless of how convinced he is that the delusional interpretation is correct. Then the next piece of evidence is examined. It is important to remember that the goal is to offer the patient a fresh insight into his thinking, not necessarily to change his mind and that a further importance of challenging evidence is that it also gives the therapist further information regarding the patients psychological vulnerabilities.

2. Reformulation

The goal is to demonstrate that delusions are a reaction to and an attempt to make sense of an experience. It shows the beliefs or inferences as being an understandable response to a specific experience. As part of this process it is essential if possible to explore their pre delusional emotional state and to link this with the covert gains of their beliefs. At the same time, it should be possible to show the cost in terms of distress and disturbance of their initial inferences.

The therapist and patient then proceed to create a personally meaningful alternative.
During this process it will become evident what their underlying evaluative beliefs are. These must be discussed and the psychological functions of the belief explored. The patient is then encouraged to dispute the negative evaluative beliefs such as, *I am unworthy or undeserving*.

3. Direct Delusional Challenge

This attempts to enlist the patients intact knowledge and logical facilities to challenge internal inconsistencies and irrationality within the patient’s delusional belief system.


The aim is to test the belief under consideration as one would test a scientific hypothesis. In collaboration with the patient the following must be derived:

- The specific inference to test.
- The predicted (by the patient) outcome in measurable and verifiable terms.
- The experiment to test the validity of the prediction.

It is very important that the patient choose the inference and specify the expected result of the test. Equally it is important for the patient to agree prior to the test what the significance of a failure of the expected results to occur would be to his beliefs. A clear alternative case to the delusional belief should be generated by the patient. Following the experiment the results must be assessed and conclusions drawn. [45p81]
5.5. ETHICAL DILEMMAS

There are many levels upon which the psychiatric involvement with the querulous may need to be ethically examined. There are the issues associated with diagnosis. As Thomas Szasz describes, the tools and methods of psychiatry, labelling and classification, are perfectly suited for social as much as medical functions:

To classify another person’s behaviour is usually a means of constraining him. This is particularly true of psychiatric classification, whose traditional aim has been to legitimise the social controls placed on the so-called mental patients.[602]

As we have seen we are faced with a spectrum of querulants who range from normality to psychosis. There are no absolute characteristics or first rank symptoms for the primary type of morbidly querulous (PMQ). Societies acceptance of behaviours has been seen to vary over time and with the associated emotions. So at best we make a syndromic diagnosis.

There are issues of involuntary incarceration. There are a number of requirements that need to be met before involuntary incarceration may be ethically supported. While I will not list them all, it is apparent that some are particularly pertinent to the PMQ. The first would have to be a certainty of diagnosis, and as I will later discuss, adequate contextual knowledge. Secondly there has to be a clear understanding of the reasons for incarceration ie protection of individual physical safety (of the querulant or others) versus functional societal safety, or to enable therapy. Thirdly therapy must be available for involuntary psychiatric incarceration to be distinguished from other forms of societal constraint. This is a particularly difficult consideration for it is evident that both for psychoses in general and the morbidly querulous in particular, past psychiatric incarceration did not offer effective therapy. Latterly with both the advent of anti psychotic medication and psychotherapies there is at least the possibility of therapy. The problem is that the existing evidence for successful therapy is inadequate, consisting of a few case studies with antipsychotics and supportive psychotherapy. These studies underlined the long term nature of treatment, being in the months rather than weeks category. There is little research evidence of efficacious therapy and so it appears to be unjustifiable to involuntarily incarcerate the morbidly querulous other than on the grounds of dangerousness.

As Bloch and Reddaway have documented in Soviet Russia psychiatry was used to stifle dissent. In most cases the dissenters were charged for criminal acts and then in the pre trial period assessed by Soviet psychiatrists. They would be diagnosed with a mental illness and hence found

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by the courts to be not guilty of the charge by virtue of mental illness. They were then incarcerated in forensic hospitals, languishing hidden from prying eyes and medicated heavily.[71a7]

Dissidents treated in this way ranged from the human rights activist Vladimir Bukovsky, to Svetlana Schramko who sent complaints to various bodies about pollution caused by a fibre plant, through to Viktoria Smirnova who on being refused permission to emigrate to Israel began writing letters to the United Nations. She was told:

"stop writing letters to the UN and no one will put you in the mad house."[71ch 9]

The practice had reached such an extent that a psychiatrist reportedly told a dissident that his disease was dissent and that as soon as he renounced his opinions, and adopted correct ones he would be discharged.[72]

In Soviet Russia the concept of paranoid disorders was primarily influenced by the emphasis of Soviet psychiatry on phenomenology, i.e. the understanding of psychiatric disorder resulting from precise descriptive studies. This derived from the classic school (Griesinger, Kraepelin and Jaspers among others). Hence the primary delusion forms the foundation of paranoia. Modifying influences came from Kretschmer with his beliefs that affective states, life situations and physical conditions were major aetiological factors.[73] This tied in with the beliefs of the extremely influential Sechenov, father of Russian physiology, who stated "that all psychic activity depended entirely on external stimuli".[73]

Equally the theories of Pavlov were transcendent from the 1930's and his physiological theories of higher nervous activity and its regulatory mechanisms implicated experience in the evolution of specific behaviours. Pavlov's theories were artificially synthesised with the Marxist view that man's behaviour is a consequence of social and economic conditions prevailing in his society.[71a2] As a result, Soviet psychiatrists seem to have rationalised the behaviour of dissent and activism and their underlying beliefs, into antisocial acts with underlying delusional beliefs.

Promotion of individualism had no place in Soviet psychiatric treatment. Psychological treatment was characterised by its' directive and educative qualities. The Soviet psychiatrist classified the socially troublesome paranoid patient as either having delusional beliefs of reformation, revindication and persecution secondary to sluggish (mild) schizophrenia or as having anti social and querulous behaviour secondary to a pscycopathy of paranoid or excitable type.[71a2,74]

We must not be lulled into the false security of associating psychiatric abuse with totalitarian
regimes. As Thomas Szasz and Michel Foucault note, European and American psychiatry over the last three hundred years has at times, used social undesirability and impoverishment as the criteria for involuntary incarceration in institutions.[6] In 1977 in Finland a television salesman contacted the police and tax authorities, claiming that the company that he worked for, along with a large television manufacturer were involved in large scale tax evasion and black market sales. His employer heard of the accusation and contacted the psychiatric superintendent of the local psychiatric hospital. This resulted in the salesman being committed for observation and a diagnosis of querulous paranoia being made. Released on the undertaking he wouldn't repeat the claims he was hospitalised twice more for repeating his accusations. It was only after a tax investigation exposed the largest tax fraud and bribery scandal in Finland's history that the diagnosis was removed.[44]

Social deviance covers a vast range of responses, some of them deviant only in terms of lack of conformity to current expectations of personal conduct and that these implications for psychiatric management of the querulous must not be ignored. Every time psychiatrists formulate a new rule of mental health, they create a new class of mentally sick individuals, just as every time legislators enact a new law, they create a new category of criminals.[6623]

For the morbidly querulous it is important to be aware that an over reliance on very specific forms of diagnosis without consideration of social and even political aspects of the situation may lead to misuse, conscious or unconscious of psychiatric classification. It is essential to avoid the trap of denying the reality of objective discrimination or inequality. Social interactions involving force either physical or mental, for example in prison, may be reduced by the exposed individual to the subjective description of feelings of being oppressed. If the psychiatrist is quick to label these as paranoid beliefs then obvious misclassification will occur.[44]

Therefore to understand the querulous individual and to establish a diagnosis of morbid querulousness the psychiatrist must have an intimate knowledge of the patient’s biography, which must then be analysed against the background of the existing social and cultural circumstance.[43]

Research into querulousness does not necessarily pathologise what it studies but indeed may be able to both set limits to or demonstrate the boundaries of normality versus morbidity as well as demonstrate the limitations of psychiatric therapy and hence protect against over enthusiastic use of incarceration.

It is salutary to bear in mind the examples of abusive psychiatric practice in our recent past, as
we consider the querulous and their interactions with society.
6. RESEARCH

6.1. DECLINE IN RESEARCH

Caduff in 1995, noting the decline in the psychiatric research into querulousness decided to construct a study to test the following hypotheses:

1) That querulousness as a diagnostic entity is less frequently diagnosed in the post nineteen seventies compared to the pre nineteen seventies.

2) If the above is true, then it is due to either:

   a) There has occurred a devaluation and reduction in usage of the diagnosis even though querulousness remains as frequent.

   or

   b) Querulousness was more frequent in the past and there was a tendency to describe as pathological behaviour now accepted as normal.

The study was based on the voluminous records of psychiatric patients of the University Psychiatric Clinic in Bern, Switzerland. He used von der Heydt’s categories of the querulous. He studied the records for two periods, 1922-1951 and 1964-1993.[5]

Between 1922 and 1951 there were 44 diagnosed as querulous out of a total patient group of 16,005 (0.275% of patients). Between 1964 and 1993 there were 32 diagnosed as querulous out of a total patient group of 33,545 (0.09% of patients). This reduction in frequency of diagnosis was statistically significant.

When the querulous were broken up into van der Heydt’s six categories he found that:

In Groups 1 (normal querulousness), 4 (querulous personality) and 6 (secondary querulousness) there had been a reduction in frequency of diagnosis in the order of 80% which was statistically significant.

Group 3 (the justice seeker/primarily querulous/genuine querulous) had not sustained a significant reduction in diagnosis.

The results suggest societal and psychiatric tolerance for querulousness has increased. As a result much more care is taken before the diagnosis of morbid querulousness is made.
Interestingly there was a reduction in the diagnosis of secondary querulousness. This may be related to a general increased acceptance of querulousness in the community. Or it may be related to the fact that initial interest in the querulous was of a descriptive nature, with classificatory systems based on phenomenology. The influence of psychoanalysis encouraged the focus on the content of misbeliefs. The biological and neurodevelopmental view of psychoses has become increasingly dominant over the last few decades. Inherent is the belief that the content of delusions was of little significance in either establishing the aetiology or influencing the therapy of the underlying process. Hence the diagnostic focus on querulousness is lost and the primary psychiatric diagnosis becomes paramount. Indeed the increased success of therapeutic options for schizophrenia and mood disorders may actually have encouraged the correct diagnosis of those with querulous behaviour secondary to other psychiatric disorders.

Of note, the diagnosis of Group 3 (the justice seeker) has not been significantly reduced. This may be due to the fact that they cannot be comfortably subsumed into Group 6 (secondary querulous) by clinicians yet at the same time they are patently morbid in form. It is possible that these results are not comparable to the English or Australian clinical experience for the German speaking world has long traditions of psychiatric and cultural recognition of querulousness. There has been little research performed in the United Kingdom and none in Australia and so if research interest follows diagnostic frequency it is likely that our rates of diagnosis would be small to non existent.

In the late twentieth century a diagnostic dissonance has been created by the current diagnostic categorisation of the primary morbidly querulous (PMQ) in DSMIV and ICD10. This dissonance occurs when clinicians are faced with the dilemma of categorising the PMQ as having delusions and specifically delusions of a persecutory type.

By placing this group into the delusional disorder category the following occurs:

- The contradiction between the Jasperian tradition of ununderstandability of delusions and the evidence of the patient series, of Kraepelin, Kolle, Kraetschmer and others that the beliefs of the primary morbidly querulous are understandable, particularly when viewed through the prism of their personality structure, vulnerabilities and the precipitating event.

- By emphasising the persecutory nature of the beliefs, DSMIV obfuscates the group even further, as in a recent series of patients less than 1/3 had overt delusions of persecution.

A similar dissonance was felt by original researchers such as Kraepelin, Kolle, and Kraetschmer. It is also why Karl Jaspers who was so strident a supporter of the ununderstandability of primary...
delusions and their association with process disorders rather than reactive or developmental disorders believed the misbeliefs of the PMQ to be overvalued ideas. It is no surprise then that modern clinicians, faced with ever more rigid and operationalised diagnoses, increasingly at odds with the subtlety and variety of clinical practice opt to either force the *oval peg into the rectangular hole* or simply develop a form of intellectual and diagnostic scotomata which avoids the anxiety by ignoring the complex misbelief all together.

Other important factors in the decline of research in the latter decades of the twentieth century were the writings of Thomas Szasz, Michel Foucault and others who highlighted the risk and reality of psychiatry pathologising societal constructs.

Equally they laid the charge against psychiatry of being a societal tool of repression. The truth of the charge had been chillingly demonstrated by the role of psychiatry in Nazi Germany. The effect on psychiatry was profound and made its practitioners naturally hesitant and wary of such a natural behaviour as querulousness. Even more apposite for Western psychiatrists was exposure of the misuse of psychiatric diagnosis in service of the State by psychiatrists of the USSR during the period 1950-1980.[71] The effect of the decline in current research is exacerbated by the fact that much of what is being performed, is by German, Scandinavian and Russian researchers and so not easily accessible to the English speaking clinician.

6.2. CONCLUSION AND FUTURE RESEARCH ISSUES
I commenced my dissertation with some thoughts of Esquirol which succinctly captures the heart of the phenomena I hoped to examine, my motivation for choosing it and the difficulties I would encounter. Morbid querulousness, despite the extensive literature I have read and my slowly increasing clinical exposure to it, remains astonishing.

Querulousness is a normal human behaviour and occurs due to a variety of factors interacting in a complex manner and manifests in a variety of ways. However there exists a group of querulous in which individuals sustain severe losses in the social, personal and interpersonal areas of life, due directly to their querulousness.[34,50,48,36,18] Equally there are a group of querulous who assault and murder others or take their own life as a part of their querulousness.[18]

That these morbidly querulous individuals are likely to have misbeliefs of delusional quality yet do not display abnormal affect, formal thought disorder or perceptual abnormalities is supported by many researchers.[18,54,5,3] Equally there is evidence from family studies that this group does
not have increased levels of schizophrenia and mood disorder in their relatives. There is no
evidence of increased levels of morbid querulousness in their relatives.[3,5,52] These misbeliefs of
delusional quality develop in individuals who are most often males in their 30’s and 40’s, who
are competent, ambitious and egotistical with a high but fragile self esteem and irritable, prickly
and distant interpersonal styles.[52,53,18,5,3] They have misbeliefs of injustice and ideas of reference
that become evident after an event causing loss, particularly of status, rights, position or
possessions. Egocentricity and a sense of entitlement develops with the misbeliefs or visa versa.
The development occurs over years with a great variation in the quality and quantity of their
querulous behaviour. There is a strong consensus that the development is a product of their life
history, personality traits and triggering events.[34,28,54,51,18] There is little description of the effect
of reception of the complaint on this development though some writers have postulated such an
effect.[4,20] A few writers have noted the inflammatory effect of incarceration or attempts to
dominate the querulous.[5,18] While the issue of the nature of their misbeliefs remains arguable
there is some consensus as to them being of the form of overvalued ideas.[28,29]

The above syndrome of morbid querulousness would appear to, at the very least, significantly
overlap with the current concept of Delusional Disorder, though perhaps more so with the earlier
concept of Kendler’s Simple Delusional Disorder. There is no evidence to support or deny that
this is a discrete entity versus a spectrum though commencing with Kraepelin, there was great
confidence amongst many researchers as to the distinct qualities of their misbeliefs despite the
great variation in quality and quantity of associated querulous behaviour. However it is possible
to identify characteristics indicative of developing morbidity.[refer to section 5.5]

There is little research evidence that informs therapy and in particular the involuntary
incarceration or institutionalisation of individuals is ethically and therapeutically unsupported.
The qualifier to this is that evidence of threat to self or others needs to be taken seriously in this
group as their misbeliefs have a strong affective component and tendency to be acted upon.[18,29]

The research indicates that in the past about 15 in ten thousand admissions to psychiatric
hospitals were for querulous paranoia.[5] There is no information concerning past or present
population incidences of morbid querulousness. There is evidence from limited studies into the
Vexatious Litigant and Contemnors and anecdotally from the Victorian Health Services
Commissioner and the Victorian State Ombudsman that the morbidly querulous still exist in
significant numbers.

After examining the research into the querulous it is evident that:
1. There has been little research in the English speaking nations in general into morbid querulousness. It is therefore not known whether the phenomenology and premorbid personality traits would be similar to that shown in the European literature. Equally the effects of cultural and societal litigiousness on rates of primary morbid querulousness are unknown.

2. Research is required into Australian Vexatious Litigants and Contemnors as research in the United Kingdom has shown they include significant numbers of the morbidly querulous. Furthermore Court liaison nurses, forensic psychiatrists and psychologists need to maintain awareness of the dangerousness to self and others of the querulous. As Kolle found, there is significant risk of physical and sexual violence including murder, as well as death through suicide. Further research is needed.

3. Solid research is lacking into the most effective management ie should we as von Dietrich states leave them to the courts or is there an effective role for pharmacotherapy and psychotherapy. This is particularly pertinent with new generations of anti-psychotic medications and cognitive therapies.

To minimise the selection bias inherent in the previous research it will be necessary to resort to unorthodox research strategies, particularly as querulous rarely front in the psychiatrists office.[36,49,37] Such an approach may be the selection of subjects at the community level, for example, from Complaints units, the State Ombudsman or the many industry ombudsmen such as for the banking and insurance industries.

As previously noted there has been a lack of specific research into the litigiousness of hypochondriacal querulants. To research this group it will be necessary to seek the clients of the Health Service Commissioner’s Office, Chief Psychiatrist’s Office, Hospital Complaints Officers and Insurance Industry Ombudsman. This will also allow for more comprehensive assessment of the non patient factors such as the effect of reception response on the evolution of the querulousness, which has not been methodically examined before.

My intention is to study a group of hypochondriacal querulants. The research population will be complainants to the Office of the Health Service Commissioner, Hospital Complaints Units and the Insurance Ombudsman’s Office.

The criteria for inclusion will be persistent, unsatisfied complaining related to grievances associated with injury or illness and medical treatment in individuals 18-65 yrs. Exclusion criteria will be a known history of schizophrenia or mood disorder.
Initially I intend to approach the subject from the perspective of *victim of the complaints industry*. I will aim to assess the subject's experience of loss or injustice, their experience of the reception of their complaint and evaluate consequential social, personal and interpersonal losses. If possible I will assess their personality via an instrument, most probably the Minnesota Multiphasic Personality Inventory. In individuals in whom morbid querulousness is identified no decision has been made as yet as to whether an attempt at recruitment for further evaluation should be made, nor as to how advice regarding psychiatric support might be given.

My initial discussions with the Health Services Commissioner, State Ombudsman and Hospital Complaints Officers have uncovered an enormous level of enthusiasm on their parts for research into this group of clients. There are however major issues associated with this level of research, related to client confidentiality and the client's reception and response to overtures by research psychiatrists. There is evidence that this group of clients respond particularly aggressively to any intimation of contact with psychiatry. If this contact is initiated by the complaints unit there is a significant likelihood that the client may assume their complaint is not being taken seriously. This may deleteriously effect the relationship between the client and the complaints office as well as increasing the possibility that the client may institute legal proceedings against the complaints unit. [Private communication with Ms Beth Wilson, Health Services Commissioner] This remains a hurdle which is yet to be fully overcome. Alternative approaches, at least initially, may involve no contact with subjects, with only assessment of case notes and communications held by the various officers. This would be with a view to evaluating some of the characteristics of this group of the querulous. The problems of anonymity and confidentiality would still exist but could conceivably be overcome.

Research is essential regardless of the difficulties as the morbidly querulous represent a group who both experience and cause exquisite suffering. Yet as their querulousness will even turn on those who present as sympathetic, psychiatric researchers into the morbidly querulous must be equipped with both fortitude and up to date medical indemnity.
7. BIBLIOGRAPHY


ch 2 K Schneider.

ch 8 E. Kretschmer.

ch 15 H. Baruk.


19. Pichot P. The Diagnosis and Classification of Mental Disorders in French Speaking Countries: background, current views and comparison with other nomenclatures. Psychological Medicine 1982; 12, 475-492.


37. Mullen P. Jealousy; the pathology of passion. British Journal of Psychiatry 1991; 158, 593-601


part 1: Chapters1,2,3


The Vexatious Litigant

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The pathology of the vexatious litigant is described in the following article and guidelines for judicial officers to manage difficult complainants are suggested.

Increasingly common in our society is the persistent complainant who disrupts the work of complaints officers, ombudsmen, commissioners and, ultimately, tribunals and courts. In the process, they leave their own lives in chaos and show a significant potential for threats and violence. As government agencies, businesses, and professional organisations have established formal mechanisms for responding to complaints, so a small but vocal group of complainants has emerged which, by persistence and insistence, consumes disproportionate amounts of time and energy.

Understanding the vexatious litigant
In attempting to understand and cope with the vexatious litigant, little account has been taken of well established literatures both in law and psychiatry.

The legal discourse is on the topic of the vexatious litigant. The psychiatric discourse is centred on querulous paranoia.1

From the early eighteenth century, a small but significant group of the unusually persistent complainants and litigants brought psychiatry and the law together. The earliest forensic psychiatrists were exposed to litigants who did not simply complain, but who were relentlessly driven by a "pursuit of justice" which seriously damaged the individual's economic, social, and personal interests; and disrupted the functioning of the courts and/or other agencies attempting to resolve the claims. The cascade in type and target of complaints over many years inundates the courts and also devastates the lives of the complainant.

To place this group, it is useful to view the spectrum of complaining behaviour. A "normal" complainant believes they have experienced a loss. If the loss is evaluated as being caused by an external agent they may feel aggrieved. They may seek redress, usually in the form of reparation or compensation. The complainant maintains perspective, shown by the balance between the value of the loss and the effort (both physical and emotional) expended in the course of seeking redress, and the individual's ability to negotiate and accept reasonable settlement.

The "difficult" complainant also believes that they have experienced a loss. This complainant will generally attribute loss to external causes and become not only aggrieved but also, to varying degrees, indignant. This is because, cognitively, their egocentric view of the world centralises their own importance and devalues and dehumanises others. There are distinct themes of victimisation. Hence they feel angry, innocent of responsibility and a victim of an unjust act.

This is a heterogeneous group. There are those who are purely mendacious and avaricious, and whose indignation is counterfeit.
Difficult complainants may also suffer from a major psychiatric illness, most often schizophrenia. These complainants are easily identified as they have the general signs of the illness, are aggrieved primarily by feelings of persecution and victimisation, and the content of their complaints arises totally from their delusional beliefs, which are often bizarre and in a constant state of flux. As a result, it is often impossible to define, let alone resolve, their complaints. Their pre-existing major psychiatric illness requires treatment, rather than the complaint being initially addressed.

Others have egocentric personalities and are incapable of viewing any perspective other than their own. They are fearful and suspicious of others and a grandiose sense of entitlement has them constantly over-valuing their own worth. These chronic grumblers simply lash out from irritation to irritation ensuring that their whole life is a series of complaints.

At times, these chronic grumblers may become "querulant" (morbid complainants). In general, they have a belief of a loss sustained, are indignant and aggrieved and their language is the language of the victim, as if the loss was personalised and directed towards them in some way. They have over-optimistic expectations for compensation, over-optimistic evaluation of the importance of the loss to themselves, and they are difficult to negotiate with and generally reject all but their own estimation of a just settlement. They are persistent, demanding, rude and frequently threatening (harm to self or others). There will be evidence of significant and increasing loss in life domains, driven by their own pursuit of claim. Over time, they begin to pursue claims against others involved in the management of claims, be it their own legal counsel, judges and other officials. While claiming a wish for compensation initially, any such offers never satisfy and their claims show an increasing need for personal vindication and, at times, revenge, rather than compensation or reparation.

Despite 150 years of psychiatric research into querulous paranoia, there is no consensus as to the underlying pathology. Theories range from an underlying organic disease process, similar to schizophrenia, through to psychogenic processes; that is, certain vulnerable characters are sensitised by certain life experiences and are then struck by a key event which triggers their complaining. Preceding the querulousness, they have often received some form of blow to their individual sense of self-esteem or security. This was often in the nature of a loss of relationship, through separation or death, ill health or loss of employment.

The key event is usually a genuine grievance and seems to echo previous losses. The key event is often of a type to threaten the (male) status symbols of prestige, position, power, property and rights. Environmental factors influence their complaint.

In general, these difficult complainants are middle-aged and males predominate 4:1.

Prior to the development of the complaint, they are reasonably high functioning, with a past history of education and employment. The majority of querulant complainants have had partners, however, their relationships or marriages are often failing or have ended. It is uncommon for them to have a past criminal history, psychiatric history or a history of substance abuse.

Their premorbid personality has been described by a variety of researchers over the years. Kraft Ebbing described them as having a "rough, irritable, egotistic personality, defective in their notions of justice." Kolle described them as "restless, excitable, irritable, inflated self-esteem, assertive, combative, defiant and fanatical." Ungvari described them as "inflexible with difficulties with intimacy, assertive, hyper-sensitive to criticism, and distrustful." They present as highly energised with labile emotions. They will have an overflowing suitcase, briefcase or box. They appear to have pressure of speech such that interrupting them is difficult and they will speak to you as if you already know all the details of the case. Their speech is vague and full of unnecessary and often confusing and irrelevant detail.

Written communications have the appearance of having been written in excitement with numerous notes of exclamation and interrogation. These are often like a legal document except the entire surface is covered with script (including the margins). The substance is repeated in several different ways with undue grammatical emphasis and underlining. They will often refer to themselves in a third person legalistic style, for example, as "the defendant". Coloured inks are used for emphasis as are the star asterisk key and the use of capitalisation. Cut outs from newspapers, personal diaries and irrelevant materials abound. They will be initially seductive and recruiting, however, if you show any lack of response they rapidly become angry and will speak to you as if you are part of the persecuting opposition.

Recent research has found that the majority of these individuals will commence litigation, and when and if they become exhausted, either through a lack of financial capacity, emotional exhaustion or through being declared a vexatious litigant, the complainant will now rest and recuperate in complaints departments and ombudsman's offices.

In court they will nearly always be self-represented, as they desire vindication which is best gained through their "day in court". Their legal counsel will be viewed as an impediment, needlessly taking the focus away from themselves and "the truth" of the matter. They will appear legally hyper-competent, but will show no true understanding of the cases they cite. They will be disorganised and overwhelmed and will constantly request more time.

While not appearing low in mood, they will often describe the failure of their claim as life threatening and may overtly threaten suicide or violent consequences to those frustrating their efforts.
Past psychiatric management was dependent on the behaviour of the querulant. Those who made threats, harmed self or others were institutionalised. Prior to the advent of psychopharmacology, they showed a chronic waxing and waning pattern over decades. With the advent of anti-psychotic medication, it has become evident that use of this medication, along with psychotherapy, is able to normalise their behaviour and thinking over a period of months. However, the querulant rarely commences any treatment voluntarily.

Managing the persistent complainant
There are existing rules for courts to manage difficult complainants. Superior courts have inherent powers to prevent an abuse of process. The policy behind these powers is the protection of courts and the maintenance of public confidence in the administration of justice. To prevent an abuse of process, courts may strike out proceedings which disclose no reasonable cause of action or defence, or which may cause prejudice, delay or embarrassment in the proceedings. The courts may also prescribe certain procedures. For example, the court may restrain a litigant from making oral submissions by requiring that the litigant make submissions only in writing. There is a separate power to prevent a person exercising a right of access to the court. Under the Supreme Court Act 1970, a litigant may be declared vexatious on application by the Attorney General. A vexatious litigant is prevented from instituting proceedings in any court without leave of the court.

Management of the querulant broadly falls into three categories:
1. Management by staff of complaints and ombudsmans' offices, and by staff from, for example, registry offices or court libraries.
2. Management by the judiciary.
3. Psychiatric management.

For the purposes of this article I will only outline guidelines for judicial officers.

1. "First: Do No Harm". A medical aphorism which highlights your goals, which should be safety and containment rather than completion and satisfaction.
2. Recognition via the six V's — they display volatile emotions, feel victimised, seek vindication, produce voluminous and vague communications, and vary their demands.
3. Maintain rigorous boundaries. They will rapidly form attachments to those they feel are "favouring" them and feel catastrophically betrayed if the favourable treatment is not maintained.
4. They are responsive to hierarchy and the formality of court must be maintained.
5. While they appear legally hyper-competent, they have a very shallow knowledge of the law. All communication with them should be simple, repetitive, and there should be recognition that their understanding of the law is generally no deeper than the average citizen.

6. It is important to clearly and repetitively maintain their focus on what the court is able to offer in terms of outcomes.
7. More time granted will lead to more confusion. They are disorganised and overwhelmed and more time rarely changes this.
8. Take all threats seriously and be aware of the psychological, as well as physical, safety of self and court staff.
9. Any recommendation that they seek psychiatric support or evaluation will lead to extremely angry and potentially threatening responses. The role of psychiatry is generally limited. However, for those individuals who threaten self-harm or harm to others, or carry out aggressive behaviour, mandated psychiatric treatment is important.
10. Never seek to specialise in an individual. Always share the load with others.

It is important to recognise that these individuals make threats of self-harm and violence to others. About 50 per cent will make threats of violence to others. It is unknown how many actually carry out those threats but it is not rare for secure forensic psychiatric hospitals to treat querulants who have threatened and harmed others.

It is probable that one is not born a querulant. The "key event" when it comes can be quite minor, however, it will often echo losses, recent or far past. They will become locked into a "pursuit of justice" which becomes the central preoccupying focus of their world and they will eventually sacrifice all other life domains for their quest. We are only just beginning to understand how to manipulate the environmental factors to improve the outcome for the individual locked into this destructive pattern of behaviour.

Endnotes
1 While the European ICD-10 remains more comfortable with the diagnosis of paranoia, it is now subsumed under the diagnosis of "delusional disorder — unspecified type" in the American Psychiatric Association, Diagnostic and Statistical Manual, 4th ed, 2002, Washington DC. Regardless of nomenclature the diagnosis remains one which requires both psychiatric expertise and a fuller understanding of the balance of positive and negative consequences of such a diagnosis.
2 R. Krafft-Ebing, Text Book of Insanity: Based on Clinical Observations, For Practitioners and students of Medicine (trans C. Chaddock, MD), 1905, PA Davis Co, Philadelphia.
6 Ridgegro v The Queen (1995) 184 CLR 19 per Gaudron J at [31].
7 Supreme Court Rules Pt 15 r 26.
10 Supreme Court Act 1970 s 84. See, for example, Bahastacharya v Minister for Police [2001] NSWCA 109.

Volume 17 No 2
Inventor, Entrepreneur, Rascal, Crank or Querulent?: Australia’s Vexatious Litigant Sanction 75 Years On

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Rupert Frederick Millane (1887-1969) was Australia’s first declared vexatious litigant. An inventor, entrepreneur, land developer, transport pioneer and self-taught litigator, his extraordinary flood of unsuccessful litigation in the 1920s led Victoria to introduce the vexatious litigant sanction now available to most Australian superior courts. Once declared, a vexatious litigant cannot issue further legal proceedings without the leave of the court. Standing to seek the order is usually restricted to an Attorney-General. It is used as a sanction of last resort. But who was Millane and what prompted his declaration in 1930? What does psychiatry have to say about the persistent complainant and vexatious litigant? How often is the sanction used anyway? What is its utility and the nature of the emerging legislative changes? Now, on the 75th anniversary of Millane’s declaration, this article examines these issues.

The Making of a Vexatious Litigant
The Early Years
Rupert Frederick Millane, inventor, entrepreneur, land developer, transport pioneer and self-taught litigator was, by any measure, an extraordinary man. A gentle soul, he could spot the “big idea”, would promote it determinedly, but could not implement. His persistence in using the courts to protect and promote his ideas went far beyond reason and led the Victorian government to enact three different Acts of Parliament in an effort to curb his activities. One enactment, in 1928, was the vexatious litigant provision that empowers the Supreme Court to prohibit issue of proceedings by such litigants without the court’s prior leave. It provided the model for similar provisions in most superior court jurisdictions in Australia. In 1930, Millane became the first person in Australia declared a vexatious litigant.

Born in 1887, in the Melbourne suburb of Hawthorn, Millane was the fourth of five children of Patrick and Annie Millane. He left school in 1902 aged 15 and by 1906 was established as a Motor Agent importing and selling gasoline and kerosene. A self-taught engineer, in 1907 aged 20, he lodged for approval in England a patent entitled 'Improvements in and relating to internal combustion engines'. This interest in transport matters, particularly public transport, would be a
lifelong passion. In later life, Millane would attribute this interest to his Irish grandmother who he said, rather than pay the £18 demanded by Cobb and Co for the journey, had walked to Castlemaine goldfields with her family upon landing as assisted immigrants at Port Henry, Geelong in 1852.3

Promoter of Petrol Railroad Cars

By 1909 aged 22, Millane was promoting himself as the Australian representative for Union Pacific Railroad Company of the United States and its subsidiary, McKeen Motor Car Company. McKeens had recently started to market single carriage petrol-powered railroad cars and for the Victorian government they offered a possible solution to complaints about the slow and infrequent train service in the bush. Millane, recognising that interest, started an enthusiastic sales correspondence with Premier John Murray.5

Millane argued that McKeens were the modern alternative to steam or electrification. His self-typed letters on a self-aggrandising letterhead (including colour) invariably made expansive claims about the cars and included pages of supporting testimonials full of facts and figures. There is liberal use of capitals for emphasis. His enthusiasm to close a sale and his lack of insight into the more measured pace of the machinery of government is clear from the increasingly urgent tone of the letters. In July 1909 alone he sent the Premier four full letters, complete with typos, which contain detailed personal suggestions on how the cars might be best employed.5 His urgings continued through 1910, and in 1911, at the Premier’s request, the Railway Commissioners met with Millane. Their report was not supportive ‘... in returning the attached memorandum they desire to invite the attention of the honourable the Premier to the intemperate character of Mr Millane’s remarks, which in some cases are distinctly offensive and merit retribution’.6

As he became increasingly derogatory of railway management, a wary Premier kept him at arms’ length although he made it clear that his personal view was that a motor train should be acquired and run as an experiment.8

Millane’s passion for McKeen Cars also spilled over into the public arena. In 1911 he published a report advocating their use, complete with route map, directed to the Traffic Commission inquiring into Melbourne suburban rail and tramway systems. An extraordinarily confident document, having regard to his youth and lack of formal engineering credentials, the submission contained detailed suggestions for completely revamping the entire ‘inter-urban’ network including the construction of an elevated circular terminus over the Princess Bridge Rail Yards.7

In the end, the Victorian government purchased only two McKeen cars. They were tried on country lines but they were not powerful enough and proved unreliable.8 The government was wary of Millane’s marketing and departmental officers regularly contradicted his more extravagant claims in internal memos.1 They declined to deal through him and dealt direct with McKeen in the United States. They also refused him access to performance data of the two test McKeens, no doubt cautious of how he might use the material.9 McKeens appear to have been similarly wary. They made it clear that Millane could not bind their company although they permitted him to act as their Australian representative and receive a commission for any cars sold.10 Victoria purchased no more McKeens although Millane continued to promote and defend them publicly.11

Shipyard Entrepreneur

In March 1917 aged 30, Millane had started to draw up plans for a small shipyard in Geelong similar to those he had seen operating on a visit to American west coast cities in 1912–1913. He believed he was assured of capital support if he could guarantee no ‘labor troubles’.12 Later that year the project suddenly grew in size following wartime speeches by Prime Minister Billy Hughes urging an increase in local ship building capacity.13 In response, Millane proposed the establishment of a ‘Co-operative Shipbuilding Company’ based at Corio Quay, North Geelong. The company would be the vehicle for raising £1,250,000 capital. It would prepare the site for four shipways, workshops, foundry and engineering works. It would build twelve 6,900 ton ships and sell them for £317,520 or higher price. He calculated that investors would share a profit on each ship of £152,520 and was confident that there would be no industrial trouble as labour would be shareholders in the profit.14

Millane moved on his scheme with incredible speed despite concealing in his own documentation that he was ‘not a shipbuilder, though I know a good bit about it’.15 He started to raise money and between July 1917 and June 1918, when he was forced to abandon the idea, he had written seventeen letters to
the Prime Minister and his department. As with his McKeen endeavour, the letters are full of facts and figures, engineering detail and free-flowing ideas. They refer to the existence of many supporters and his personal ability to mobilise 'over 400 experienced and willing steel and iron workers, many experienced on ship construction here and in England, Scotland, Belfast and America, willing to drop their present occupation and make a satisfactory started (sic) ship yard a success'. The letters press constantly for a meeting with the Prime Minister and support from government.

For its part the government was less enthusiastic. The advice to the Prime Minister was that the scheme was impractical and that Millane's attempts to register the Co-operative name, raise money and issue a prospectus were in breach of various wartime regulations. Indeed, he had been prosecuted and fined on these matters in August/September 1917. Millane was advised in no uncertain terms that he should stop promoting the company otherwise further legal action would be taken. Clearly convinced of the merit of the scheme, he continued to promote it well into 1918. He even lodged for copyright registration as an original literary work his personally produced prospectus, replete with ship photographs, ambitious claims about his personal ability to manage labour (in capitals for emphasis) and a lengthy personal and flattering profile.

By November 1918 Millane recognised that the scheme was dead. He wrote a stinging letter to Acting Prime Minister Watt protesting the government treatment of him and claiming compensation. He regretted:

having to take this action, but I am certain that investigation, impartially, or before proper authority, you will see I was most shamefully treated, lost considerable money, as well as prospects of establishing the finest engineering works and steel shipyards in the country.

It stopped short of legal action but it was a cry for justice and a sign that a new theatre of activity was about to open up.

**Rail System Visionary**

In February 1921, undeterred by his shipyard setback, Millane returned to his rail network theme with a proposal for the formation of a 'Traffic League'. He was picking up on the pressures faced by a rapidly growing city in the 'roaring twenties' for an accessible and efficient public transport system. Here, Melbourne's cable car and train system was struggling to meet demand generated by expansion, particularly in the northern and western suburbs. It also suffered regular congestion at key central spots such as Flinders Street Railway Station. Millane's solution, mainly a repetition of an 1877 proposal of his father when he was a Crown Lands Department Surveyor, and to be promoted by the League, proposed a reorganisation of the city's traffic outlets and inlets and the erection of a new central railway station in the vicinity of the Exhibition Gardens. In order to lobby support for this 'Direct and Central Railway', Millane self-published a journal called *Traffic*. With a subscription set at $1- and to be published monthly he claimed:

'TRAFFIC,' the first and only public railway and tramway publication attempted in this country, undertaking more than a public object.

The object seems 'TOO BIG' for some people, but it is only plain simple railway track — no difficulties, a little pick and shovel, brick and structural steel work — that means Millions to the City improvement, and means commercial development and saving of a month per annum to nearly all future users. So WHY NOT rally up and join in such a beneficial campaign, and later on be in the first train of pioneer supporters to run over the new route?

The 34-page journal contains advertisements by traders and merchants and extensive newspaper quotes on traffic congestion. It is freely illustrated with photographs of busy Melbourne intersections, maps and proposed engineering solutions such as an elevated rail track along Lonsdale Street out to Heidelberg. Much of the free-flowing copy is in capitals for emphasis. Millane also invited subscribers to invest with him in the purchase and development of properties along the proposed rail routes, it being 'INVESTMENT FREE FROM EXTRAVAGANT SPECULATION OR RISK'.

Although the journal claimed to be supported by companies such as Myer (Melbourne) and other leading merchants and businessmen, there is no record of it having gone to a second edition. Possibly, this is connected to the death in June that year of his father aged 77. The elevated rail track and the station in the Exhibition Gardens were never built.
Omnibus Pioneer

By 1922, authorities were grappling with how to meet Melbourne’s transport needs. One issue being debated through the newspaper columns was the electrification and modernisation of the cable car tramway system.32 Interestingly, Millane had a view on this and appeared at public hearings conducted by the Railways Standing Committee. Describing himself as an engineer with American experience, he favoured an underground electric conduit system rather than overhead wires. When questioned on whether he had consulted the Tramways Board about the matter, he gave a reply that hints at his growing maverick status. He replied: ‘The Board resented information coming from anyone outside the service’.33

Issues of electric conversion were soon overwhelmed by the belated arrival, in 1923, of the petrol omnibus on Melbourne’s roads.34 They proved immediately popular with commuters because of their route flexibility and speed and were given a fillip when the tram system went on strike in April.35 However, two new issues soon dominated. The collapse of tramways revenues from bus competition and the damage suddenly caused to the roads by the solid wheels of increasing numbers of heavy buses. Throughout 1923 and 1924 newspapers columns were filled with articles and editorials such as Motor Bus competition’, Trams v Buses36 and ‘Private enterprise a parasite’.37 Under pressure to act, the government moved to control the hitherto unregulated buses. In introducing the Motor Omnibus Bill 1924 Honorary Minister Webber was clear on the government’s purpose:

This Bill has been introduced for the purpose of controlling and regulating motor omnibus with a view to providing safeguards for the travelling public, and of protecting the railways and tramways from unrestricted competition. At the same time it will provide municipalities with funds to assist them in maintaining roads in their districts. The Bill applies only to omnibuses plying for hire within the City of Melbourne proper, and within an area of 8 miles from the corporate limits of the city.38

The legislation proposed a ‘seat tax’ and gave control of bus licences, route allocation, designation of stops, passenger limits and related issues to the Hackney Carriages Licensing sub-committee of the Melbourne City Council (MCC).39 The entrepreneurial bus proprietors and their many supporters saw the changes differently. It was an interference with free market forces. Proprietors indignant,32 ‘Scotching the Buses’,33 Hysterical Legislation,34 Putting back the clock,35 Competition or confiscation.36 Housewives protest37 declared just some of the newspaper headlines of the period.

It was into this politically hostile environment that Millane inserted himself having identified the omnibus as his next big commercial opportunity. In October 1924, in what was arguably a politically naïve intervention, he sought to influence the debate raging over the ‘seat tax’. In his capacity as promoter of a new bus firm Highway Motors, he sent the government a letter that acting Minister John Cain used as evidence that buses could in fact pay the proposed tax. In Parliament, Cain described the author as ‘a great authority of the subject’.40 Although Cain did not name Millane as the author, the identified residence of Ivanhoe and style are both his. The letter, read into Hansard, is full of facts and figures and grand, even exaggerated, plans as it describes the ‘contemplated service of a fleet of 45 passenger buses of far superior type to any ordinary buses’.41

The Legal Challenges Begin

On 1 February, 1925 the new regulatory system got underway. Routes would only be allocated to registered buses and allocation would be valid for 12 months. Within weeks, the numbers of buses running collapsed; down from 320 to 40. Proprietors blamed taxation costs and lack of route security.42 Previously successful bus proprietors announced their closure amidst much resentment.43

It was into this situation that Millane suddenly suggested a loophole; he had been researching the law on passenger vehicles at the Supreme Court Library.44 On 17 February 1925, appearing for Highway Motors and on behalf of five bus owners whose services operated in and around Reservoir in Melbourne’s northern suburbs, he applied at the Melbourne District Court for licences under the Carriages Act 1915 (Vic). He argued that the Motor Omnibus Act 1924 (Vic) had not repealed this earlier Act that could be traced to William IV and earlier, and that it provided an alternative (and cheaper) licensing system. He also noted that the routes in question had a starting point 8 miles from the city centre and were thus not caught by the new law. He convinced the two Justices of the Peace who made up the court and the licences were granted.44 Millane immediately forshadowed
further applications and his almost daily applications over the next 3 months become increasingly bizarre. They included an application for a licence to carry three passengers in his 1912 Hupomobile car between Mildura and Mallacoota and back, a distance of 640 miles. It was refused. Days later he made a blanket application for 1000 licenses. It too was refused as ‘abuse’.85

Other proprietors seized on these developments and started applying for Stage Carriage licences in Petty Session courts all over the city. The Commercial Motor Users Association (CMUA) met with Millane and also decided to seek Stage Carriage licences.86 Intervening, the government sent the leading barrister of the time, Owen Dixon KC, to argue their case in the Petty Sessions court against the CMUA legal counsel. Millane then withdrew his applications from those of the CMUA. He wanted to go it alone. Dixon argued that the whole of the Stage Carriage Act dealt particularly with horse drawn vehicles and its very terms were applicable only to horses and coaches.

As such, the Motor Omnibus legislation was based upon the assumption that the Carriage Act applied to horses only and the new law should prevail.87 Magistrate Cohen did not agree and decided that cars could be registered as Stage Carriages.88 Millane would cite this ‘victory’ against the government for the rest of his life.

Emboldened by these events, Millane and other proprietors continued to make Stage Carriage licence applications. The government regrouped and moved next to test the validity of the bus law by having the MCC inspectors launch criminal prosecutions for non-compliance.89 In particular, they targeted four owners and drivers one of which, Samuel Michaelis, was linked to Millane. Michaelis was the beneficial owner although the bus was in Millane’s name.90 Again, Dixon KC appeared for the government and this time was successful, although the same magistrate presided. He held that ‘motor buses may not be run validly as stage carriages’.91 The MCC, as the licensing authority, then resolved to enforce with vigour the Omnibus law and prosecute unlicensed buses. In their view ‘ample time had been given to motor bus owners to comply with the Act’.92

As prosecutions and costs mounted against Millane and his supporters, he refused to acknowledge their legitimacy and went on the counter-attack. He issued summonses against the two MCC inspectors for issuing prosecutions that exceeded their powers and ‘that offended against the Stage Carriage Act’. The Town Clerk described this as a retaliatory ‘act of spleen’.93 The Justices of the Peace dismissed the case without hearing evidence.94 He continued to unsuccessfully issue against them and the Tramways Board for the rest of the year.95 As well, in what might be interpreted as an effort to intimidate dissenting bus proprietors into joining a proposed Stage Coach Operators League, he began to issue against them for not having Stage Carriage licenses.96 In one such case, counsel for Ventura Buses told the court:

that a perfectly ridiculous charge has been brought against my client. The same informant has brought a number of ridiculous charges against various people lately, and the only way to protect other people from such charges is to penalise the informant by awarding costs against him.97

Toward the end 1925, the government acknowledged that it was having difficulty administering the new legislation. Unlicensed buses were ‘pirating’ bus routes, fees were too high but principally there was a need to tighten the definition of Omnibus to exclude the Stage Carriage option. Despite protest meetings by the Stage Coach and Motor Transport Owners Association, no doubt promoted by Millane,98 in December 1925 it introduced and passed what could be described as a ‘Millane amendment’. It made definitions ‘wateright’ so that omnibus had to be registered, made it harder for litigants to take technical points and increased maximum fines thresholds.99 Millane’s response to the parliamentary clarification was immediately to lift the level of his litigation at both a summary and superior level. In 1926, he regularly issued summonses in the Melbourne Court of Petty Sessions against the Lord Mayor, the Police and the Minister for Public Works. His claims were creative. An example was one against the Tramways Board for ‘using cars exceeding 11 inches greater width than wheels of cars’.100 This and other summonses would draw heavily on his Supreme Court library researches and discovery of the recently enacted Imperil Act, Application Act 1922 (Vic) that had reviewed and confirmed which Imperial legislation was still law in Victoria.101 Almost using the Act as a primer, his proceedings referred to concepts such as the deprivation of licence without trial and prosecution; to unlawful ejection and to the rights of British subjects. All were struck out or
dismissed for lack of jurisdiction. His subsequent affidavits and other court documents would quote extensively from that Act.

Meanwhile, in the Supreme Court he issued three Supreme Court writs against the Minister of Public Works; the Tramways Board and the Mayor, Councillors and Aldermen of the Melbourne City Council. Newspaper reports of the time refer to pages of closely typed claims that are both confusing and sweeping in their content. Drawing variously up the Carriage Act 1915 (Vic) and the rights of British subjects under the Imperial Acts Application Act they sought, among other things, penalties against the Tramways and Council for running buses without Stage Carriage licences and for depriving citizens of roadway use by introducing laws prohibiting left and right hand turns at city intersections. All three were struck out summarily as disclosing no reasonable cause of action although in one case when asked by the Judge whether he intended to engage proper legal assistance he replied: 'We would like to, if we could get some Barristers who know the difference between an omnibus and a Stage carriage. (Laughter)'.

Later that month in yet another review application an exasperated Mr Justice Mann advised:

Although I have every desire to help you, I find that it is quite impossible to make any proceeding out of the papers which will result in anything. If I made an order it would only land you in further expense and more and more costs. It is quite impossible for a man of your mental calibre to conduct legal proceedings to a successful issue by yourself. I am only telling you again, as you have been told before, in your own interest, that for a very small sum of money you can see a Solicitor and get what you require done. It would not be proper for the Court to oblige you. I cannot give you the order for which you ask.

Millane — Could you rule that I could get an order to review if I had a Solicitor? I have another case.

By the end of 1926 the 'bus wars' were coming to an end. The tramways were no longer losing money; roads were being improved and most bus proprietors were becoming reconciled to the new system of regulation. Millane took a different view, continuing to seek Stage Carriage licences and assisting other rogue operators to review lower court decisions in the Supreme Court on points of law. He also starts to move the litigation into the High Court with requests for special leave to appeal. His self-typed affidavits in support, peppered with legalism relating to Stage Carriage provisions, are verbose and confusing. His applications were all unsuccessful.

Showing their growing frustration, the government moved to solve the Millane problem through a second legislative change. In December 1927 they again amended the Motor Omnibus Act to increase the penalties for running unregistered buses. In introducing the one page Bill into the Legislative Council, the Minister for Public Works, The Hon JP Jones made the target of the legislation unequivocally clear:

Since the passing of the Motor Omnibus Act in 1924 the owner of certain motor omnibuses has been operating them in the metropolitan area without a licence and, notwithstanding that he and his drivers have been prosecuted no fewer than 109 times, he continues to operate the omnibuses and to treat the Act with contempt. His conduct proves conclusively that the existing penalties are inadequate to enforce the provisions of the Act. The chief by laws prosecuting officer of the City Council, in a report on the subject in June last, states that on practically every occasion on which the owner and his driver have appeared before the Court a strenuous defence has been entered upon.

Millane was unmoved. Having now got the taste for legal action, in September 1928, he intervened in yet another transport issue confronting Melbourne motorists. This was the long discussed introduction by the City of Melbourne, of car parking fees, designed to deal with the growing number of vehicles clogging the commercial area.

Millane's interventions were typically novel. He charged the Town Clerk and Mayor with making unlawful threats and menaces by demanding the 1/- parking fee. In support he quoted the Road Toll Act 1835 (UK) and statues of Elizabeth I and Henry VI. He created his own parking business by pegging out a miner's claim for parts of Queen Street near the corner of Bourke Street and Collins Street near the comer of Collins Place. Armed with a licence to carry on the business of livery stables and car parking, he had a pamphlet printed promoting his new service, only to be prosecuted by the police for distributing a pamphlet without showing the publisher's name and address. He retaliated by prosecuting publishers of all
Melbourne newspapers for the same offence. When By-Laws Officer O'Toole removed the miner's pegs, he found himself prosecuted a number of times for 'unlawfully removing survey or boundary pegs contrary to the Mines Act'. None of the actions were successful, which was the same fate of the business. Meanwhile, in Heidelberg.

The Inventor, Local Government and More Legal Challenges

By 1912 the Millane family had moved to Lockley Road, Ivanhoe in the then Shire of Heidelberg. The purpose appears to have been land development and in September 1922, Millane was in correspondence with the Shire about subdividing the land parcel into shopping sites. The Shire rejected his preliminary plans but indicated future approval if 'a proper surveyor's subdivision plan' was submitted. This comment was most likely not appreciated by Millane, his surveyor father having only died in June. Perhaps because of this loss the project goes nowhere. It was overtaken in October 1925 by what the Shire Building By-Law committee describe as a proposal for 'an extraordinary reinforced concrete construction' at the Lockley Road site.

The radical proposal was for a fireproof house made of empty kerosene tins and reinforced concrete. Again, the timing reflects Millane's identification of a commercial opportunity. It coincided with a housing shortage and public discussion on the use of alternative building materials such as steel and rubber. The State Savings Bank also had a proposal for workers' houses at Fisherman's Bend (Garden City) and called for tenders to build 88 houses including six at Heidelberg. Millane's proposal was an audacious response to this environment. He had conceived it some years earlier when a Motor Cycle Sales distributor travelling in the Mallee, an area then being settled under a post-war soldier settlement scheme. There he noticed a farming customer living in aessian humpy surrounded by literally hundreds of empty petrol tins left over from filling tractors. His response was to suggest a house made of tins to form lightweight cellular walls. They would be composed of 85% sealed air, the rest reinforced concrete, offering high insulation against summer heat and winter cold, as well as being fireproof, light, strong and cheap.

The Patent's office did not share Millane's enthusiasm for the concept. In December 1924 it rejected his application 'short of superfluous verbiage' for a patent for a 'Hollow Core Monolithic Concrete Building'. The product was not an 'article of new manufacture' or an outcome of 'skilful ingenuity'. He challenged this rejection but, no doubt preoccupied with Stage Carriage matters throughout 1925, let it lapse until 1926 when his four chamber applications in the Supreme Court failed on procedural and evidentiary grounds.

Despite this lack of official endorsement, in May 1926 Millane started building a large 21-square prototype referring to technical support from the University of Melbourne and financial support from the English, Scottish and Australian Bank. For Millane, the idea was given further cogency by the death toll in the 1926 bushfires. However, the Shire was unconvincing and in May 1926 sent a registered letter citing breach of building regulations and their decision 'without qualification to insist upon this building being demolished immediately'. Immediately, Millane rose to the defence of his concept. He wrote numerous and long letters to the Council. He prosecuted the Shire for sending a letter showing malicious intent in ordering him to demolish a building, sought an injunction, issued a writ claiming £9,250 damages on the basis of a Statute of Charles 1666 and appeared in person before the Shire Council to state his case. All to no avail and the part-completed house was demolished on 9th August 1926 on the basis that 'insufficiently perforated tins were used instead of expanded metal, that the slashed tins were rusty, greasy and painted, and that the studs were not uniform'.

From a nearby corner Millane watched as a team of men set about the demolition. A report of the event written some years later described him as:

...well dressed in the fashion of the times. His long single breasted coat was buttoned and he wore a red carnation in his buttonhole. In a few hours the house was a heap of rubble. The young man looked dejectedly at what had once been his home and walked slowly away.

The demolition unleashed an avalanche of prosecutions and litigation against the Shire, its Councillors, its officers, its lawyers and others drawn into the saga. Seeking justice for this event
became an obsession with Millane for the rest of his life.

Over the next 2 years until the start of 1930 Millane personally issued a bevy of criminal informations and summonses in the Heidelberg and Melbourne Petty Sessions courts. They showed remarkable ingenuity. A Councillor was prosecuted for being a competing builder and voting on the resolution to demolish. The Shire was charged with destroying a work of art and illegal detention of (demolished) goods. The Shire lawyers were charged with sending letters demanding money with menaces and unlawfully deceiving various courts. Millane also convened a jury at the site of the demolition that awards him damages of over one thousand pounds. All were struck out with costs, usually for want of jurisdiction. Far from being rebuffed by this lack of success, Millane moved his litigation to higher courts, regularly filing lengthy and often rambling affidavits full of legalese in support of applications to review the decisions. He typed his own documents and appeared in person. Dismal in the Practice Court inevitably led to appeals to the Full Court and then to the High Court, which conveniently for Millane in those pre-Canberra days was in Little Bourke Street, just next door. All the proceedings lapsed or were struck out.

Under this assault, in October 1926 the Shire resolved to bankrupt Millane for non-payment of costs £54/4/-. The purpose was to gain legal control of his ability to both continue and issue future legal proceedings. Unusually, Millane was represented by counsel who resisted the petition on the basis that the Council's motives were improper and designed to stifle the pending compensation action. The argument was rejected and in August 1927 McArthur J ordered that the estate be sequestrated.

Although he would be discharged in 1930, the bankruptcy unleashed further litigation particularly as the Shire moved to sell Locksley Road. Although the bankruptcy did stall a Supreme Court action Millane continued to maintain his rage in the Petty Sessions courts. In one predictably unsuccessful prosecution against the Shire lawyers alleging they obtained a debtors' summons by fraud and deceit, the Magistrate provided the following advice:

Why do you not get some good legal advice instead of giving yourself, the Court, and the defendants much unnecessary bother and expense? If you are wise, you will get some work and build yourself up bodily and mentally so that you will become a reputable citizen instead of being a court ghost.117

A Law to Deal With 'Cranics': History is Made

As early as January 1926, the Melbourne City Council had had enough of Millane's seemingly endless litigation. They received advice from the City Solicitor HE 'Pompey' Elliott that there appeared to be no satisfactory mode of restraining Millane except to request the government to pass an Act on the lines of the Venetious Actions Act 1896 of England. That legislation had been introduced to curtail the vexatious litigation of Alexander Chaffers against public figures such as the Archbishop of Canterbury, the Speaker of the House of Commons, Judges and the Trustees of the British Museum. Accordingly, in February 1926 the Melbourne Town Clerk wrote to the Attorney-General requesting that the Council and public bodies be given similar statutory protection. An indication that the government was less concerned about the urgency of the situation is reflected in an Agenda report on the move published some months later that reviewed the history of such litigants in the Supreme Court:

At present there is an old woman who enters any room that she finds vacant and writes incoherent letters against both Bench and Bar. Late one afternoon she stood in the quadrangle and 'coo-eeed' loudly several times. An attendant asked her what was the matter. 'I am coo-eeing for an honest judge,' she replied, 'but I do not think there is the slightest hope of finding one about here.'118

In September 1927, after further prompting from the Melbourne City Council, the government finally introduced into the Parliament the Supreme Court (Venetious Actions) Bill. It was a repetition of the English provision and targeted persons who habitually and persistently, without reasonable grounds, issued vexatious legal proceedings. Only a senior law officer could initiate the motion and the person concerned must be given an opportunity to be heard. It was then for a Supreme Court judge to control the issue of any further legal proceedings. That Millane was the target is made clear from specific references to him during debate.119

The Bill met opposition in the lower house. How many cases constitute 'habitually' and how
do you 'differentiate between a sane man and a crank'. In particular, labour lawyer Maurice Blackburn opposed the Bill. He argued that there had been insufficient time to consider the provision, that it was dangerous and the right of the citizen to bring a grievance before the court should be inalienable: 'That right must not be taken away simply because one or two cranks have instituted a few frivolous actions, or a dozen such actions'.

He succeeded in having debate on the Bill adjourned to allow further consideration and it was subsequently withdrawn altogether whilst the lower house was sitting 'in camera'. Late in 1928, the provision was quietly inserted, without further debate, as §35 in the 1928 consolidation of the Supreme Court Act.

The unusual circumstances surrounding the passage of the statutory provision fed the conspiracy suspicions of Millane and other litigants over the next few decades who questioned the validity of its passage. Interestingly, in Millane's case, on the same day that the Parliament dealt 'in camera' with the Vexatious Bill they also passed a further amendment to the Vexatious Proceedings Act, specifically targeting Millane. It increased fine levels.

By 1929 the Heidelberg Shire, still under litigation siege from Millane, had become frustrated at the lack of action by the government. The Shire had received 235 documents from him and the Shire President interviewed him 101 times at his private residence. In his view 'the thing had gone beyond the humorous stage'. They instructed their solicitors to 'take what action possible under the new Act to prevent Mr Millane from embarrassing the Council with further litigation'. Even the journal of the Law Institute was moved to comment: 'Nearly all barristers and solicitors in Melbourne know Mr Millane and while marveling at the industry of this famous litigant, will welcome the proposed legislation'.

In July 1930 the Attorney-General finally took action. He brought proceedings to have Millane declared a vexatious litigant. Mr WM Irvine appeared for the Attorney-General. The application was supported by six affidavits from Clerks of Courts and a Solicitor's clerk. They showed that Millane had issued since 1925: 87 Supreme Court writs, 53 summonses out of the Heidelberg Court, 58 out of the City Court, and 15 out of the Court at Preston. In all 213 writs and summonses had been issued in four years.

Because of the special nature of the proceedings the case was referred directly to the Full Court. A young barrister, JW Roger Thomson, was appointed Millane's counsel. The instructing solicitors were Maurice Blackburn and Tredinnick. Both acted in an honorary capacity. Thomson argued that the new law offended the principle against retrospectivity in that all but one of the proceedings predated the 1928 legislation. He also relied on an English precedent that supported the exclusion of criminal proceeding from consideration. The court ignored the first point and distinguished the second. On 5 September 1930 Rupert Frederick Millane became Australia's first declared vexatious litigant. He was 43 years old.

Through his counsel, Millane appealed to the full bench of the High Court. It listened for half an hour before Chief Justice Isaacs refused his request for special leave. A decade later Isaacs would himself become involved in legal proceedings that led to his sister-in-law Edna Isaacs becoming Victoria's second vexatious litigant.

**Litigation Post-Declaration: The Quest For Leave**

Although the making of the declaration coincided with the end of Millane's entrepreneurial career, it also signalled a new phase in his litigious activity. The requirement that he seek leave before he issued proceedings moved the focus to the superior courts and away from the defendants and inferior courts. The Supreme and High Court registries and practice courts become the focus of Millane's prodigious numbers of affidavit filings and in person motions. However, the subject matter continued to have familiar themes, namely Stage Carriage licenses and compensation from the Heidelberg Shire.

The declaration was not an immediate success. Continuing to show his legal ingenuity, in October 1930 he issued proceedings against the Mayor, Aldermen, Councillors and Burgesses of the City of Melbourne and prosecuting officer O'Toole for barratry, the common law misdemeanour of habitually exciting or maintaining suits of quarrel. This was in response to Council prosecutions for running unlicensed buses. The Attorney-General promptly brought contempt proceedings in the Supreme Court. There, Millane gave an undertaking not to issue further proceedings but not before asking the judge for an order 'that other parties cannot take proceedings against
me?" In response the judge said: "You have an Act all
to yourself. You can always defend any action
brought against you, but you cannot defend by
bringing another legal proceeding."\[97]

This advice foreshadowed the surge of activity
that occurred through 1931. In April of that year
Millane and his two of his supporters, Noble
Kerby\[98] and Frederick Hampton renewed the Stage
Carriage campaign. They determinedly ran their
unlicensed and dishevelled buses up and down
Sydney Road to Coburg pirating tramways
customers. In response, licensing authorities
conducted a massive campaign against them result-
ing in repeated prosecutions and fines. Newspaper
headlines of the day give the flavour: *Competition
with tram: Complaint about Bus service*,\[99] Millane
fined £50 for Bus offences: *Given Notice of Appeal*,\[100]
*Motor Omnibus Act: Further prosecutions*,\[101] *Motor
Bus prosecutions: Developing into farce*.\[102] Then, on
29 May 1931 Millane succeeded in getting leave to
proceed by counsel to appeal the fines and challenge
the regulations under which the proceedings were
taken. This had the effect of adjourning 80 further
prosecutions pending the outcome of the
challenge.\[103] In June, Millane had another success
when an ageing Chief Justice Irvine ordered a stay
'on all Summonses past heard or pending in the
courts of Petty Session'.\[104] He apparently mis-
stood Millane's rambling application and made the
wrong order.\[105] This, combined with a successful
Order to Review application on behalf of Kerby,
caused speculation on "Will the buses come back?"\[106]

However, it was not to be and urgent on by
parliamentary\[107] and local government\[108] pressure,
by the end of the year the authorities overcame
these legal setbacks. Hampton\[109] and Kerby\[110] were
gaoled and served 8 and 6 months imprisonment
respectively before being released on special licence.

With the buses temporarily seized to pay fines\[111]
and a warrant issued for his arrest, Millane left the
jurisdiction and moved to Albury, New South
Wales. From there he continued to litigate. In 1932
alone he had seven matters active in the High
Court. In one, on behalf of *Highway Motors*, he
sought £10,600 compensation from the State of
Victoria, the Attorney-General, the 'Treasurer and
the City of Melbourne for the gaoling of Hampton
and Kerby, the loss of four stage carriages, fines
imposed and general legal expenses.\[112] In another,
using the trading name *Union Oil*, he sued the
Commonwealth government claiming amongst
other things, that customs duties were ultra vires the
constitutions. There, his former adversary, now
Justice Dixon found the action incomprehensible
and in staying it forever was reported as saying, in
Millane's absence, "The state legislation relating to
vexatious litigation might also apply in
Commonwealth jurisdiction. It might be that Mr
Millane was not sufficiently competent to conduct
his own litigation (Laughter)".\[113]

In March 1933 Millane returned to Victoria
and was promptly arrested for non-payment of
£1,276 in fines and sent to Pentridge Prison for 4
years. However, in September, as with Kerby and
Hampton, he was released on special licence after
serving only 6 months.\[114] During his imprisonment
he served 23 days solitary confinement and was
assessed by two police medical officers for removal
to an asylum\[115] before being released following
representations by Solicitor LP Le Grand of
Brunswick.\[116] Possibly the government was wary of
creating a 'Stage Carriage martyr'. The event did,
however, give rise to a continuing grievance.

Hardly missing a litigious beat, 2 months later
he brought contesting proceedings in the Hawthorn
Petty Sessions seeking to introduce 'fresh evidence
of ownership' relating to the four seized buses. An
exchange between the Magistrate and Millane
indicates how the courts commenced to deal with
Millane's actions. They deferred them:

> Mr Stafford — I will have to go into it. I will do
  nothing about it today.

> Millane — The Chief Justice wants you to
determine matters of fact.

> Mr Stafford — When the Chief Justice directs
  me to take evidence as to facts I will do so. I will
  adjourn the matter until next year."\[117]

A Litigant Slowed But Not Stopped

As the 1930s got underway, Millane's fortunes
were in decline. The combined effect of failed
business ventures, legal expenses and fines took
their toll. Millane family resources were not
enough and older sister Florence's support for her
brother saw her own property sold by the bank,
but not before the now customary Millane legal
tussle in the Supreme Court.\[118]

Mother Annie, brother Gilbert and later
Florence, all took up residence in Brighton, first,
at 90 Male Street, a modest brick dual occupancy,
and in 1939 in a more substantial Victorian house
at 837 Hampton Street. Millane now derived his
income by working with his brothers in a bicycle
business and general buying and selling of cars and other mechanical parts. Indeed, their yards became full of old cars and bits of machinery. In 1935 Millane obtained leave to revive his compensation claim against the Heidelberg Shire, although he was ultimately unsuccessful. Over the next few years he maintained a correspondence with the government seeking compensation for wrongful imprisonment, sought copyright for two pages of rules for "Popular Radio Contests" and in 1936, after a 3-year hiatus, again brought actions in the High Court. There, the Victorian declaration did not apply.

One action, in 1938, dismissed by Justice Owen Dixon, sought to appeal his case against the Heidelberg Shire. Another, in 1943, against the Chief Electoral Officer, challenged his defeat as an independent Senate candidate in the 1943 federal election. In a disjointed two-page affidavit he analysed the meaning and source of a 'Free' election and, relying on his view of the Imperial Acts Application Act 1922 (Vic), argued that all or any "Rules or Regulations" have no validity at all against the general public, or prosecuting powers in any Court of Law. This latter point no doubt was a response to the many past prosecutions launched against him.

Nor did Millane suppress his creative side. He was busy inventing and making suggestions. As with his ship-building scheme in 1917, he responded to a war effort. In March 1942 he wrote to the government with suggestions for 'miniature semi submarine' motor boats with torpedoes. He was politely thanked. Later that month he suggested Motor Torpedo warhead boats, outboard motor boats and hydroplanes. The government responded more tersely: 'that your proposals do not add to information already available'. Then in 1947-1948 he sought copyright for two literary works. One was entitled 'Election Progress Report' but he failed to submit a copy of the work. The second, 'Tabulated Race Guides and charts' comprised three closely typed pages of horse names and calculations. Neither made it to commercial implementation.

Litigating Through a Brother, Who Needs Leave? In 1939 the Millane brothers, unmarried and now in their 50s, and their 80-year-old mother Annie, moved around the corner and took up residence at 837 Hampton Street, Brighton. It is from this property that Rupert Millane and his brother conducted a bicycle frame manufacturing and general buying and selling business. Gilbert signed an option to purchase the property for £1,175 on terms from a Mr James G Hone but, due to wartime controls on property dealings, the transaction did not progress. Instead, weekly payments of £2.2/- were made. In 1946, immediately after the war Millane discovered that the owner, now a Mrs Eileen M Bosher, was selling to an Arthur Lyne Browne, a city merchant. Seeking to forestall a loss of property rights and showing a belated understanding of conveyancing processes, he attempted to lodge a caveat to protect his and Gilbert's interests. The Registrar of Titles rejected it as the Commonwealth Bank, mortgagee for the new owners, had already lodged (although not yet registered) a title transfer. This unleashed a decade of litigation on the intricacies of caveat law that travelled to the Supreme Court, the High Court, the Privy Council and back again effectively culminating with Millane's forced eviction on 21 October 1955.

Examination of the many litigation files held in the National Archives show Millane's remarkable persistence. The documentation is almost all generated by him. It is in a self-typed loose affidavit format in an increasingly repetitive and emphatic style with liberal use of legalese and capitals. Most applications initiated in Victoria in the Practice Court rather than through the normal issue of a writ and then proceeded on appeal to the High Court. Browne, the Commonwealth Bank and the Registrar of Titles were all drawn into the proceedings at various times. Millane, to get round his vexatious status, attached Gilbert's name to a number of the applications and sat with him in court prompting him with questions. In response, the court ordered that Gilbert proceed only through Counsel: a not too subtle extension of Millane's vexatious litigant declaration. This order too generated appeals.

Despite regular dismissals, Millane simply filed further affidavits and made more applications. Attempts by Browne to get possession of the property dragged through the 1940s into the 1950s. In 1952 he suffered a setback when rather confusingly, Coppell J gave Millane leave to file a caveat. This could not defeat Browne's interests as the title had been transferred to his name in March 1946. However, by the mid-1950s things were drawing to a close. In December 1954, the Victorian Full Court ordered that the caveat be removed. A month
later Gilbert was bankrupted for failure to pay legal costs and in October 1955 he died. Ten days after his funeral Millane was unceremoniously evicted. His words suggest the poignancy of the moment:

Complainant with his Solicitors and van loads of police and truck removers suddenly entered premises before 10am and put me off the premises 9.48am and thereafter proceeded to remove (damage or otherwise) all household furniture, furnishings, bed, lining, dining room equipment and accumulation of deceased estates for over 100 years, engineering business papers etc. of household value £1,050 taking every piece of clothing except what I was wearing. Took away two van loads of best furniture and effects £1,000 (which were attached by bankruptcy Court for £643) also two van loads of second rate furniture etc. to Brighton and Moorabbin Girls & Boys Orphanages. Burnt all miscellaneous which fell or broke, and several 5-ton tip loads of steel materials, business goods from yard and sheds, workshod 4 dozen bicycles, 40-cush. Capacity concrete mounds, truck load of salvaged good motor tyres and later after detention for some weeks refused to give me papers in the house or goods out of yard and sheds mainly some seven motor cars, 5 motor cycles machinery equipment. Building trade — benches — tool. Total value £3,645. Only thing salvaged was two sets cases of paper and typewriter and used clothing then wearing — jewelry, valuables and title deeds for land were all wilfully removed and burnt.15

Millane endeavoured to fight a rear guard action in the Victorian court. He obtained leave from the Privy Council.176 It went nowhere. Meanwhile, the High Court registry now refused to file his documentation for not being in the correct form and on their face an abuse of the process of the court.177 Random filings of increasingly incoherent affidavits continued until 1959. They contained a stream of consciousness of the events over the last 30 years. The case then faded away.178

During all this Millane did not let go of the themes of his earlier litigation. He remained busy in the Supreme Court and the High Court. Indeed, from the date of his declaration at the end of 1930 until 1955 he made 81 separate filings in the Supreme Court. Mainly personal affidavits, they supported in person applications in the Practice Court for writs of certiorari, prohibition and mandamus reflecting Millane’s comfort with the language of the law.179 There are occasional subject matter changes such as in 1947 when he sought to intervene in a gas dispute by having the Attorney-General ordered to do what may be described as ‘strike breaking’ but mainly he tried to have reviewed both the Heidelberg Shire and Stage Carriage matters. In words that were rather ironic, Barry J dismissed a number saying:

Without expressing any opinion as to whether Certiorari is available or appropriate vehicle to bring these matters before this court, I am clear that it is not open to the applicant to ask successfully for an Order in such an omnibus (author’s emphasis) form.181

In 1951, once again showing legal versatility, and under commercial pressure in his bike business, he sought leave to be able to prosecute the Cycle Traders Association for what in modern times might be described as price-fixing or cartel behaviour. His affidavit railed against their ‘intimidation’.182 Two months later following publicity in the Truth he sought leave to issue defamation proceedings against the publishers for ‘wilful and malicious libel in their full page article with photo Pegged out Goldmine in City in last battle’.183 The seven-page affidavit that was filed provided Millane the opportunity for a complete, although disjointed, review of events relating to Stage Coaches and Heidelberg Shire.184 It appears that Millane cooperated with the publicity but disliked the result.

One successful leave application in this time followed the death of his sister, Florence in 1951. As the appointed administrator of her estate, he was given leave to institute legal proceedings to collect assets due the estate. A former frock manufacturer she was owed £643/15/- by Sportscraft Sportswear. There is no record of any action ever having been taken.185

Persistent to the End

As the 1960s arrived Millane had entered his 70s. His immediate family had all died.186 His only source of income was the old age pension and he was dependent on friends and family for accommodation. He moved from stables to a warehouse to a garage talking with him a suitcase of papers and other paraphernalia. He was losing his sight and used a white cane to get around.187 He was not forgotten, however, and his now legendary activities even get mentioned in Parliament during
discussion on amendments to the Vexatious Litigant provision:

I wish to rise to the defence of Rupert Frederick Millane. He is a poor old chap who at the moment is very ill. Over the years he has had this complex, or what I might term this obsession. I had not long been a member of this House when in 1955 Mr Millane asked me to present a Petition to the House. After investigation by the then Clerk of the House and Mr Speaker, it was decided, because of certain irregularities in the Petition, not to accept it. In those days Mr Millane lived in Brighton. From that day — I hope I am not using strong words — he perverted the life out of me. 199

He also remained a familiar figure shuffling around barristers’ chambers and the courts wearing a battered hat with brim and dressed in a scruffy overcoat but always with a fresh flower in his lapel. Well recognised as a polite and gentle soul, he patiently waited in the Practice Court to make his leave applications for review and appeal. 199 Well known to the judges, and with the political intensity of the subject matter now history, they were patient with him. In one case before Justice Tom Smith (the elder) when seeking an extension of time to file a new statement of claim, he was given 21 days. Millane replied that would be difficult as he was going to be busy in the High Court tomorrow and then in the Heidelberg Magistrate’s court the afternoon. Smith J replied with a straight face: ‘Mr Millane, the trouble with you is that you have too broad a practice’. 191

He died at a Prahran hospice on 7 December 1969 of a cerebral thrombosis. Perhaps conscious that he was the last of his line, a few years earlier he had arranged for the grave to be inscribed with the names of his family. Unusually, he added the further inscription ‘Erected by Rupert F Millane 15th August 1965 RIP’. He was buried according to Roman Catholic form in a family grave at the St Kilda Cemetery, Melbourne. He was 82.

The Psychiatric Perspective

The Spectrum of Complaint

The single-minded, unrelenting expression of complaint and associated litigations of Rupert Millane may appear to many, as abnormal. This is because the phenomenon of complaint is familiar to all; it is the expression of dissatisfaction. The understood cornerstone of the normal complainer who seeks legal redress is negotiation and the acceptance of reasonable settlement. Central to this process is the maintenance of perspective and balance, that is, effort expended is related to degree of loss.

Equally familiar but less common, is the group of difficult complainers who while usually presenting with a long history of conflictual relationships and chronic grumbling, actually display a heterogeneous aetiology ranging from the whistle-blower or social activist through to those with narcissistic or paranoid personalities. Many seem to overreact to and over-inflate their loss. They present with a stubborn and at times vengeful refusal to compromise in negotiations but inevitably settle to minimise the cost to them. 199

Further along the spectrum are individuals whose complaint arises from pre-existing major psychiatric illness. Aggrieved by loss and (often) persecution, their claims arise totally or in part from the delusions associated with a pre-existing psychotic illness. As a result, their claims are often bizarre, the nature of claim usually in constant flux and it is often impossible to define, let alone resolve, the claim until the underlying illness is treated. This group is rarely recognised by those managing the complaint even if it is not always simple to aid the individual in receiving the psychiatric treatment they require.

Querulous Paranoia

Lying between the difficult and the frankly bizarre are a group which have captured the minds of generations of eminent psychiatrists from those of the 19th century, Krafft-Ebing 199 and Kraepelin 194 through to Ungvari 195 and Mullen 196 in this century. They most commonly attract the psychiatric diagnosis of Querulous Paranoia or one of its variants. As early as 1845 it was described as:

... A phenomenon so remarkable, that the more we observe it, the more are we astonished, that a man who feels, reasons and acts like the rest of the world, should feel, reason and act no more like other men upon a single point. 197

Querulous Paranoia is characterised by a relentless, persistent and single-minded pursuit of justice for real or imaginary wrongs through complaint, claims, petitioning of authorities, litigation and sometimes threats and actual violence to self or others. It takes place over years. At the core is an incorrigible belief by the person that they have been victimised and that this is a typical example
of the way they have been treated by the world. Hence, while their behaviour is overly directed to attainment of compensation and reparation, the covert and driving demands are for vindication. This is not simply to have the rightness of their claim acknowledged by individuals or organisations but rather to have the potential greatness of their life acknowledged as well as recognition that the potential was never reached due to the envy and malevolence of others. They want public and societal acknowledgment. This explains the gross discrepancies that often exist between the experienced loss and their persistent and unremitting level of commitment to the pursuit of justice and their willingness to sustain the inevitable negative impact on their personal, interpersonal and social functioning of such a relentless pursuit.

These beliefs of having suffered loss or injustice dominate their mental life and slowly exclude all other aspects of life. While initially there may not be discernible effects on their thought form or functioning, over time these develop in their verbal and written communications an over-inclusive and hence voluminous, repetitive, over elaborated and circumstantial style which makes their communications increasingly incomprehensible. Equally, there is spread of grievance towards those who are only peripherally involved in the claim or involved in the management of the complaint such as complaints organisations and officers, their own legal counsel and the judiciary. This loss of focus is accompanied by an increasing disorganisation of their efforts in pursuing their complaints.

The Developing Model of Querulous Paranoia

Aetiology there are many theories. Initially, psychiatric researchers began with the belief that it was a biologically predetermined disorder. For his part, Kraepelin, whose asylum housed hundreds of the querulous, moved to the belief that this disorder was of psychogenic origin, that is, an 'abnormal development in a psychopathic (personality disordered) disposition under the influence of ordinary life'.

Ernst Kretschmer held that those forms of paranoid psychoses with understandable misbeliefs were not disease processes but were developments in an abnormal personality subjected to a specific kind of stress. For the stress to be pathogenic it must be specific for a particular personality's vulnerabilities that have been sensitised to specific stressors by past experience. They are then serendipitously exposed to those specific stressors that then provoke a response. However, the response, while understandable in quality, is exaggerated both psychologically and behaviourally. The evolution of this reaction continues to be influenced by environmental factors such as the reception of their complaints. Although Kraepelin proposed a series of sub-classifications of the querulous, modern researchers such as Mullen espouse a continuity of querulousness without multiple discrete entities.

Psychiatry and psychology offer various explanatory models such as the psychodynamic and cognitive for the development of querulous paranoia. They also acknowledge the complex interplay of other factors such as social, cultural and legal.

The beliefs were thought to be of the form of overvalued ideas. These are isolated beliefs accompanied by a strong affective response that take precedence over all other mental activity and are maintained indefinitely. Overvalued ideas are understandable because of their origins in the strong affect of the particular personality and its situation. They are felt to echo earlier experiences to life events. Although often idiosyncratic and false, they have the force of highly charged and compelling insights. Their qualities are similar to passionate political or religious beliefs and differ only in degree.

The incidence of querulous paranoia in the psychiatric arena varies. Most recently they were found to constitute about 0.2% of all referrals to a hospital outpatient psychiatric service. There is no information on general community incidence rates although recent research with complaints organisations suggests a frequency of the order of 0.2%–0.3% of clients.

There is surprising unanimity in the research findings that the majority developed their querulousness in their 30s and 40s and 50s and equally there is a consistent preponderance of men to women of the order 4:1.

The premorbid functioning is of a generally competent individual with high school education and a fair work history. Relationship history begins to highlight some difficulties with only 30% ever married, 18% divorced and 50% never having married.

Premorbid personalities are shown from Krafft-Ebing through to Ungvari to be consistently ambitious and masking feeling of under-
achievement and incompetence. Hence, they are apparently self-assertive and egotistical with high but fragile self-esteem and they inevitably become embittered and overly sensitive. They may be irritable and anti-authoritarian and their relationships are marked by jealousy and distrust, lack of empathy, distance and conflict. Essentially, mistrustful they are, as Ricardo Pons describes 'Those who look for noon at 2pm'.

Prior to the onset of their querulousness there was a high level of traumatic events in their lives resulting in severe disturbance of living conditions with 60% having a preceding stressful court case and 31% had been dismissed from work.

Ungvari notes that the intensity of querulous behaviour varies from sending complaining letters to authorities to vexatious litigation. Kolle found that of his patients 80% had litigated. Their activities, however, do not stop at litigation but in fact may deteriorate into threats, assaults, murder, and or suicide. Astrop found that less than 25% were hard core litigious cases but over 25% had history of aggressive behaviour.

**Clinical Presentations of Querulous Paranoia**

The psychiatrist or psychologist will tend to see the morbidly querulous in a limited number of contexts. They will rarely (if ever) present for psychiatric or psychological treatment of their querulousness but do present to psychiatrists and psychologists for expert opinion to certify their sanity so as to aid their court procedures. At times they are seen at the behest of the Court particularly in issues of the Family Court pertaining to custody of children.

They may be seen in a forensic setting either as a complainant or for criminal charges of threats or physical assault or murder.

The demeanour of the querulent will be dependent on the context of the interview. In the case of the psychiatrist as expert witness a querulent will present as a victim and supplicant, eager to recruit the psychiatrist to the cause. They may express concerns about the interview being hug the and they may well tape the session either covertly or overtly. The querulent will exhaustively explain that this will take some time to explain. They will, 'carry much paper and have an old suitcase or briefcase stuffed to the gunnels with diaries and documents.'

In the case of the forensic or non-voluntary psychiatric interview the querulent will be aggressive and dismissive of the process and will not attempt to recruit the psychiatrist. They will minimise the amount they will discuss and expect the psychiatrist not to believe them. They may refuse to give their name or personal details. They often appear to have a positive, self-confident style but remain emotional and touchy. Their current mood is usually dictated by the course of recent life events.

According to Kraepelin there may be 'a wearisome diffuseness of conversation' and it abounds in half or wholly misunderstood professional expressions. The vast majority will have emotionally charged misbeliefs of being unjustly treated and the belief in the need to restore their rights (revindication), plus or minus misbeliefs of persecution. They will have ideas of reference. Kraepelin describes them as ideas of grievance, self-appreciation, and inflated self-esteem. The major themes of their grievances tend to be conjugal, legal, litigious and persecutory. Less commonly will be scientific breakdown, medical mistreatment and stolen inventions.

**Written Communications**

Kraepelin describes the typical amount of letters as being voluminous. Their form is careless with the appearance of having been written in excitement with numerous notes of exclamation and interrogation. They are like a legal document except the querulents cover the entire surface with script (including the margins). The substance is repeated in several different ways with undue grammatical emphasis and underlings. They will often refer to themselves in a third person legalistic style, for example, as the defendant or by their surname.

Freckelton, writing in a more modern age, describes the use of coloured inks for emphasis and the cutting out of captions and quotes from newspapers. He notes their particular affinity for the star asterisk key and the use of capitalisation for especially virulent expressions of frustration.

More recently, research with Victorian complaints organisations has shown further characteristics of their communications. They do not limit themselves to one form of communication but communicate in multiple modes utilising letters, phone, facsimile, emails and in person visits with or
without appointments. There is a delight in the use of multiple colour highlighter pens.\textsuperscript{216}

**Characteristic Behaviour in Court**

In court, they will typically have either rejected legal counsel at the outset or fallen out with their legal counsel and so will be representing themselves. Overly this will be due to arguments with their legal counsel about progress of the case or lack of payment of legal fees. However, it is often because their counsel, restrained by the rules of court, is unable to express the querulant’s demands forcefully enough to satisfy them. They find the drama of Court proceedings addictive, and they gain maximum expression of their needs for vindication and vengeance by direct communication to the court. In consequence they often make claims of negligence and demand disciplinary action against their former legal counsel, who in turn may sue for non-payment of fees.\textsuperscript{217}

In court, though untrained, they will have developed what Goldshein describes as hypercompetency, that is, factual knowledge of law without understanding of the legal framework, let alone in spirit or implications for society. This often results in them focusing on, and quoting from documents such as the Magna Carta, the International Covenant on Civil and Political Rights, or the Constitution with little true understanding. Often they will invoke the concept of natural justice and its subtleties.\textsuperscript{218}

Regardless of their apparent competency, they will usually become overwhelmed and disorganised and will as a result consume large amounts of court time justifying why they are out of time for instituting actions or submitting documents. There is often transfer of focus from their original grievances to the legal processes or particular personalities in their legal world. Conspiracies can be formed which involve magistrates, judges, police and others.

**Management and Therapy**

Research with Victorian complaints organisations suggests that the vast majority of morbidly querulous are never sighted by mental health professionals let alone receive treatment. Instead, complaints officers, lawyers, court staff and the judiciary manage them. This has led to an increasing awareness by these groups that the usual management techniques are inadequate. They are left with dissatisfied clients and ongoing complaint or litigation as well as high levels of emotional and financial cost to both the complainant and staff. In terms of organisations and courts, small numbers of complainants absorb large amounts of time and effort. This inevitably results in increased dissatisfaction and new complaints rather than an attenuation of the original complaint.\textsuperscript{219} Increasing stressors for those managing the complaints occur as the client becomes increasingly emotionally labile, desperate and threatening. This is in addition to being the focus of new complaint and further litigation.

It is increasingly evident that management must be task and group specific and range from management guidelines for judicial officers, management training for complaints officers and front line counter staff (in the management of the emotionally labile, angry, threateners of harm to self or others) and policy and procedures for complaints organisations and the courts. Although further research is required, such developments are occurring through research with complaints organisations and through the marriage of these findings with existing psychiatric and psychological knowledge and techniques.\textsuperscript{220}

The psychiatric literature focuses on those who were hospitalised in asylums. In the earlier cases 'therapy' was primarily by long-term institutionalisation. As shown by Kolle, this was unnecessary. Kolle's major management tip was to emphasise the importance of careful diagnosis and the importance of identifying those with schizophrenia or manic depression as the cause of the querulousness.\textsuperscript{221}

Van der Heydt states that institutionalisation should only be used when it is necessary for the physical protection of the public and that a declaration of incompetence must only be used to protect the individual, not society. Finally, he describes the bushfire of querulousness that is ignited when attempts to dominate or subordinate the querulous are made.\textsuperscript{222}

Essentially, neither analytic psychotherapy nor cognitive behavioural therapy alone was found to be of use as 'the querulous have no pressure of suffering and hence have no motivation for therapy'.\textsuperscript{223}

Since the advent of psychopharmacology, some therapists in the mid to late 20th century have used pimozide in low doses (2mg/daily) and recorded success. The numbers of patients cited have been very low.\textsuperscript{224} Of equal importance to
pharmacotherapy is the attitude of the therapist that must be: ‘... an interested attentive relaxed and un-affective attitude with an unfeigned air of detachment and suspended judgement’.285

One of the author's own approaches with a small number of involuntary inpatients in a forensic psychiatric setting has been with low dose atypical anti-psychotics initially, followed by cognitive behaviour therapy which has successfully reduced the preoccupation with their grievances. This has required months of inpatient admission.

The Legal Dimension

The Numbers

In the 75 years that have elapsed since Victoria pioneered the vexatious litigant sanction most federal, state and territory superior courts (except the Northern Territory) have armed themselves with a similar power. Although there is no publicly available national register, research indicates that only 45 persons have been declared since 1930 (see Table 1). However, two groups are omitted from this national register. It does not include persons who are only prohibited from issuing proceedings against particular defendants rather than banned from issuing any future proceedings without prior leave. These litigants could be described as being only 'partially vexatious'. Nor does the list include litigants declared by the Family Court, Section 121 of the Family Law Act 1975 (Cth) effectively prohibits the publication of its list for reasons presumably linked to the genesis of the Court in 1976 as a 'helping' or private court.

A number of explanations are offered for the small numbers of orders made nationally. First, as Table 1 indicates, most of the jurisdictions have only introduced the sanction in recent years. Indeed, New South Wales regarded by many as

Table 1
Australian Vexatious Litigants by Court 1930–2005

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<td>Section 67A Supreme Court Act 1933</td>
<td>1998</td>
<td>N/A</td>
<td>N/A</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
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<tr>
<td>New South Wales</td>
<td>Section 84 Supreme Court Act 1984</td>
<td>1970</td>
<td>N/A</td>
<td>1</td>
<td>2</td>
<td>6</td>
<td>9</td>
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<tr>
<td>Northern Territory</td>
<td>N/A</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Queensland</td>
<td>Section 6 Vexatious Proceedings Act 2005</td>
<td>1980</td>
<td>N/A</td>
<td>4</td>
<td>3</td>
<td>5</td>
<td>11</td>
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<tr>
<td>South Australia</td>
<td>Section 39 Supreme Court Act 1935</td>
<td>1935</td>
<td>Nil</td>
<td>Nil</td>
<td>1</td>
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<td>3</td>
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<tr>
<td>Tasmania</td>
<td>Section 194 Supreme Court Civil Procedure Act 1932</td>
<td>1994</td>
<td>N/A</td>
<td>N/A</td>
<td>Nil</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Victoria</td>
<td>Section 21 Supreme Court Act 1986</td>
<td>1929</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>13</td>
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<tr>
<td>Western Australia</td>
<td>Vexatious Proceedings Restriction Act 2002</td>
<td>1930</td>
<td>1</td>
<td>1</td>
<td>Nil</td>
<td>4</td>
<td>6</td>
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<td>Totals</td>
<td></td>
<td></td>
<td>7</td>
<td>10</td>
<td>11</td>
<td>21</td>
<td>49*</td>
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Note: *Total of individual litigants is 45. Two have declarations from two courts and one has three declarations. Source: S. Smith, PhD research, Faculty of Law, Monash University.
the most litigious jurisdiction in the country, only enacted the sanction in 1970. Second, the list of parties who may bring an application to have a person declared vexatious has been limited. Typically, they are senior law officers such as an Attorney-General. This inevitably adds a political dimension to the initiating process that inhibits the number of applications. Third, the criteria for obtaining an order, have been both narrow and cumbersome. Most jurisdictions adopt a form of words similar to those used in Victoria, namely:

The Court may, after hearing or giving the person an opportunity to be heard, make an order declaring the person to be a vexatious litigant if it is satisfied that the person has:
(a) habitually; and
(b) persistently; and
(c) without any reasonable ground, instigated vexatious legal proceedings (whether civil or criminal) in the court, an inferior court or a tribunal against the same person or different persons.  

Establishing these arguably repetitive criteria, narrowly focused as they are on the legal nature of the various proceedings rather the litigant’s conduct, is burdensome for the applicant and cumbersome for the court. They inevitably involve a painstaking review of all the litigant’s applications. A contrast in this regard is the Californian approach that clearly delineates what is vexatious with regard to the litigant’s conduct and introduces numerical guidance. For example, in that state a person can be a vexatious litigant if they have commenced, prosecuted, or maintained in propria persona at least five litigations in the immediately preceding 7 years that have reached finality adverse to the litigant or that have unjustifiably remained pending for 2 or more years without action.

Fourth, over the last 20 years changes to court rules have given court registrars the power to refuse acceptance of litigant documents that are irregular or represent an abuse of the process of the court. Although few court registries appear to record how often this power is exercised, anecdotal evidence suggests it is regularly applied in the case of self-represented litigants. This represents a significant shift toward pre-emptive control. After issue of proceedings there are further controls available such as the ability to order security for costs and summary dismissal as an abuse of the process. These sanctions also reduce the number of litigants being declared vexatious. A further examination of these remedies is beyond the scope of this article.

Finally, it is clear that the courts are conscious of protecting the right of the citizen to have their day in court. Despite the absence of United States style constitutional guarantees of due process, they can and do decline to make vexatious declaration orders.

The Push for Nationally Consistent Legislation

Nonetheless, since 2000 there has been a 190% increase in orders made compared to the previous 70 years (see Table 1 above). This has brought a new focus on the utility of the sanction to combat litigants whose repeated actions waste court resources and harass defendants. Western Australia and Queensland in particular have responded by introducing new legislation.

The Queensland Vexatious Proceedings Act 2005 has been developed through the Standing Committee of Attorney’s General (SCAG) of the Commonwealth, state and territory governments as a template for nationally consistent legislation. It introduces four key changes to the ‘traditional’ regime. First, it widens the class of persons able to bring vexatious order applications to include defendants and persons with sufficient interest (s5). These new categories still require the preliminary leave of the court (s5 (2)). Significantly, the changes also expressly provide that the court may make an order on its own initiative (s6 (3)). These changes combine to place the court squarely in control of preventing its processes from being abused. It remains to see how activist the court will become.

Second, the court will be able to take into account legal actions brought outside the state (s6 (1) (a)). In introducing this change the Queensland Attorney General said this ‘will ensure that vexatious litigants will not jump from state to state in pursuit of their causes and will enable similar consequences to flow from one state to another’. Given that only three litigants have ever been declared in more than one court, the change would appear to reflect an anticipated increase in ‘forum shopping’ rather than demonstrated need.

Third, the court can now declare vexatious persons who they find to be acting in concert with a vexatious litigant (s6 (1) (b)). This is a curious change. It appears directed at combating support-
ers of 'primary' vexatious litigants although it is not clear whether the rest of vexatiousness will in practical terms be a lesser one than for the principal 'vexator' and lead to 'guilt by association? Although the catalyst for this change is not clear, it appears to be a response to the activities of a particular litigant and his supporters in Queensland and their claims inter alia that Australian paper currency is not legal tender. This is not always the best basis for legislative change.

Finally, the changes introduce tighter definitions of what constitute vexatious proceedings. As in California, there is now an express focus on the conduct of the litigant with vexatious proceedings including those that are 'conducted in such a way as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose' (4). This is an appropriate widening of focus.

Now that Queensland has enacted the model Bill, it remains to be seen how promptly and comprehensively the various states and territories implement the same provisions in support of a nationally consistent approach. Ominously, the Queensland Attorney General was silent on any engagement by the Commonwealth government on the plan when she introduced the Bill to the Parliament in late 2005.

Future Control Through the Inherent Jurisdiction: A Phoenix Stirs?

Prior to 1928, Australian courts had not been prepared to assert an unlimited control over future litigation of vexatious litigants. The established view was that the power of the court to protect its processes from abuse, as derived from its rules or the inherent jurisdiction, was limited to litigation then before the court. It was only the introduction of statutory amendment prompted by Rupert Millane that extended the courts power to control future proceedings.

Recently, the English Court of Appeal in _Ebert v Vero; Ebert v Birch_238 and _Bhamjee v Fordeick_,239 reviewed the earlier English authorities and asserted a power to control future proceedings based on the inherent power. This is notwithstanding the existence of the statutory provision in the United Kingdom. The difference appears to be that the latter requires initiation by a senior law officer whereas use of the inherent power enables the court to act on its own initiative. One commentator has described this development as 'audacious quasi-legislative activity' and 'one that can only weaken, if not destroy, the law officers' monopoly over the initiation of the statutory power'.

In Australia, it seems unlikely that the courts will follow this English development. Certainly, there appears no need to remodel the inherent jurisdiction as the model legislation as discussed above specifically provides for the court to make vexatious declarations covering future proceedings on its own initiative. The interest will be in how assertively they exercise it.

Conclusion

Just over 75 years ago Rupert Millane became Australia's first declared vexatious litigant. Whether he was also a querulant is a moot point. Certainly, the amount of material in the public domain is suggestive of such a diagnosis. His gender and single status fit the profile. At the onset of major litigation he was in the typical age range (39). There is his voluminous legal documentation that cascades over ever-increasing targets over a 30-year time period. The documentation itself exhibits a level of increasing excitement and emphasis that progressively exhibits, in Kraepelin's words, a 'wearisome diffuseness'. Then there is the apparent transfer of focus from the original grievances to the legal process. Nonetheless, no matter how tempting such a retrospective diagnosis, it would be inappropriate to be definitive in the absence of full information on his character, intimate personal experience or phenomenology that would enable a full psychiatric evaluation.

In modern times it is this same absence of full data that inhibits the ability of the medical and legal systems to promptly respond to the challenges posed by this group of litigants to themselves and to the legal system. Clearly, a passionate litigious obsession that may well develop into a severe psychiatric condition not only impacts on the individual and their family but the proper functioning of the legal system. Accordingly, the recent revival of interest in querulents/vexatious litigants by psychiatry and policy-makers is to be welcomed. The opportunity it provides is best summed up by an English commentator:

It might be time for the legal profession, the judiciary and legislators to begin to reassess the concept of the vexatious litigant in medical terms. Hopefully, an awareness that vexatious litigants are not simply people who are a nuisance to the court system but individuals in need of psychiatric attention will both help
with our understanding of them and enable the formulation of more appropriate responses to a psychiatric, rather than legal condition. 256

At a technical level the vexatious litigant sanction itself is at the margins of the armoury of mechanisms designed to protect court processes from abuse. This is reflected both in the small numbers of orders made over 75 years and in the limits of its effectiveness. As Millane257 demonstrated from the very beginning, the sanction is far from absolute in stopping litigants in their tracks. At best it slows them down and changes their focus to the courts and away from defendants. Their activities are still a cost to be borne by the system and society. It is not clear that the development of streamlined and nationally consistent regime will change this. Certainly, without the participation of the Commonwealth courts in Australia a national regime is still far from being a reality.

The more significant control of persistent litigators appears to be the power given to court registrars to refuse acceptance of litigious documents that are irregular or represent an abuse of process. The problem is that this occurs largely behind the scene and without the glare of public accountability. If public confidence is to be maintained in this aspect of the courts' administration there is a case for greater transparency at the very least through the publication of numbers of litigants affected. A similar observation applies to the current invisibility of vexatious orders made by the Family Court.

Finally, discussion of the utility of the vexatious sanction needs to note that it does not apply in the context of the many industry ombudsman schemes such as the Banking and Financial Services Ombudsman. These alternative dispute resolution or 'private justice' schemes operate alongside but outside the legal hierarchy covered by the current sanction. Yet their high profiles and huge caseloads influence current public perceptions of what justice is and how fairly it is administered. How they meet the challenge of querulents has implications for public confidence in the legal system as a whole. This is a work in progress.258

Endnotes

1 Originally s33 Supreme Court Act 1928 (Vic) it is now s21 of the Supreme Court Act 1986 (Vic).
2 It was accepted 29/4/1908. See www.vdlspacenet.com/textdoc/db=EPODOC&IDX=GB19070995 &F=0&QPN=G Access 3 October, 2005.
3 'Persistent Litigant', People, 11 February 1953, p 38.
4 Premier of Victoria 1909–1912.
5 PROV, VPRS 421/P0, Unit 78, 1915/15019.
6 PROV, VPRS 421/P0, Unit 78.
7 See letter dated 9/6/1910 by Murray to Thomas Tait, Chairman of Victorian Railway Commissioners seeking advice on Millane's suggestion that McKeen cars be used on the Outer Circle line rather than steam trains. In that he draws Tait's attention to 'the contemptuous terms in the third paragraph', PROV, VPRS 421/P0, Unit 78, 1910/9768.
8 'Slow and Infrequent trains', Age, 3 May 1910.
9 PROV, VPRS 421/P0, Unit 79. The elevated circular terminus would be where Federation Square is now located. The report draws heavily on an 1877 proposal of Patrick Millane offered in response to railway construction proposals of that period. See further 'Scheme for connecting Melbourne and Oakleigh', Argus, 28 February 1877, p 7b; 'Mr Millane's Railway Scheme', Argus, 1 August 1877, p 7c; Melbourne Punch, 26 July 1877, p 299.
10 They were trialled on the Ballarat/Maryborough and Warrnambool/Hamilton lines. See copy memorandum of Chairman, Victorian Railways Commissioners to Minister for Railways dated 13 May 1915, PROV, VPRS 421/P0, Unit 78, 1915/5464 and Harrigan, LJ, Victorian Railways to 1962, Commissioners of Victorian Railways, 1962, p 240.
11 For example report of Superintendent of Passenger Train service dated 5th May 1914, PROV, VPRS 421/P0, Unit 78, 1914/6282.
12 See exchange of telegrams between Victorian Railways and McKeen, April 1911, PROV, VPRS 421/P0, Unit 79, 1912/2096.
13 See copy letter to Millane from Acting Secretary Victorian Railway Commissioners dated 22 June 1914, PROV, VPRS 421/P0, Unit 78, 1914/11251.
14 See copy letter from William McKeen to Secretary of the Victorian, Queensland and New South Wales Railways dated 3 March 1915, PROV, VPRS 421/P0, Unit 78, 1915/5495.
15 Letter to the Editor by RF Millane of McKeen Motor Co in Argus, 22 March 1915 p 4.
16 NAA: A2, 1918/128J, Part 2, Millane letter to H W Churchin dated 6 February 1918. Millane would appear to have worked in the USA for Union Pacific circa 1912–13 for which he was paid $US6,000. See NAA: A2, 1918/1283 Part 2
Millane letter to Hon WA Hughes dated 30 August 1917.


18 See application for copyright of literary work of 'Prospectus bringing about industrial and financial co-operation', NAA: A1336, 6597.


20 See generally NAA: A2, 1918/128J, Part 2


22 NAA: A2, 1918/128J Part 2 See Memorandum to Secretary of Prime Ministers departments dated 26 November 1917.

23 25 April, 1918, NAA: A1336, 6597.


25 NAA: A1336, 9187.


27 'Scheme for connecting Melbourne and Oakleigh', Argus, 28 February 1877, p 7b; 'Mr Millane's Railway Scheme', Argus, 1 August 1877, p 7c; Melbourne Punch, 26 July 1877, p 299. The scheme was rejected by the government of the day.

28 Patrick Millane had first suggested a central station for Melbourne in 1878. See Melbourne Central Railway Station', Argus, 14 May 1878, p 7b.

29 NAA: A1336, 9187.

30 NAA: A1336, 9187, p 1.

31 This last proposal was an earlier idea, Millane and his father Patrick had claimed copyright in the plans as a literary work in 1916. NAA: A1336, 5014.

32 NAA: A1336, 9187, p 33.

33 City Traffic: Tramway conversion: cable or electric system', Argus, 8 August 1922, p 8 and 'Overhead wires an abomination', Argus, 10 August 1922, p 9.

34 'City Traffic: Tramway conversion: cable or electric system', Argus, 8 August 1922, p 8.

35 In the Revenue Bill 1905 provision was made for the purchase by the Victorian government of 8 Motor Omnibuses at £1,300 each. In response to a question Thomas Bent MLA said 'it had not yet been determined where they would run'. See Victoria, 110 Parliamentary Debates, Legislative Assembly, 2nd August, 1905, 715. In Sydney an Omnibus fleet of four had commenced in 1910. By 1922 the fleet exceeded 200 over 95 routes. See 'Motor Bus Service', Argus, 31 January 1923, p 8.


37 Argus, 29 January 1924, p 9.

38 Argus, 2 January 1924, p 8.


40 Victoria, 167 Parliamentary Debates, Legislative Assembly, 21st October, 1924, 1001.

41 Motor Omnibus Act 1924 (Vic).

42 Argus, 23 October 1924, p 11.

43 Argus, 29 January 1925, p 8.

44 Argus, 15 July 1924, p 12.

45 Argus, 30 January 1925, p 6.

46 Argus, 2 February 1925, p 12.

47 Argus, 4 February 1925, p 22.

48 Cain was later Premier 1943; 1945 and 1952–1955. His son, also John Cain was Premier 1982–1990.

49 Victoria, 167 Parliamentary Debates, Legislative Assembly, 28th October, 1924, 1154.

50 The Millane family had moved to Ivanhoe circa 1912. See also Victoria, 167 Parliamentary Debates, Legislative Assembly, 28th October, 1924, 1154–1158.

51 'Only 40 Buses running', Argus, 17 February 1925, p 12.

52 'Kintral Service to end', Argus, 30 January 1925, p 11.

53 'You can't beat Millane: down a dozen times but still fights back', Truth, 11 August 1928, p 1 and 'Persistent Litigant', People, 11 February 1933, p 36.


55 'Motor Bus licences: further applications', Argus, 20 February 1925, p 11.

56 '1000 Licenses wanted: Magistrate says it is "Abusrd"', Argus, 24 February 1925, p 12.

57 'Stage Carriage Act: further applications possible', Argus, 19 February 1925, p 14.

58 Appointed a High Court Justice in 1929; he was Chief Justice 1952–1964. See 14 AD 87.

59 'Motor Bus Licenses: Applications adjourned', Argus, 21 February 1925, p 34. See also 'Persistent Litigant', People, 11 February 1933, p 36.


61 A written directive was given to the Council Licensed Vehicle Committee by the Public Works Department to prosecute non-complying owners/drivers in the Petty Sessions court and any appeals in the Supreme Court. The Council made it clear that it expected the government to underwrite its costs. See PROV, VPRS 930/VP1, Unit
14. Minutes dated 11 March 1925, 25/1330; PROV, VPRS 4035/P0, Unit 14, Item 25/1330.


64 'Unlicensed buses: prosecutions authorised', Argus, 12 June 1925, p. 11.

65 PROV, VPRS 4035/P0, Unit 14, Minutes of Licensed Vehicle Committee dated 28 May, 1925.

66 'Council officers charged: strange prosecutions fails', Argus, 12 June 1925, p. 18. See PROV, VPRS 4035/P0, Unit 14, Minutes of Licensed Vehicle Committee dated 20 January, 1925.


68 'Stage Coach prosecution: dismissed with costs', Argus, 3 July 1925, p. 16.


70 'Petition against Bus Act', Argus, 28 December 1925, p. 18.

71 Motor Omnibus Act 1925 (Vic) and Victoria, 170 Parliamentary Debates, Legislative Assembly, 3 December 1925, 2589.

72 Affidavit of Frederick Charles Percy Hill, sworn 1 July 1930, Supreme Court File 4360 of 1930 and 'Tegged out Goldmine in city law battles', Truth, 6 October 1931, p. 2.

73 It was published with full Explanatory Memorandum and the Report of the Joint select Committee. It was essentially the result of research by Sir Leo Cussen.

74 Eleven summonses were issued at the Melbourne District Court in 1926. See Affidavit of Frederick Charles Percy Hill sworn 1 June 1930 Supreme Court File 4360 of 1930.

75 'Tramways and buses; two Supreme Court writs', Argus, 23 January 1926, p. 9; 'Writ against Minister', Argus, 30 January 1926, p. 29.

76 'Writ against Council: Judge reprimands litigant', Argus, 13 April 1926, p. 9.

77 'His own lawyer: Judge discourages litigant', Argus, 29 April 1926, p. 9.

78 'Control of Buses: Mr Cameron satisfied: Tramways revenues again normal', Argus, 30 June 1926, p. 23.


80 In one unsuccessful Order to Review proceeding on behalf of his driver Frank Zino objection had been taken to the improper issue of the summons. The issuing Justice of the Peace had used a 'rubber stamp' instead of his signature. Dixon KC informally counselled the MCC against further use, PROV, VPRS 3183/P3, Unit 18, File 277727 and 'Rubber Stamp signature: is it legally sufficient?' Argus, 10 February, 1927, p. 9. Millane was again unsuccessful when he tried the same defence when prosecuted himself shortly thereafter, PROV, VPRS 251/P0, Unit 127, file 4224 and PROV, VPRS 256/P0, Unit 894. See also 'Vacation practice notes; Buses and Motor cars: litigants illustration', Argus, 9 July 1926, p. 9.

81 For example see Affidavit of RF Millane sworn 19 March, 1927 NAA: A10074, 191779. Special leave refused on 24 March 1927.

82 Victoria, 175 Parliamentary Debates, Legislative Council, 22 December, 1927, 4534.


84 Affidavit of Frederick Charles Percy Hill, sworn 1 June, 1930, Supreme Court File 4360 of 1930.


86 Affidavit of Frederick Charles Percy Hill, sworn 1 June, 1930, Supreme Court File 4360 of 1930. See also 'Persistent Litigant', People, 11 February 1953, p. 38.

87 The 1912 Sands and McDougall Melbourne Directory lists at Locksley Road, Rupert, his father Patrick and his brother Gilbert (Builder). In 1920 sister Florence is listed as living nearby at 84 Lower Heidelberg Road. She purchases the property in 1922. Rupert would also use this address in court documents. Interestingly, the street running parallel with Locksley is named Gilbert.

88 PROV, VPRS 1748/P2, Unit 8, p. 441.

89 PROV, VPRS 4339/P1, Unit 1, p. 22 dated 8 October, 1925.


91 'Persistent Litigant', People, 11 February 1953, p. 36–37. At that time empty kerosene tins were also being used for all manner of household items such as beds, chairs, stoves, buckets and meat safes. See further Broome, B, The Victorians: Arriving, Fairfax, Syme & Weldon, Melbourne, 1984, pp. 141–142.

92 See Affidavit of James Bastian Richards, Prothonotary of the Supreme Court, sworn 20 June, 1930 Supreme Court File 4360 of 1930.
93 '£2,000 Home made of Kerosene tins: Surprise for Ivanhoe: new idea for suburban Houses', Argus, 1 May 1926, p 1. See also Affidavit of Rupert Frederick Millane, Sworn 28 July, 1930 Supreme Court File 4360 of 1930.

94 31 people lost their lives in the 1926 bushfires. See Noble, W.S, Ordeal by fire: the week a state burned up, 1977, p 8.

95 PROV, VPRS, 1748/P2, Unit 10, Minutes dated 20 May 1926, p 744.

96 PROV, VPRS, 1748/P2, Unit 10, p 813.


98 The Writ against 10 Councillors and the Shire Building Inspector was summarily dismissed by Schutt J in the Practice Court. Millane lodged an appeal. Application for an injunction and his appeal dismissed by Mc. Parlan J. See PROV, VPRS 4561/P0, Unit 1, Building By Law Committee Minutes dated 10 June 1926, p 175; PROV, VPRS 4330/P0, Unit 1, Building Inspectors Report dated 15 July 1926, p 45 and 'Writ against Council: struck out by Court', Argus, 19 June 1926, p 16.

99 PROV, VPRS 9531/P1, Unit 12, Shire Minutes dated 20 July 1926, p 30.

100 'Kerosene-Tin House: Owners prosecutions fail', Argus, 18 June 1926, p 15.

101 Tagged out Goldmine in City in Law Battles', Truth, 6 October 1951, p 3.

102 See Affidavit of Arthur Coyne Tingate, Heidelberg Petty Session Clerk, sworn 25 June 1930 and Frederick Charles Percy Hill, Melbourne Petty Sessions Assistant Clerk sworn 1 July 1930, Supreme Court File 4360 of 1930.

103 See Affidavit of James Bastian Richards, Prothonotary of the Supreme Court, sworn 20 June 1930 Supreme Court File 4360 of 1930.

104 Between 1928 and the start of 1930 he filed five affidavits and requests for Special Leave to appeal in the High Court Melbourne registry. None are successful. See for example NAA: A10074, 1928/8.

105 PROV, VPRS 1748/P2, Unit 10, Shire Secretary to Fink Ben and Miller, Solicitors dated 22 October 1926, p 284.

106 'Estate sequestrated', Argus, 4 August 1927, p 7.

107 Certificate of Discharge granted 4th May 1930 subject to payment of £15,15.0 costs to creditors. It appears never to have been paid. See Affidavit of George Neville Almond, Solicitors Law Clerk, sworn 30 June 1930 Supreme Court File 4360 of 1930. Millane was so troublesome to the registry of the Court of Interpleisy with his constant 'unintelligible' filings and applications that the Official Accountant requested that Federal Attorney General Laffan permit the registry to decline to receive further papers unless directed to by a Judge. NAA: A432, 1929/930, Report dated 12 March 1929.

108 The property was eventually sold by the Trustee in Bankruptcy for £277/10/- but only after delayed by litigation. See 'You can't beat Millane: Down a dozen times but still fights back', Truth, 11 August 1928, p 1.

109 Millane v President ex c/o Shire of Heidelberg [1928] VLR 52.

110 'Old legal phrases: Land cases at Heidelberg', Argus, 25 May 1928, p 5.


112 HE Elliott was a distinguished World War 1 soldier and politician. His successful, although troubled career, offers a contrast to Millane's. See further 3 ADB 428.

113 PROV, VPRS 4025/P0, Unit 14, Minutes of Licensed Vehicle Committee dated 20 January 1926.


115 PROV, VPRS 4025/P0, Unit 144, Letter dated 10 February 1926, p 190.


117 PROV, VPRS 4025/P0, Unit 152, Letter from Town Clerk to Attorney General dated 24 May 1927.


120 Victoria, 173 Parliament 1927.19, 1358ff.

121 1 ADB 310.


126 Victoria, 175 Parliamentary Debates, Legislative Council, 22nd December, 1927, 4054ff.
127 (1929) 3 Law Institute Journal 120.
128 PROV, VPRS 9531/P1, Unit 13, Council Minutes, 17 December 1929, p 71.
129 (1929) 3 Law Institute Journal 120.
130 'Prolific Litigant: 213 cases in four years: Court asked to restrain', Argus, 18 July 1930, p 7. See also Supreme Court File 4360 of 1930.
131 There is substance in this submission, Section 33 became effective in December 1929. After that date until the hearing, according to the affidavit material filed in support of the application, Millane issued only one petty session court proceeding. See 'In re Millane', [1930] VLR 381 at p 385 and Supreme Court Supreme Court Supreme Court File 4360 of 1930.
132 In re Baulder (1915) 1KB 21.
133 In re Millane, [1930] VLR 381. See also 'Suppressing a Litigant: Case under new Act: Motion against Rupert F. Millane', Argus, 12 August 1930, p 7 and 'Millane sits on mountain of law awaiting legal earthquake', Truth, 9 August 1930, p 13.
134 Special leave refused 16 October 1930. See NAA: A10074, 1930/47. For a subsequent application see NAA: A10074, 1930/51.
135 Edna Francis Jasca (1908–1989) (also known as Davis and Landeford) declared 21 July 1941. See Supreme Court File 301 of 1941.
138 (1899–1958) An inventor and engineer Kerby is also a partner in Highway Motors. In 1927 he lodged a patent for an improved axle spring for an automobile in France. See v3.espacenet.com/ce/index250341.html.
139 Argus, 11 May 1931, p 5.
140 Argus, 22 May 1931, p 9.
142 Argus, 30 May 1931, p 19.
143 This was an order of Mann J referred to in Notes of Barry J dated Aug/Nov 1930 contained in Supreme Court file 4360 of 1930. See also 'Millane drives Stage Coach through Bus law', Argus, 8 August 1931, p 12.
144 See extract in Order of Full Court dated 27 May 1953 in NAA: A10074, 1953/24.
145 Anderson, K, Fossil in the sandstone, the recollecting judge, Spectrum Publications, Melbourne, 1986, p 129 and also Affidavit of Rupert Frederick Millane dated 20 November 1940, Supreme Court File 4360 of 1930.
146 'Millane drives Stage Coach through Bus law', Argus, 8 August 1931, p 12.
147 Mr Keane MLA, Victoria, 186 Parliamentary Debates, Legislative Assembly, 26 August, 1931, 2549ff.
148 PROV, VPRS 3183, I/3, Unit 189, 4775, Letter from Coburg Town Clerk to Town Clerk, City of Melbourne dated 27 October 1931.
149 1931 Police Gazette, Week ending 6 August, p 847.
150 1931 Police Gazette, Week ending 2 June, p 628.
152 NAA: A10074, 1932/27.
154 1933 Police Gazette, week ending 23 September, p 935. See also 'Persistent Litigants: Committed to Prison', Argus, 24 March 1933, p 8.
155 Affidavit of Rupert F Millane sworn 20 November 1940 Supreme Court File 4360 of 1930.
156 PROV, VPRS 251/P0, Unit 136, item 5023.
157 'Rehearing of cases: Sought by Rupert Millane', Argus, 30 November 1933, p 5.
158 Florence Millane had bought 84 Lower Heidelberg Road Ivanhoe in 1922. Through the 1920s this was a common address for service for Rupert Millane. The Bank commenced foreclosure proceedings in 1930. See Commissioner of the State Savings Bank of Victoria v Millane [1931] VLR 18.
160 The action had been stayed in 1927 upon Millane's Bankruptcy. See Millane v Shire of Heidelberg [1928] VLR 52. See also Millane v Shire of Heidelberg [1926] VLR 8.
161 PROV, VPRS 251/P0, Unit 140, item 72 and PROV, VPRS 251/P0, Unit 143, item 2001.
162 NAA: A1336, 32749.
164 NAA: A10074, 1943/18. Millane received 1025 primary votes.
165 NAA: MP/150/1, 356834.
166 NAA: MP150/1, 514/201/1826. Letter dated 21 March 1942 from Secretary, Ordnance, Torpedoes and Mines.
167 NAA: A1336, 45218.
168 NAA: A1336, 46393.
169 This précis of the facts drawn variously from Affidavit and Judges notes contained in Supreme Court file 4360 of 1930 and NAA: 10074, 1948/29; NAA: A10074, 1951/17, NAA: A10074, 1953/59.
172 Notes of Shall J dated 30 April 1952 in Supreme Court Court file 4360 of 1930 and NAA: A10074, 1954/3.
176 Order of Martin J dated 6 October 1955 Supreme Court file 4360 of 1930.
177 For example order of Fullagar J dated 5 November 1956 in NAA: A10074, 1955/59.
178 NAA: A10074, 1959/42.
179 Manual inspection of Supreme Court file 4360 of 1930 in March 1984.
180 Affidavit of RF Millane sworn 17 April 1947 Supreme Court file 4360 of 1930.
182 Affidavit of RF Millane sworn 30 August 1951 Supreme Court file 4360 of 1930.
183 6 October 1951, p 3.
184 Affidavit of RF Millane sworn 25 October 1951 Supreme Court file 4360 of 1930.
185 Order of Dean J dated 10 December 1951 Supreme Court file 4360 of 1930 and PROV, VPRS 28/4/4, Unit 206.
186 His father Patrick died in 1922, aged 77 and his mother Annie in 1933, aged 94.
187 'After 27 years he approaches court', Sun News Pictorial, 8 March 1957, p 16.
188 Noble Kerby’s son Colin provided accommodation for a time in his Middle Park warehouse. Priv. Corres. Colin Kerby dated 6 October 2005. Rupert also stayed in the garage at 2 College Street Hawthorn, the home of his Millane cousins. See interview with Brendan and Bernard Millane dated 17 May 2005.
189 Mr John Rosier MLA (Brighton), Victoria, 271 Parliamentary Debates, Legislative Assembly, 6 November, 1963, 1813.
191 Interview with Philip Opas 21 March 2005.
198 Krapelin, n 194.
201 Hirsch, S, Shepherd, M (eds), Themes and Variations in European Psychiatry, an Anthropology, Wright and Sons, Bristol, 1974, Ch 8.
202 Mullens, n 196.


Pang, n 206.

Lester, n 199.


Kolle, n 214.

Astrup, n 212.


Caduff, n 218.

Pang, n 206; Astrup, n 212 and Heydt, n 218.

Kazepelin, n 194.

Ibid.


Freidelton, n 219.

Lester, n 199.


Ibid.

Lester, n 199.

For example refer Lester, G. Workshops for management of the unusually persistent complainant; interviewing techniques for emotional liability, anger and threats of harm to the self, interviewer and third parties. Unpublished Manual. Refer Victorian Institute of Forensic Medicine, Fairfield, Victoria 3078.

Kolle, n 214.

Heydt, n 218; Caduff, n 218.

Ibid.


Ibid.

Only Queensland maintains a publicly available (Internet) register. See 5.9 Vexatious Proceedings Act 2005 (Qld).

See for example Section 21(1) Supreme Court Act 1986 (Vic).

Section 21 (2) Supreme Court Act 1986 (Vic).


Means ‘in person’. In Australia such litigants are referred to as ‘self represented’ or ‘unrepresented’.

In 1965, California was the first of five American states to introduce a Vexatious Litigant statute. The sanction then focused on the requirement that security be posted before any litigation could continue. In 1990 the Californian legislature amended the statute to provide the further sanction of a ‘pre filing order’. This effectively adopted the Australian sanction of barring a declared litigant from issuing new proceedings without first obtaining judicial leave. For a full discussion of the Californian statute see Rawles, L W ‘The California Vexatious Litigant Statute: a viable judicial tool to deny the clever obstructionists access?’ (1998) 72 SCALR 275.

For example see Victorian Supreme Court Rules 19 and Federal Court Order 46 Rule 7A.

Between 2002–2004 the Federal Court is believed to have placed thirty-six people on their register for having had documents rejected as frivolous, vexatious or an abuse of the courts process. See Pelly, M. ‘Nuisances in court: judges get tough on serial pests’, Sydney Morning Herald, 27 May 2004, p 18.

For a historical discussion of these controls see Smith, n 239.

For example AG (NSW) v Wenworth (1988) 14 NSWLR 481. In the United States the various state vexatious litigant sanctions have faced regular challenges on constitutional grounds. See further


249 The three multiple declarants are: Goldsmith COLLINS (High Court (1952) and Victorian Supreme Court (1953)); Constante BIENVENU (Victorian Supreme Court (1969) and High Court (1971)) and Alan SKYRING (High Court (1992), Queensland Supreme Court (1995) and Federal Court (1999)).

250 For example see Re Skyring [1995] QSC 55.


252 For a review of the English and Australian authorities supporting this position see Commonwealth Trading Bank v Inglis (1974) 131 CLR 311.

253 [2000] Ch 484.

254 [2004] 1 WLR 85.


257 Research efforts to locate possible medical records when Millane was gaolied in 1952 have so far proven unsuccessful.


259 For an example of a contemporary persistent litigant see Philip Morris Ltd v Attorney-General for Victoria and Linsdell [2006] VSCA21.

260 Lester, n 199.