MEDICO-LEGAL ASPECTS OF PROFESSIONAL SPORT

By Mr. Xavier Connor, Q.C.

Delivered at a meeting of the Medico-Legal Society held on Saturday, 7th August, 1965, at 8.30 p.m., at the British Medical Association Hall, 426 Albert Street, East Melbourne.

I have interpreted the subject of the discussion as "Medico-Legal Aspects of Boxing", and other sports will be referred to only by way of comparing the incidence of the injuries. If any of you feel you have been brought out under false pretences on a raw Melbourne August night, I apologize.

In introducing this discussion, I shall attempt to do four things. The first is to refer briefly to the Victorian Statutes which deal with the legal crimes of assault, wounding with intent to do grievous bodily harm and manslaughter, and to consider five decisions of the English Courts which may be thought to have particular relevance to boxing. In the second place, I would like to look with you at some records relating to the nature and extent of boxing injuries, and in the third place, in the light of the law and the facts, to consider whether boxing as it is now conducted is unlawful, and finally, to indicate as I go through, some of the matters on which the legal members would like to hear the views of the medical members.

Turning to the question of the Statutes, you will appreciate that the brief reference to them at this stage is in very general terms, and if one wanted to use them for professional purposes, they would require a much more careful and qualified statement than I am about to give. First of all, dealing with the subject of Common Assault, it may be described as an attempt to commit a forcible crime against the person of another. It includes a battering, which in turn includes beating and wounding with a hostile intent. It is an offence under Sec. 38 of the Police Offences Act, which provides a penalty of not more than £50 or imprisonment of not more than three months. It may also be the subject of a presentment or an indictment in a higher court where the penalty is imprisonment for not more than two years—Crimes Act, Sec. 37.

Going up the scale—Assault occasioning actual bodily harm: This may be heard summarily by Justices in a Court of Petty Sessions, with the consent of the person charged, in which case

the maximum is one year—Justices Act sec. 102A. It is, however, commonly the subject of a presentment or indictment in a higher court, and if dealt with in this way, the Crimes Act provides a penalty of imprisonment for not more than four years.

Again going up the scale—Unlawfully and maliciously causing grievous bodily harm to any person with intent to do so: This is a felony and exposes the offender to imprisonment for not more than fifteen years—Crimes Act, Sec. 17. It has been held by the Supreme Court of Victoria, the Full Court, that this crime may be committed by a person striking with his fists only. (See *R.* v. *Heaton* (1898) 5 A.L.R. 61 C.N.).

Going further up the scale—Manslaughter: This consists of the unlawful killing of another, and it may be committed where a man doing an unlawful act not amounting to a felony kills another without intending to do so. It carries a penalty of imprisonment for a term of not more than fifteen years—Crimes Act, Sec. 5.

With these four offences in mind, I turn to a consideration of five decisions by the English Courts, three of which dealt with prize fighting and allied subjects, and the other two with the relevance of consent to the assault by the person assaulted.

The first of these cases—*R.* v. *Young*, 19 Cox, C.C. 371—was heard by *Bramwell B.* at the Central Criminal Court in 1866. The accused, Young, was indicted for feloniously killing and slaying a man named Wilmott; the crime lawyers usually refer to as "manslaughter". The two men had taken part in what was described as a sparring match. They were naked to the waist, and I include some details which are not particularly relevant to the legal issues, but which may be of interest to the medical members—they had fought a succession of rounds, and both of them were wearing boxing gloves. The evidence indicated they had hit each other as hard as they had liked with the gloves for upwards of an hour. The contestants, according to one witness, were getting tired, and in the last round were having what was described as a "hugging match" and were too exhausted to strike each other forcible blows, but were trying to throw each other, and whilst so engaged the deceased slipped away, or was thrown away from Young. According to another witness, he fell either from a blow or a shove by Young. He fell on his posterior and struck his head against a ring post. The deceased was shortly afterwards admitted to hospital and died five hours after admission, from what the House Surgeon at Charing Cross Hospital

described as a rupture of an artery on the brain caused by a bruise over the right ear which might have been caused by either a blow or a fall.

The deceased's second said that what was going on was simply sparring, fairly conducted. The nine or so men present, including the contestants, were good friends. He was a teacher of sparring himself and constantly sparred with his pupils. He had known accidents to happen occasionally, but never a death. If a man's nose gets knocked with the gloves, they will make it bleed, but it requires a very hard blow to give a black eye. The House Surgeon said that in his opinion, sparring with gloves in the manner described by the other witnesses might be dangerous to human life, but that death would be a very unlikely result from such blows as had been given. A man might die from the blow of a cricket ball much sooner than from the blow of a glove. The danger would be where a person was able to strike a straight blow, but that danger would be lessened as the combatants got weaker.

Bramwell B. said it was difficult to see what there was unlawful in the matter; it took place in a private room, and there was no breach of the peace. No doubt, if death ensued from a fight independently of its taking place for money, it would be manslaughter, because a fight was a dangerous thing and likely to kill. He said also that the medical witness had stated that this sparring with the gloves was not dangerous, and not a thing likely to kill. After consulting *Byles J.*, *Bramwell B.* said that he retained the opinion he had previously expressed. It had, however, occurred to him that supposing there was no danger in the original encounter, the men fought on until they were in such a state of exhaustion that it was probable they would fall and fall dangerously, and if death ensued from that, it might amount to manslaughter. He proposed, therefore, to leave the case to the jury, and reserve the point if necessary. We do not know whether the law was right or wrong, because the Jury brought in a verdict of not guilty.

Before leaving the case, however, I think we should take notice of two things. First of all, the evidence, both medical and lay, was that the sparring, so-called, was unlikely to kill. In the second place, *Bramwell B.* said that death ensuing from a fight would constitute manslaughter because a fight was a dangerous thing and likely to kill. Perhaps it might be noted by the medical members, just in passing, that it is an ingredient of man-

slaughter that the killing must be unlawful, and finally, one might query what would medical opinion be today about boxing (professional or amateur) where the knock-out rule prevails.

The next case which I feel will be of some interest to you is *R.* v. *Orton & Ors.* 14 Cox C.C. 266. It was tried at the Leicester General Sessions. The unusual incident was that the Chairman of the General Sessions was a Baronet, Sir Frederick Fowke. I will refer to him as Sir Frederick.

At Leicester, fourteen men were charged with assembling together for a prize fight. Now, this involved showing that the prize fight was illegal and not merely an amicable sporting contest. The test which had been laid down in previous cases was that a prize fight was one in which the lives or the health of the combatants was endangered, or in which the intention was to continue the contest until one of them was disabled or subdued by violent blows. If it satisfied those requirements it was regarded as a prize fight and illegal, and if death resulted the survivor and those who were present and encouraged the fight were guilty of manslaughter.

Orton was one of the two combatants who fought each other in a ring. They both wore gloves. It was said they both fought with great ferocity for about 40 minutes, and they both severely punished each other. One of them—it is not disclosed which —had his ear bitten through. At the end of 40 minutes when the police arrived it was what Mr. G. K. Chesterton has described as a powerful understatement to say it was clear the combatants were not well disposed towards each other. A charge was made for the spectators to get in and the fight was for money. Sir Frederick, the Chairman, directed the jury that if it was a mere exhibition of skill in sparring it was not illegal, but if the parties met, intending to fight till one gave in from exhaustion or injury received, it was a breach of the law and a prize fight whether the combatants fought in gloves or not, and he left it to the jury to say whether it was a prize fight or not. The jury, in fact, found that it was a prize fight, and they brought in a verdict of guilty. The Chairman, Sir Frederick, reserved the question of the correctness of his direction for the Court of Criminal Appeal, which consisted of *Kelly, C. B.,* and *Lindley, Manisty and Hawkins, JJ.*

Kelly C. B. said that the question was whether the prisoners were guilty of unlawfully assembling together for the purpose of prize fighting. The jury found that this was a prize fight. No

doubt the combatants wore gloves, but that did not prevent them from severely punishing each other. There can be no doubt that upon the facts the conviction ought to be affirmed. *Denman J.* said he was of the same opinion. The jury examined the gloves in their private room, and having the fact proved that the combatants severely mauled each other they found rightly that this was a prize fight. The question was entirely one for the jury, and the other three members of the Court of Criminal Appeal concurred.

The next case is *R.* v. *Bradshaw,* 14 Cox, C.C. page 83, which was tried before Lord Justice Bramwell at the Leicester Spring Assizes, 1878. Bradshaw was indicted for the manslaughter of a man named Dockerty at Ashby-de-la-Zouche. The deceased met with the injury which caused his death on the occasion of a football match played between the football clubs of Ashby-de-la-Zouche and Coalville in which the deceased was a player on the Ashby side and the prisoner was a player on the Coalville side. This is not a case about prize fighting, but it is, I feel, relevant to the question of whether the fact that a person operates within the rules of the particular sport has any relevance to the matter. The game, for the comfort of people who go to League football, was played according to certain rules known as "Association Rules". Counsel for the Crown in opening the case for the prosecution was proceeding to explain the "Association Rules" to the jury and to comment upon the fact of whether the prisoner was or was not acting within those Rules, when *Bramwell, B.* interposed and said, "Whether within the Rules or not, the prisoner would be guilty of manslaughter if while committing an unlawful act he caused the death of the deceased".

After the game had proceeded about a quarter of an hour the deceased was "dribbling" the ball along the side of the ground in the direction of the Coalville goal when he was met by the prisoner who was running towards him to get the ball from him or prevent its further progress. Both players were running at considerable speed. On approaching each other the deceased kicked the ball beyond the prisoner—and things have not changed that much—the prisoner by way of "charging" jumped in the air and struck him with his knee in the stomach. The two met, not directly, but at an angle, and both fell. The prisoner got up unhurt, but the deceased rose with difficulty and was led from the ground. He died the next day after considerable suffering, the cause of death being a rupture of the intestines.

There was considerable evidence and argument as to whether what the prisoner did was or was not within the rules of the game.

The following, although it is a little lengthy, is an extract from the summing up of the case to the jury by *Bramwell, B.*, and I feel that it is worth reading to you. *Bramwell, B.* said to the jury by way of charging them:

> "The question for you to decide is whether the death of the deceased was caused by the unlawful act of the prisoner. There is no doubt the prisoner's act caused the death and the question is whether that act was unlawful. No rules or practice of any game whatever can make that lawful which is unlawful by the law of the land; and the law of the land says you shall not do that which is likely to cause the death of another. For instance, no person can by agreement go out to fight with deadly weapons, doing by agreement what the law says shall not be done, and thus shelter themselves from the consequences of their act. Therefore, in one way you need not concern yourselves with the rules of football. But on the other hand if a man is playing according to the rules and practice of the game and not going beyond it, it may be reasonable to infer that he is not actuated by any malicious motive or intention, and that he is not acting in a manner which he knows will be likely to be productive of death or injury. But independent of the rules, if the prisoner intended to cause serious hurt to the deceased, or if he knew that, in charging as he did, he might produce a serious injury and was indifferent and reckless as to whether he would produce a serious injury or not, then the act would be unlawful. In either case he would be guilty of a criminal act and you must find him guilty; if you are of a contrary opinion you will acquit him."

In reviewing the evidence, *Bramwell, B.* stated that no doubt the game was in any circumstances a rough one; but he was unwilling to decry the manly sports of this country, all of which were no doubt attended with more or less danger.

The jury brought in a verdict of not guilty.

The next case, and perhaps the most important one, is *R.* v. *Coney & Ors.* (1882) 8 Q.B.D. 534. It was a decision of the Court of Criminal Appeal. It was unusual in the sense that the Court of Criminal Appeal consisted on that occasion, of Lord Coleridge, the Chief Justice, and 10 other members of the

Queen's Bench Division. So it was apparently considered a reasonably important case.

The case had been reserved by the Chairman of Quarter Sessions and its main importance lies in the legal discussion and the decisions relating to the position of spectators. There is very little information in the report as to the nature of the fight, other than that the two men fought with each other in a ring formed by ropes supported by posts in the presence of a large crowd, and that they fought for a period between three-quarters of an hour to an hour.

In the course of the judgments it is clear that all eleven judges took the view that a prize fight is illegal and that the consent of the persons actually engaged in fighting to the interchange of blows does not afford any answer to the criminal charge of assault.

Cave, J., at page 539 said, "The true view is, I think, that a blow struck in anger, or which is likely or is intended to do corporal hurt, is an assault, but that a blow struck in sport, and not likely, nor intended to cause bodily harm, is not an assault, and that, an assault being a breach of the peace and unlawful the consent of the person struck is immaterial. If this view is correct a blow struck in a prize-fight is clearly an assault; but playing with single-sticks or wrestling do not involve an assault; nor does boxing with gloves in the ordinary way, and not with the ferocity and severe punishment to boxers deposed to in *Reg.* v. *Orton*."

There are very many judgments in this case because there were very many Judges, but they are substantially to the same effect. I was disposed at one stage to read extracts of most of them to you, because the proposition which I ultimately propose to put to you is perhaps a little startling. I thought perhaps I ought to reinforce it as much as possible with legal authority, but having regard to the other things that need to be said I will not refer to the judgments of any other than the report of *Hawkins J.*, who said that "whatever may be the effect of a consent in a suit between party and party it is not in the power of any man to give an effectual consent to that which amounts to or has a direct tendency to create a breach of the peace so as to bar a criminal prosecution. In other words, though a man may by his consent debar himself from his right to maintain a civil action, he cannot thereby defeat proceedings instituted by the Crown in the interests of the public for the maintenance of

good order. He may compromise his own civil rights, but he cannot compromise the public interests". He then continues, "Nothing can be clearer to my mind than that every fight in which the object and intent of each of the combatants is to subdue the other by violent blows, is, or has a direct tendency to, a breach of the peace, and it matters not, in my opinion, whether such fight be a hostile fight begun and continued in anger, or a prize fight for money or other advantage. In each case the object is the same, and in each case some amount of personal injury to one or both of the combatants is a probable consequence, and although a prize fight may not commence in anger, it is unquestionably calculated to rouse the angry feelings of both before its conclusion. I have no doubt then, that every such fight is illegal, and the parties to it may be prosecuted for assaults upon each other".

Later he says, "If two men, pretending to engage in an amicable spar with gloves, really have for their object the intention to beat each other until one of them be exhausted and subdued by force, and so engage in a conflict likely to end in a breach of the peace, each is liable to be prosecuted for an assault. Whether an encounter be of the character I have just referred to [and I think this is, for our purposes tonight, probably the most important statement], or a mere friendly game, having no tendency, if fairly played, to produce any breach of the peace, is always a question for the jury in case of an indictment, or the magistrates in case of summary proceedings."

The last case to which I make reference is *R.* v. *Donovan* (1934) 2 K.B. 498. It was a decision of the Court of Criminal Appeal, consisting of *Hewart C. J., Swift* and *Du Parcq JJ.* The appellant was convicted at the Surrey Quarter Sessions of indecent assault and common assault on a girl of seventeen. Again, it is not a case about boxing, but it is a case which bears on the question of "consent". The appellant had caned the girl for the purpose of sexual gratification, and a doctor who examined her about forty-eight hours later said that there were seven or eight red marks upon her body, and expressed the opinion that these marks indicated that she had suffered a "fairly severe beating". There was evidence which, if believed, clearly indicated that the girl had consented to what had occurred. For present purposes, the case is complicated by the consideration which the Court of Criminal Appeal had to give to the Chairman's charge to the jury, and in the event the appeal was allowed and the appellant

was discharged. What is of interest, however, for present purposes is the view expressed by the Court as to the relevance of consent. The Court, at p. 507, cited a passage from the judgment of *Cave J.* in *R.* v. *Coney*, 8 Q.B.D. 534 at 539, which I have already read to you. They then considered the exceptions and said one exception is the case of persons who, in perfect friendship, engage by mutual consent in contests, such as "cudgels, foils or wrestling", which are capable of causing bodily harm. This is justified on the basis that bodily harm is not the motive on either side, and such contests are "mainly diversions—they intend to give strength, skill and activity, and may fit people for defence, public as well as personal, in time of "need" and are, therefore, not unlawful.

Another exception is to be found in cases of rough and undisciplined sport or play, where there is no anger and no intention to cause bodily harm. In such cases, the act is not itself unlawful, and it becomes unlawful only if the person affected is not a consenting party. Another exception is the reasonable chastisement of a child by a parent or a person *in loco parentis*.

Returning to the case under consideration, the Court said this (at p. 509)—"Always supposing, therefore, that the blows which he struck were likely or intended to do bodily harm, we are of opinion that he was doing an unlawful act, no evidence having been given of facts which would bring the case within any of the exceptions to the general rule. In our view, on the evidence given at the trial, the jury should have been directed that, if they were satisfied that the blows struck by the prisoner were likely or intended to do bodily harm to the prosecutrix, they ought to convict him, and that it was only if they were not so satisfied, that it became necessary to consider the further question whether the prosecution had negatived consent. For this purpose, we think that "bodily harm" has its ordinary meaning and includes any hurt or injury calculated to interfere with the health or comfort of the prosecutor. Such hurt or injury need not be permanent, but must, no doubt, be more than merely transient and trifling."

It is my submission to you that from those cases it is reasonable to formulate the following propositions—

1. A fight, by whatever name called, in which the lives or health of the combatants are endangered, is unlawful.

2. A fight, in which the intention is to continue the contest until one of the contestants was disabled or subdued by violent blows, on that law, is illegal.
3. The fact that a fight is conducted by rounds does not, in itself, prevent it from being unlawful.
4. The fact that the combatants wear boxing gloves does not in itself prevent the fight from being unlawful.
5. The fact that the contestants confine themselves to striking blows which are within the rules of boxing does not of itself prevent the fight from being unlawful.
6. A blow struck in sport and not likely or intended to cause bodily harm is not an assault and therefore mere exhibitions of skill in sparring with gloves are not unlawful.
7. Where actual bodily harm is caused the consent of the combatants is no defence to a charge of assault.
8. Whether an engagement is an amicable spar with gloves or an unlawful fight is a question of fact for the jury or magistrate.

That, so far as I can discover it, is the law. Perhaps we can look quickly at the facts.

First of all, what kind of injuries do occur in modern-day boxing? Ira A. McCown, M.D., the Medical Director of the New York State Athletic Commission, has written an article about this in the *American Journal of Surgery*, Vol. 98, 1959, pp. 509-516. He says that the injuries which occur in boxing represent many types and degrees of trauma and the organs and tissues which are most exposed bear the brunt of this trauma, although, he points out, any part of the body may at times be injured. In his view, of the exposed and unprotected areas, the forehead, the eye-socket (periorbital regions) the face, nose, mouth, ears and hands are most frequently involved, although he points out, more protected organs, such as the brain and kidney, are particularly vulnerable to boxing trauma.

T. A. Gonzales, who, despite his name, was pathologist and medical examiner of the City of New York, made a study over a thirty-two year period (from 1918 to 1950) on fatalities in competitive sports—see his article, "Fatal Injuries in Competitive Sports", in the *Journal of the American Medical Association*, Vol. 146, pp. 1506-1511 of 1951. During that period, he performed autopsies on athletes whose deaths resulted from athletic trauma; there were 43 deaths from baseball, 22 deaths from football and

21 deaths from boxing. In respect of boxing, Gonzales reports—"Thirty-two years of boxing competitions have produced fewer deaths in proportion to the number of participants than occur in baseball and football, and far fewer deaths than occur from daily accidents. It seems that the moral and physical benefits derived from boxing far outweigh the dangers inherent in it or any of the other competitive sports".

McCown points out, nevertheless, that there were seven deaths among professional boxers in New York State during the seven year period from 1945 to 1952 inclusive.

Blonstein has done some work on injuries in amateur boxing in London. He is a doctor, and the medical officer for the London Amateur Boxing Association. According to a paper he gave in 1959, since 1945 there have been nine fatal cases in the amateur ring, all due to intracranial haemorrhage, sub-dural or extra-dural haemorrhage, accompanied by a mid-brain haemorrhage—all caused by the boxer falling with the back of his head on to the ring. In two cases it was noticed the boxer had an exceptionally thin skull. There had been five deaths amongst professionals since 1946 and Blonstein adds, "The number of fatalities, regrettable as they are, compares favourably with those in other sports".

There was a general study by O. Johansen, and quoted by Mr. M. Critchley in the 1957 *British Medical Journal* (referred to before) which indicated that between 1946 and 1948 in Oslo there were 6057 sports injuries, which showed that boxing accounted for 1·65 per cent of all accidents, football for 21·8 per cent and skiing for 29·4 per cent. The Australian figures are difficult to obtain, but Dr. Refshauge, who is with us tonight, and from whom we hope to hear later on, has been asked to estimate the calculations, and he says, for the whole of Australia, for the years 1922 to 1962, there were ten boxing deaths, or an average of one death every four years. By estimating the number of professional contests and the number of amateur contests during the forty years in question, he arrives at an estimate of one fatality per 10,000 contests.

I hope Dr. Refshauge will be able to tell us how those ten boxing deaths were distributed between professional and amateur contests, because the one death for every 10,000 contests, I think, depended very largely on putting in all the amateur contests (including, I think, even schoolboy contests) and if the ten deaths were substantially from the professional ranks, it would perhaps

be germane to know how many professional contests there were during that period.

The necropsy reports of the ten boxing fatalities in almost every case gave subdural haematoma as the cause of death and in no case which Johansen personally perused was a fractured skull noted.

Finally, from fatalities to injuries, I go first to New York State, because New York State is rather proud of the way in which boxing is supervised. The New York State Athletic Commission has made a fairly determined effort to supervise the sport, or "the game" as it is called, and the medical requirements of boxers in New York are as follows—

1. Annual physical examination, including E.E.G., X-ray of heart and lungs, medical examination pre- and post-bout.
2. Two physicians at ringside for all bouts.
3. Mandatory E.E.G. and neurological examinations post-bout for all boxers who sustain a knock-out.
4. Each boxer required to wear a properly-fitted mouth-piece during each bout.
5. Re-evaluation of both the boxing and medical records of any boxer who sustains six consecutive losses or three knock-outs—he is regarded as a candidate for possible retirement.

In addition, according to McCown, the following safety measures have been introduced in New York State, and have operated during the period for which I am about to quote you some injuries.

In the first place, a new type of ring padding to replace the old felt pad. McCown suggests that this has stopped a lot of contra-coup injuries of the occipital regions hitting the floor.

Secondly, the substitution of eight-ounce for six-ounce gloves for all except championship bouts.

Thirdly, properly fitted mouthpiece to be worn by the boxer during the fight.

Fourthly, there is a portable resuscitator with oxygen equipment available at all rings.

Fifthly, there is a 30-day automatic minimum suspension for any boxer who sustains a knockout or technical knockout or other injuries of sufficient severity.

Finally, interruption of any bout, except a championship

fight, wherein the opponent sustains more than two knockdowns in any one round. Both of these knockdowns must be for the mandatory eight counts.

Now, I suspect that in all parts of the world things are not as good as that, but having regard to that kind of examination, and those kinds of safety measures, I give you the statistical table of injuries which McCown has prepared, being a seven year study from 1952 to 1958 inclusive.

The total number of participating boxers is 11,173.
Knockouts were 325.
Knockouts requiring hospitalization were 10.

Technical knockouts were 789, and they were divided as follows: those that were secondary to injury and resulting in a fight being stopped because of the injury were 557. Those stopped as a result of inability of a boxer to defend himself, or from fatigue, exhaustion, or because he was out-classed, were 232. Lacerations and contusions (trauma to the soft tissue), were 1010. Injuries to the eye were 19. These were distributed as—corneal injuries 13, detached retina 6. The fractures were 38, sub-divided as—nasal bones 16, metacarpals 14, jaws 4, phalanges 3, and one ankle. There were four shoulder dislocations. These were before the days of Sonny Liston. There were 18 "boxer's knuckles", an arthritic condition of the hands, apparently. There were 148 retirements because of poor records or neurological disorders, heart diseases. Dr. McCown was very proud of the fact, I think, that the total mortality was zero. Now, in a State with those sorts of requirements for the licensing of boxers, strict medical examination and strict ringside supervision, these were the injuries.

Dr. Blonstein gives the injuries in the Amateur Boxing Association in London for two years as follows— First of all, he says that boxing injuries rank eighth in frequency amongst sport injuries. There are far more injuries, he says, on percentage, with skiing, hunting, soccer, motor-cycle racing, motor racing, rugger, and athletics. Out of 200 consecutive injuries treated at the Middlesex Hospital Athletic Clinic, only eight were due to boxing. The majority were due to rugger, soccer and athletics. In 4350 contests held under the auspices of the London Amateur Boxing Association in the 1957/58 season, 137 injuries were reported, about three per cent. There were 42 cuts in the region of the eye, six of the lips, three of the forehead, two of the ears,

three of the mouth, and one of the nose. There were three fractured metacarpals, two fractured noses, 60 knock-outs, and nine cases of amnesia without loss of consciousness. You may feel, in the light of what is to be said later, that that may be significant, "nine cases of amnesia without loss of consciousness". In addition, there were five sprains involving metacarpo-phalangeal joint of the thumb or inter-phalangeal joints of the fingers. In the following season, 1958/59, there were 2,400 contests, with 132 recorded injuries. There were 28 knockouts, 14 cases of amnesia without loss of consciousness, 45 cuts around the eye, 8 of the lips, 5 of the mouth, 3 of the face, 3 of the nose and one of the head. There were 9 cases of black eye, 4 fractured metacarpals, 5 sprains of interphalangeal joints, two cases of bruised ribs, one bruised neck, one bruised arm, and one sprained ankle.

The renal injuries that come from boxing, I could imagine, would be quite a fascinating subject for urologists. I pass over it tonight, not because I think it is either unimportant or uninteresting, but because in the very careful investigations that appear to have been made by American urologists into renal injuries in boxing, both resulting from trauma and from mere expenditure of energy which have shown a quite considerable amount of blood and albumen in the urine after bouts, in something over 1,000 cases of what Kleiman called "athlete's kidney", only some eight of them have been required to retire from their particular professional sport. So that, although I say I do not regard it as uninteresting or unimportant, I do not think it is of sufficient importance to spend too much time on tonight.

I pass then to the final medical matter, and probably the most important and most controversial of all, the so-called "Punch-drunk" syndrome. This term appears to have been introduced into the medical literature, so far as I can discover, in 1928 by an American, Dr. Martland. He has been criticized, because it has been said by a number of people that there has been no proof of what he has asserted, or what he has said. Speaking as a medical layman, I feel that the criticism is somewhat unfair, because at that stage Martland was only drawing attention to a phenomenon which had been reported by lay people, and suggesting to the medical group who he was addressing—and his address was subsequently reported—that the medical profession ought to get interested in this and just see whether there is anything in it. I feel it is a little unfair in those circum-

stances to say, when he was making what I feel should be regarded as an intelligent speculation, that his proposition had not been proved, because he really was not making a proposition, he was suggesting an inquiry. He said that "While most of the evidence supporting the existence of this condition is based at this time on the observation of fight fans, promoters, and sporting writers, the fact that nearly one half of the fighters who have stayed in the game long enough develop this condition, either in a mild form or in a severe and progressive form, which often necessitates commitment to an asylum, warrants this report. The condition can no longer be ignored by the medical profession or the public. It is the duty of our profession to establish the existence or non-existence of punch-drunk by preparing accurate statistical data as to its incidence, careful neurologic examinations of fighters thought to be punch-drunk, and careful histologic examinations of the brains of those who have died with symptoms simulating the Parkinsonian syndrome. The late manifestations of punch-drunk will be seen chiefly in the neurologic clinics and asylums, and such material will practically fall to the neuro-pathologists connected with such institutions."

That really, to be fair to him, is about all he said. You will be hearing from Mr. Langford about this, and if he disagrees about what I am saying, I have no doubt he will tell you. However, a subsequent criticism of him by people like McCown strikes me as a little unfair.

Martland described a "punch-drunk" syndrome of acute cerebral trauma followed by chronic traumatic disorder, which has apparently been considered as one of the most frequent serious complications of boxing. McCown contends that it has never been proved to be a neurological syndrome peculiar to boxers and produced by boxing. He says that it has, unfortunately, become a slick medical cliché with which to label any boxer whose performance and behaviour in or out of the ring is unsatisfactory or abnormal.

He then refers to the work done by H. A. Caplin and J. Browther, two experienced neuro-surgeons, who looked at a lot of bouts in America, had them filmed, and then replayed them with slow motion, but I will leave that to be dealt with by Mr. Langford.

On the other hand, a person with the standing of MacDonald Critchley has himself indicated that he has seen 69 cases personally of people whom he considers are suffering from a punch-

drunk syndrome. He was neurologist at the King's College Hospital, and said that an important distinction distinguishes boxing from most other forms of athleticism. Injuries are coincidental in other sports, but in boxing the aim or object is to render the opponent *hors-de-combat.* Traumata are therefore not so much regretted as regrettable. He says—and this as a medical layman is what impresses about Dr. Critchley—"This paper makes no plea either for or against pugilism. Amateur boxing can certainly perform many useful purposes, sociological as well as personal. Whether the benefits of amateur boxing outweigh the drawbacks is a question for others to decide, while some may well consider that professional pugilism forms a problem all of its own. My own neurological experiences comprised a series of 69 cases of chronic neurological disease in boxers. Many of these, perhaps the great majority, should be looked upon as examples of punch-drunkenness, either early or well established. In only a comparatively few cases does legitimate doubt occur about the possibility of there being some coincidental and non-related nervous or mental disease, for example, epilepsy; psychopathy; pre-senile dementia; cerebral arteriopathy."

I will leave it to Mr. Langford to deal in more detail with Critchley's almost statistical case histories of the people he has looked at. He has noted the onset of this disorder, in many cases, to be long after the time when boxing trauma has ceased. He gives an average of about sixteen years for the onset of the condition, and the somewhat (to the layman) terrifying conclusion that not only is the condition not reversible, but it is, in almost every case, progressive—even though the subject has long since ceased to be subject to boxing trauma.

Having regard to the time, gentlemen, I would like to make way for the medical speakers, who I feel should constitute the more important part of tonight's discussion. I can only say for myself, somewhat tentatively (I am not prepared to say at this stage that I have a closed mind about it) that, having regard to the law, as enunciated in the cases I have spoken about, and having regard to the facts as disclosed by the injuries, my own feeling at this stage is that professional boxing certainly, as conducted at the moment with the knock-out rule, probably constitutes a crime. Whether this is right or not right is for other people to decide. I can appreciate the carnage argument, which runs along the lines that other sports do more damage, and indeed, Dr. Refshauge can give you some very convincing statis-

tics regarding a senior and second eighteen team in the League with which he was associated—the training injuries for one year with them as compared with the thousands of contests he saw at the Stadium. The carnage argument indicates that boxing is not a main offender. It indicates there are all sorts of other sports which offend to a greater degree, and, of course, road accidents cause more carnage than any sport. From the point of view of the lawyer, and perhaps the sociologist, there does seem to be a distinction in that boxers are trying to do what they do. It is said, of course, that in football it is not deliberate—and, of course, it is not deliberate with the team you support, although you seem to think it is deliberate with any other team. But, it would seem to me, with respect, that there is a pretty clear distinction on legal grounds to be drawn between a blow which is delivered to try and cause temporary concussion and one which is not so delivered. Having regard to the law, and to the injuries which statistics disclose as having been caused by boxing, I would find it very difficult to understand why, if boxers were charged with assaulting one another, the magistrate could decline to convict them. I can well understand our juries might not.

Finally, at this stage, I suggest that the legal members of this society would be grateful to hear the view of the doctors about the punch-drunk syndrome. Do the doctors think, as McCown thinks, it is a slick, medical cliche, or do they feel that it is a very real and quite tragic consequence of boxing? I have not touched on this in my talk to you, but it would be very interesting to hear from the doctors (and I have no doubt Dr. Refshauge can help us on this) what the mechanism of the knockout is, because in the medical literature there are four different explanations of it. I think it would also be of considerable interest to all of us to hear some observations from Dr. Refshauge, who has actually been present at many thousands of bouts at the West Melbourne Stadium.

THE CHAIRMAN: Although Mr. Connor is disposed to disclaim the title of the paper and limit it to professional boxing, he did from time to time indicate that the kind of medico-legal problems with which he was concerned could arise in other forms of professional activities, and other forms of sporting activities.

I would not like to think that members should feel restricted in the scope of the discussion by the emphasis given to boxing, and with that invitation, I ask Mr. Keith Langford to open the discussion.

MR. KEITH LANGFORD: I will come firstly to assumptions and prejudices. As a neuro-surgeon, it is an assumption on my part that this sport of boxing surely must produce some damage to the brain. Here is one person attacking another person, knocking his head as frequently as he can get at it, jerking it back in various ways, banging it on the canvas—surely, there must be damage done to this soft, delicate tissue which I handle with such care? Surely, this must also be bolstered with medical evidence? The electro-encephalogram, that marvellous weapon that is used so often in the Courts to establish for or against insurance companies; the air studies eminent neurologists use from time to time to bolster their medical opinions, and finally (at the last Court of Appeal) the post mortem—surely this would establish the rightness or correctness of my assumption? That is the way I went about proving that I was correct, but as you found out tonight, the medical evidence does not prove boxing to be as dangerous as other sports in respect of injuries.

We will turn then to the prejudice on my part that boxing is not a noble sport or recreation. Dr. Refshauge, I am sure, will draw his sword or boxing glove at this statement, but, in my view, it is part of our modern civilization because it does envisage this victory, partly by rendering an opponent incapable of defence or counter-attack by physical injury. This does differ from other sports, although victory in other sports is obtained by the same means, particularly in Grand Finals, when maiming is one way to keep a brilliant opponent out of the game. Football has its dangers for the participants. Having played the game I know some of my opponents never missed being involved in this activity of maiming rather than aiming for the ball. I am reminded in this respect of boxing and other sports, that Dr. Summerskill has, with great skill, pointed out the deficiencies that exist in boxing for maiming one's opponent. We know of many more efficient ways of rendering a person incapable of further activity, but she points to the testes as being the focus of assault by some who are more skilled in the knowledge of what renders someone incapable, and yet, as is pointed out, "with less permanent damage than damage to the brain."

My prejudice has been built up over the years, starting with my school boxing. Perhaps, as others of you here know, boxing was built up by the determination on the part of the Headmaster to make it part of our manly education, and therefore, boxing was a compulsory activity, unless you were medically exempted.

Whatever your feelings about boxing, perhaps you will agree with me to some extent when I say I might not have had much cause for objecting to people contesting with gloves, hitting at one another, efficiently or inefficiently with one another's consent, but when it happens without the consent, as it did at my school, I feel this is reprehensible and certainly I can object with some grounds.

We have heard how we look in the medical journals and we do not find much to back up the assumptions that boxing does, in fact, do much injury. What, then, as a brain surgeon, and also a doctor, can I say to this company so that we may feel that perhaps boxing has got some points that give us cause for concern. We have heard those statistics, and I need not requote them. About this question of repeated knockouts, and the fact that the boxing commissions have been alert to it and have kept people from boxing again for periods of a month upwards—it is interesting. On the football field you can be knocked out, and you can be concussed, you can have an amnesia for a day, and then you can play again. There are certain of our footballers, one of them came to me a year ago and I talked to him very seriously about this matter because this was the fourth knockout of the year—to the point of the jaw, or not, I cannot remember—but the fact is he went away, chastened perhaps a little, but none the wiser, because he was playing for his team before the season was out once again, and I see he is playing again this season.

Now, Dr. Critchley: is he an authority in this matter? Surely we must acknowledge that his series of cases is an impressive series. As far as I am aware there is no one with a comparable series. Yes, we all as doctors know that there is the punch-drunk person. We have seen him in casualty, stagger in and become irritable and abusive. He is emotional, breaks into tears, knocks people down, picks fights. He has poverty of thought, and so on, but there is a recognizable person we all know. When we look into the literature to find him he can turn out to be an epileptic, and so on, and not have a punch-drunk syndrome. It is legitimate criticism, but Critchley in his series has tried, we hope, to weed out those people who do not merit these other classifications and he has come up with over 60 people in his own personal series. He has admittedly looked for them, and they have perhaps been sent to him, but this is worthy of scrutiny because he is such an eminent authority and there is such a significant number of cases.

The other thing, as it has been told to us, is that the onset of this trouble is late. It is not a month after the knockdown, or the staggering about, the automatic behaviour, the amnesia, it is 16 years on the average for the onset of the trouble with this progressive encephalopathy. He boasts with some justification that the Boxing Commission have tried to right the situation. They have introduced what seem to be very stringent measures. We hope these findings do not affect the doctors at all. We respect them as eminent medical people. I do not know them personally, but we hope that they are judicious, unbiased and objective, and so on. However, the fact remains that they may not clinically be able to tell which person that they examine is later going to develop this type of deterioration that has been pointed out. The concern about it is that it can be progressive. The elecro-encephalogram (E.E.G.) has been used a lot as a means of picking out and weeding out those people that are defective, but E.E.G. is a very crude testing device. There can be a very large brain tumour in a person's head and yet the E.E.G. can be quite normal. It does not surprise us that we can have very great destruction in the brain due to repeated blows of a fist on the head and yet only show a mild change on the E.E.G. which may persist for a month and then subsides. It does not mean very much to us, clinically.

Dr. Critchley says we can distinguish these people more easily than the E.E.G., and so there is a feeling surely that medically we have grounds for concern. It was found that University candidates had shown changes in their behaviour patterns, their attitude to work, and so on, and it was found there was a significant amount of change in the E.E.G. records amounting to 60 per cent abnormal activity in a group of boxers as compared with a control series of ordinary population of less than 10 per cent. So it was felt, even on this crude testing, that there was some basis for concern.

Now, getting to the last consideration—or at least to another consideration—the post mortem, the last court of appeal. What evidence is there there? This really surprised me. Surely people must die eventually, even boxers, even the old soldier who only fades away, and surely the boxer must die eventually and we will have his brain. It is a point of great concern amongst doctors, particularly surgeons, that we do not have adequate post mortem examinations. This is one reason that we have not got adequate post mortem examination reports of brains. The other factor is that brain examination has been very much a Cinderella of post

mortem examination. It has been a very cursory and slick examination. There has not been any difficult and painstaking work done until very recently, when Sabina Stritch, only a few years ago in London, did a series of cases, not to do with boxing, but where there had been what seemed to be relatively minor head injuries and where these relatively minor head injuries were shown to have produced disastrous effects. We hear about knockdowns. We all know that it is not an uncommon thing to be knocked unconscious for a period of some seconds or minutes, and rendered amnesic for a day. There is the other state, the groggy state, the in-between state, where there is some impairment of activity of the brain. Lady Sabina Stritch produced at least the evidence of painstaking work. It is evidence that the brain is damaged sometimes by minor trauma. The mechanism of it, the petechial haemorrhages that have been quoted by Martland, have gone out. People do not any longer find enough evidence to support that view, although this was the supposition he made in the light of his own experience. This was theory. Later we found, many years after the post mortem evidence that there occurs in the deep parts of the brain great destruction from relatively minor blows. We are blessed, I am afraid, with relatively few neurones. We start losing them very rapidly when we reach the twenties, and at our age I am afraid, we have shed a great deal of our resources. If you start knocking them about on the football field, or anywhere else, including the boxing ring, you are asking for trouble. We see it in motor-car accidents, and in the court, and the consulting room, people who have few neurones. You knock a few more out and you are left with the same sort of picture, slowness, poverty of movement, poverty of thought, unco-ordination, trembling, all the sort of picture Critchley builds up for us. "Why the progressiveness?", you might ask. I can only say that this is probably because they continue to shed neurones due to plain ageing. Now, I have had my 10 minutes, I am sure, but I would just like to read to you something I quoted many years ago when I was the editor of a magazine. It was written up in the Sydney paper in August, 1945. "Fists and boots provided an amazing finish to the high schools Rugby Union match between Sydney High and Fort Street at Centennial Park yesterday afternoon. Three minutes before the game ended players on both sides fought, punched and kicked each other and one boy who abused the timekeeper was threatened with arrest. One Fort Street player seized an opponent, held his head down,

and rained blow after blow until forced to let go. The timekeeper, a policeman, was abused by one boy when he intervened in a scrimmage and he threatened to take him into the police station. Several players bore marks on their faces from punches. One boy had to be taken to the pavilion for attention. Sydney High won the match by eight points to three.

During a scrum in a Rugby League football match a Newtown forward is alleged to have bitten off most of the lobe and part of the side of the ear of W. McRitchie, St. George forward, causing disfigurement that can only be removed by a grafting operation."

McRitchie is reported to have said: "There had been normal rough and tumble between rival forwards but nothing vicious until a Newtown player sank his teeth into my ear. When he bit me I tried all I knew to break away and in desperation I think I even scratched his face."

DR. J. G. H. REFSHAUGE: Mr. Chairman, firstly I thank Mr. Connor for such a provocative paper tonight. I do not know why it is, but because one has the misfortune to write an article on boxing, people think that one must love the sport. That is not necessarily so. I would like to say at the outset that when I started to write that paper I thought I would achieve some overwhelming amount of evidence, that it would just be automatic that anyone having done this work would be able to prove to the world conclusively that this sport should no longer exist. I am afraid that I came to the conclusion, after writing this paper, that many other people have stated when they have been preparing papers about any subject, that there is a gross paucity of any authoritative data for any particular sport. We have been quoted many figures tonight. The New York figures are very good for New York, but they are no good for any other part of America. The Boxing Commission in America, to give an example, is not a fool-proof scheme. It works for New York, it does not work for the other 49 States.

Boxing control, medically, in Melbourne is good at the Stadium. It was, when I was there anyway. They do have very good medical examinations, but if I said to a boy who had been knocked out, "You shall not fight here for six weeks", he could go somewhere else to fight, and there was no legal method in the sport to stop this. In other words, I do not know whether it has improved, I have not been to the Stadium for five or six years, but I do not think it has. Therefore, there is no true medical

supervision, or supervision by the promoters, of any professional boxer.

There is no doubt in my mind from reading all the evidence that has been given to me, and from having been a Stadium medical officer for some five years, that the syndrome of punch drunkenness does exist. I could not with any degree of honesty say I saw any evidence of punch drunkenness, in the five years I was there, from any boxer. After all, there were only about 27 knocked out, and no one was knocked out for more than a minute. We did have one brain opened, but the fellow had been hit some days before. We were suspicious of him but could not work out why we were. We both watched the fight very closely and he ended up having his brain opened. He had had, according to the surgeon's evidence, a sub-dural haematoma for some time. He just had a bad headache that night and could not raise his hands and there was no fight.

We have had figures quoted tonight about boxing and suggested figures about other sports, but I would like to point out that there is no authority where we can get figures about sport in this country at all. This week, and as late as Thursday, I tried to get information on how many car-racing drivers there were in this country, how many motor-bike racing drivers there were, how many jockeys, how many professional footballers and soccer players there were, but there is no one who can give me the answers to these questions. Therefore, figures do not mean very much at all.

We have been speaking tonight about intent to do grievous bodily harm; on this aspect, in 1961, 1962 and 1963, from press cuttings only, I collected the number of people who had fractured jaws and concussion (this was from the senior lists of League football teams) and although it is by no means an accurate list, it is an average of thirty-five players per club. In 1953, thirty-one players (or one in fifteen) had fractured malars. As Mr. Langford pointed out, even in the very minor injury (if it is a minor injury) brain damage can occur. A fractured malar does not occur with a glancing blow—it usually takes a fair blow, such as one with an elbow. There were sixty concussions in 1951 and forty-nine the following year; I do not know whether they were concussions by our criterion, but they were reported in the press, and that is one in eight players. As I stated before, these figures are not very reliable, because there is no authority to tell me how many people play organized sport. I tried to work it out, and it came to 300,000

(plus or minus a couple of thousand, I suppose). We do not know what happens in sport, and consequently we sometimes get a little wrong in our perspective. For instance, in Le Mans, the famous place for motor-car racing in France, one participant killed himself and eighty bystanders. I am not a protagonist for boxing, have no illusions about that, but it is not such a bad thing as when someone can go out in a car and kill eighty people; they could not prosecute the driver, because he was dead. There have been five motor-car racing drivers killed in this country in the last seven years, and as this information was obtained only from press cuttings, I do not know if that means anything much at all.

When I rang the Victorian Cricket Association, I was told that there have been four cricket deaths over the last twelve years in Victoria, two of which were attributable to blows by the ball, and two to being struck by lightning on the field!

Just going away from this for the time being, what I would like to see before we condemn or extol any sport, or before legal action is taken or not, is some organization or bureau formed so that we can obtain some facts and statistics in order to make true statements about sporting injuries and deaths. It would mean that in ten or fifteen years' time we may be able to ascertain what type of injuries are common to a particular sport, the conditions under which they occur, and from there we could strive for better grounds, better equipment and training. This would in turn help to decrease the number of fatalities, the serious injuries, time lost from work and so on. You could, perhaps, even get a standardized type of treatment. The worst thing that such a Bureau could do, of course, would be to say, "Down with Boxing", or "Down with such and such a sport". Its function should be to give unbiased facts on each particular sport. With boxing, as in any other sport, there is a lot of room for improvement. My experience with boxing is limited when one reads the series on boxing by McCown and Critchley, but I would say we do not have first-class gymnasiums in this country—by the same token, I do not think they have them anywhere else in the world either. The standard of amateur boxing in this country is higher than it used to be; conditions are far better than they were twenty years ago, and I think the Association would compare most favourably with any other organization of its kind in the world, but it is still not good enough. There is no over-all control of one boy. He can fight in Melbourne this week and go to Swan Hill the next week and the following week he can fight somewhere else. There should be a better system

of control in this regard. We have not outlawed people like Jimmy Sharman yet. In my opinion, this type of boxing could be called no more than "a blood bath". When you go through Critchley's series you will find his comment on the fellow that takes on all comers; I think anyone who wants to be put off boxing should go and see Jimmy Sharman's troupe.

The answer to two people in the ring is the knockout blow—who knocks the other out? The fact that two people get in a ring and fight one another has focused much attention on the sport. I think it is a good thing attention is focused on it, but if we are going to keep boxing as a sport, the rules have to be changed and made safer. However, I think this applies to every other virile sporting event.

PROFESSOR BRETT: I am not concerned to put forward an answer for or against boxing as an essential sport, although the answer to that must depend on the medical evidence and ethical considerations.

I would, however, like to express my doubts about the proposition put forward by Mr. Connor that it could be regarded as a crime. I think it is significant that the last major case which has been quoted to us was in the early 1880s, and it was a culmination of a series of cases which, when reviewed, were all dealing with fights—generally classified as prize-fights. One of the difficulties about prize-fighting is there is very little at all in the report as to the exact conditions under which fights took place, but it is clear from the report that fights were conducted in circumstances which were somewhat clandestine at any rate, and that the authorities did take steps to suppress it as soon as they were able. It is fairly significant, too, that although fights have been conducted both openly and not so openly, under the Queensberry and similar rules in all countries in the world, there has never been an attempt to state that an injury constitutes a crime. In the case *R.* v. *Coney*, the expressions the two judges used went far beyond that. They indicated it is a crime whether it is professional or whether it is amateur, and the expression is wide enough to encompass wrestling and several other sports. In my view, the judges, in the expressions they used, were speaking loosely because they had in their minds the circumstances of the case they were dealing with, and the propositions they put forward proved to be too much.

I think it is incredible that this activity, which is part of the Olympic sports, should have been continued after the *Coney* case, if it were a criminal activity. The key to Coney's case is put for-

ward by *Stephen J.*, who was, perhaps, the greatest criminal lawyer of his day. He did not condemn the match on the grounds the two participants were intending to assault each other; he condemned it on the grounds of the type of crowd it drew, and the type of public disorder it created. That gives us some general idea of how some professional boxing matches could be conducted in such a way they could constitute a criminal assault upon each of the parties, but I doubt whether in cases where deaths have occurred in recent times, the current rulings on manslaughter would be sufficient to support a charge. I think it is accepted you cannot be guilty of manslaughter on the basis of an unlawful act, unless that act was likely to cause death or serious injury.

Those are my reasons for saying I am unable to accept Mr. Connor's opinion that boxing could be regarded as a crime, but whether in some respects it should be, is a different kind of proposition.

MR. STEPHEN: I was rather intrigued by Mr. Connor's remarks on the 1930 case (Donovan's case) and I wonder whether he can tell us whether the appellant was successful in this case because the two exceptions from criminality applied, that is, when manly exercises are engaged in, or when sporting blows are delivered.

THE CHAIRMAN: I think if Mr. Connor could answer the question now, it might lead to some discussion.

MR. CONNOR: The reason why the appellant was successful, as I understood the case, was that the Chairman of the Sessions had directed the Jury that the only question was, was there consent or no consent, and the Court of Criminal Appeal said this was taking a short cut. They felt the appellant probably would have been convicted if the Jury had been properly charged, but they took the view that the proper charge was that there should have first been a consideration by the Jury as to whether actual bodily harm had been inflicted. They took the view it had been, the consent was irrelevant, but because that direction had not been given the Jury had never really considered whether actual bodily harm had been inflicted or not, and although they thought it was, probably the Jury would have concluded, having regard to the medical evidence about the marks on the girl's body, that there had been actual bodily harm. The fact that the question was not put to the Jury was the basis for upholding the appeal.

I think it is quite apparent from the judgment that the Court of Criminal Appeal felt that had the Jury been properly charged

there would have been a conviction, but they nevertheless felt because they had not been, and it was open to the jury to say that there was not bodily harm in the accepted legal sense, that a conviction should be quashed. They did not, as I understand it, suggest that what had happened had come within any of the accepted exceptions.

MR. S. E. K. HULME: Mr. Chairman, I was wondering whether Mr. Connor would tell us—whether there is any difference between the case where the professional fighter is attempting to beat the other fellow, knock him down, for what might be called the purpose of boxing, and the case where, because of a personal animosity, or one thing or another, he is simply seeking to knock him down.

There was the fatality two or three years ago in the world championship fight where a man called either Porritt or Parrott, was killed, but where it was quite clear, not only from the background circumstances but also from the statements of the victor, that his one idea when he got into the ring was to beat the living hell out of this man. It was not so much for the purpose of winning, but because there was a background of animosity and he wanted to beat him. There was the fight between Louis and Max Schmelling, where Louis knocked Schmelling out within 1½ minutes at the beginning of the round, more, perhaps, for political reasons than personal, in my submission, on grounds not so much connected with the winning of a fight but for the making of a point against this man.

I would be interested to hear whether this kind of attitude makes any difference to the liability of the person who turns out to be not only the victor in the fight but also the killer of his opponent.

MR. CONNOR: Mr. Chairman, I can find no reference to that in any of the cases. If I may, because it may be convenient at this stage, refer to a letter which I have received from Mr. Ray Dunn. He was to have been here tonight, but looking around I do not see him and he is not all that hard to pick out. Mr. Ray Dunn, as most of you know, is not only a lecturer in criminal law and procedure in the University of Melbourne, but has an enormous practical conection with criminal law. May I just read to you what he wrote to me, because it is very much in support of what Professor Brett has said. I will omit the formal parts. I sent him the

cases to which I referred you, and he said: "My very quick thoughts on the matter are as follows:

"1. The older cases were decided in an era of prize fighting which included the bare knuckle days and the early boxing-glove days where the gloves did not take a great deal away from the effect of the blows.

"2. The direction to the jury in *R.* v. *Orton* indicates that the attention of the Court was directed to the type of fight which was carried on in those days, viz. the fight to a finish, which was far more likely to cause bodily injury than the present-day boxing matches limited to a fixed number of rounds.

"3. The trend in the cases appears to be that the type of fight in which there was an inherent likelihood of bodily harm or death arising to one of the contestants was the evil which the law sought to remedy.

"4. In view of the great number of boxing matches in England and Australia, the surprising lack of legal authority on the matter indicates that the literal interpretation of the common law in the nineteenth century, no longer applies. In England and Australia there have been numerous inquests into the deaths of persons who have died as a result of injuries received in boxing matches but there have been few, if any, findings of manslaughter.

"5. The issue appears always to be one of fact for the jury and it would appear that the changed attitude towards prize fights may well be due to:

(a) A fixed number of rounds of short duration;

(b) the use of more scientifically manufactured boxing-gloves which are designed to limit the danger to the fighters.

(c) The presence of doctors and inspectors of police at the ring-side to prevent the likelihood of a fight developing into a dangerous sport, particularly where the referee, the doctor or the inspector can stop the fight at any time if one of the participants appears to be likely to suffer injury.

(d) The formulation of a Code of Rules, many of which are designed to prevent injury to the participants.

"6. There may still be boxing matches where the circumstances show an obvious likelihood of injury (e.g. badly matched opponents, a fight to a finish or a bare knuckle

fight, etc.), and in these cases the facts could lead to a finding of assault, manslaughter, etc.

"7. An interesting point arises as to whether any deliberate punch outside the rules (e.g. a kidney punch), would make the fight illegal."

It seems to be that "the fixed number of rounds" is a matter to be taken into consideration, but something which is not decisive of the question. The question of the referee interfering is also of importance, but as has been drawn to my attention by Mr. Leo Lazarus of Counsel, who is with us tonight, he actually was present at the Stadium on an occasion when a person, a boxer, was killed as a result of the delivery of blows. He pointed out to me a matter which had not occurred to me before, but the real danger to boxers is to those in title bouts, particularly those who are ahead on points and who start to receive a battering. In other words, the referee is reluctant in those circumstances where a fighter is ahead on points, and in effect he only has to stand up to win, to stop a fight.

Dr. Edith Summerskill, without specifying the occasion, speaks in her book of the sight that was apparently depicted on American television of a doctor coming in the view of thousands of people and peering into a boy's eyes, as she says, and deciding that it was all right for him to go on, and he was killed in the next round. So that with all the safeguards it does seem difficult, for a referee always to be right, and also very difficult, as Dr. Edith Summerskill points out, for a referee to intervene because of popular reaction as soon, perhaps, as he ought to do.

I asked Mr. John Dillon, the permanent departmental head of the Chief Secretary's office, who is also a member of this society, what the situation was about the police at these fights, and what instructions they had. He said that the police were there primarily because the Stadium authorities asked them to come and paid for their services for the evening. There was usually an inspector of police, and on some occasions in the past he had interfered, but generally speaking, the inspector of police did not interfere because in his experience the referee interfered before it was necessary for him to do so.

Despite the force of what Professor Brett and Mr. Dunn have said, I remain somewhat recalcitrant in that I feel that, if the principles in the law as laid down in the nineteenth century were applied, it would be very difficult for a magistrate not to convict a boxer on the charge of assault where the knockout rule pre-

vailed. I am not saying that this is a good or a bad thing, but it seems to me that if it is a bad thing, then the law ought to be changed. My own feeling is that some kind of convention has settled on the community that people in these circumstances are not prosecuted. I can well imagine the Government of the day, of whatever political complexion, taking the view that they certainly should not be prosecuted without notice. For the thing to have gone on for years and years with the public, the police, and medical officers present at the ring-side, and suddenly to spring out of the air a prosecution might not be a very satisfactory way of administering the law. But if the Government decides after a proper inquiry—and you will appreciate that all the matters that Dr. Refshauge has put to you would call for a very intensive sort of inquiry—my proposition is that if the Government decided to do anything about it that the present law would be adequate for a start to deal with the matter and with professional boxing as at present conducted with the knock-out rule, I find it very difficult to see how it is not a legal assault.

MR. R. K. TODD: Mr. Chairman, if I may take up your implied invitation to go a little beyond boxing, the proposition I did wish to put to the meeting was in relation to Australian Rules football.

I say nothing about the criminal law, if I may make that plain, but as far as the Civil law is concerned the proposition is that an action for damages for assault does not lie at the suit of one player in the Victorian Football League against another. Now, the basic proposition is that no wrong is done to one who consents. With any sports involving physical contact, the participant consents to all the ordinary risks which are incidental to that game or sport. That may be all very well—it is obvious in boxing the participant is going to be hit, but in a game like football, it is also obvious he is going to be hit, knocked or touched by someone in the course of going for someone else or going for the ball. By the very behaviour of the players (not by Dr. Refshauge's startling statistics of injuries) they accept the proposition they may be deliberately struck. I deduced this pattern of their behaviour through that most remarkable of all bodies, the V.F.L. Tribunal. They are, in fact, as willing to make a statement to the V.F.L. as is a member of the Mafia not in custody to make one to the Senate Committee about criminal doings of gangland friends. When they are prepared to keep this silence, I would put the proposition to members, whatever the position of the criminal law, the position in civil law should be that a person who engages in play which

involves these sorts of deliberate risks, could not sue for damage to his person in civil law.

MR S. ABEL: I believe it was Bernard Shaw who said, "a professional boxing champion is a perfect specimen of the human race, who happens to be born in poverty." An interesting phenomenon has been developing in recent years, both on a local and a world basis. Professional boxers are reputed to be not the Irish migrants from the United States, or the Lithuanians and Italians we used to know, but most of the top boxers in the world are non-whites who tend to come from countries where economic conditions are such that there is great difficulty in rising from the slums. I do not know much about Australian boxing, but I do not think one can say these days that the best boxers are the Italians or the Lithuanians. Now it is the trend to import temporary visitors from Asia, or to engage the part-aboriginal.

The point I want to make is that because we are living in a society of plenty, professional boxing may die a natural death, before its participants die an unnatural death.

As far as the rules are concerned, (and I speak with a little experience) I think there should be a much stronger control not only of the boxers, but of the managers. It has always seemed odd to me that they can prevent cruelty to animals by punishing the owner of an animal, through various Societies, but so far as I know, no manager has ever been punished for being cruel to the people under his control. I know we have nothing of that sort happening in Australia, but it is a legal problem which should be scrutinized more carefully. A good many of the professional boxers are of extremely limited intelligence, and assuming the manager is his agent, if the boxer is mentally defective, in law he cannot appoint an agent. I will be interested to see some kind of inquiry on these people, who are practically morons, delegated to other people who are economic gluttons. It is an unholy combination, because the Manager says they have to fight here one day, and here another, until the time comes when they are discarded with virtually no means at all. I feel, being a purely legal problem, this should be mentioned.

THE CHAIRMAN: Gentlemen, just before I ask Mr. Connor to deal with any matters that he thinks have not been covered in the comments that have been made, may I just elaborate a little on one point, and that is a social problem really and it is a very old one, of those who for no doubt exclusively economic reasons

expose themselves to risks for public entertainment in one way or another, from the gladiator to the circus performer, the professional boxer or the professional footballer. It ranges all the way from the most degrading kind of physical contest to things which are on the fringes of the arts. This is a very difficult social problem and it may be that it is outside the scope of this paper, or perhaps of this Society, but I think it has been made clear really that it lies at the root of this topic. I do not know whether Mr. Connor would like to speak on that particular aspect as well as some of the other things that have been mentioned by the speakers.

MR. CONNOR: Mr. Chairman and gentlemen, if I may just say this, that in the paper that Dr. Refshauge published, and which no doubt we did not get time to talk about tonight, he quoted Mr. Richard Lean, the General Manager of Stadiums Limited, as saying that professional boxing has far more aspirants in time of national economic stress. During the depression the professional ranks were so enlarged that they were able to run three tournaments a week, and Mr. Lean asserts that, "The hungry fighter was the best fighter". Conversely, since the war, while the national economy has been buoyant, the professional ranks have dwindled and the standard of competition has been lowered.

So far as the groggy state is concerned, which Mr. Langford spoke about, I just refer you to something which Gene Tunney said when he was training for the second Dempsey fight. He said, "I went into a clinch with my head down, something I never do. I plunged forward and my partner's head came up and butted me over the left eye, cutting and dazing me badly. Then he stepped back and swung his right against my jaw with every bit of his power. It landed flush and stiffened me where I stood. That is the last thing I remember for two days. They tell me I finished out the round, knocking the man out. Took on another sparring partner for three rounds". None of which he remembered. Tunney further stated that it was 48 hours before he knew who he was, and not until the seventh round of the Dempsey fight was he entirely normal. It may be that boxing has a counter-claim. In concluding this description, Tunney said, "From that incident was born my desire to quit the ring forever at the first opportunity that presented itself, but most of all I wanted to leave the game as it threatened my sanity, before I met with an accident in a real fight with six-ounce gloves that would permanently hurt my brain."

I only mention that the Belgian Royal Academy of Medicine has recommended to the Belgian Government a few years ago that boxing should either be stopped or stringently controlled. Boxing is now forbidden in Iceland.

In conclusion, I want to read you a very short description of a prize fight. In a very indirect way it may have some bearing on your last question, Mr. Chairman. I propose, in order to make it interesting for you, to submit or to interpose some incorrect names, to see if you can identify it. We will call the promoter Jack O'Sullivan. This account says that Jack O'Sullivan presently offered prizes for skill in the painful art of boxing, and as he spoke there stood up a champion both grave and of great stature. A skilful boxer, whom, perhaps, we can call Cassius. If you think there is anything new under the sun, this is what Cassius said, "I am the best boxer of all here present. None can beat me. I tell you plainly that it shall come true if any man box with me I will bruise his body and break his bones. Therefore let his friends stay here in a body to be at hand to take him away when I have done with him". Then they all held their peace and no man rose, save —perhaps we could call him Felix, and we could call Felix's second "Joe", I suppose. Joe was Felix's second, and it was said in this account that he put a waist band round him and then he gave him some well-cut thongs of ox hide. The two men, being ready, went into the middle of the ring and immediately fell to heavily punching one another. Presently Cassius did come and give Felix a blow to the jaw. Felix could not keep his legs, they gave away under him for a moment and he fell back, but noble Joe raised him up. His friends came round and led him from the ring unsteady in his gait, but his head hanging on one side and spitting great clots of gore. I apologise to the classical scholars for reading that in English. It is from the 23rd book of the Iliad and it describes a boxing contest that took place at the funeral games after the death of Patroclus. After 3,000 years maybe we have not changed all that much.