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The Scalpel with the Baton —  
Myths and Mysteries

*by*

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Delivered at a meeting of the Medico-Legal Society held on  
4th March, 1988 at the Royal Australian College of Surgeons.  
The Chairman of the meeting was Dr. R. L. C. Sutcliffe.

Mr. President, Ladies and Gentlemen,  
The invitation to address this Society was accompanied by a request for a title to embrace some recollections from 40 years medical practice in association with Police. My choice embraces one of the myths surrounding the appointment of Police Surgeon — its duties and responsibilities — neither wielding the knife to excise pieces of police personal pathology, nor the truncheon to quell riots and disturbances. A Police Surgeon in this state could more precisely be called a clinical forensic physician. This is in line with practice for over 100 years especially in the United Kingdom and later in New Zealand. An alternative title for the paper entered my head — very rapidly to be discarded because of the risk of misinterpretation. The title might have been ‘Of sex and sin — not mine but others.’ Whilst this might perhaps have appealed by virtue of the hint of its salacious content, I felt that discretion was the better part . . .

The content of the paper would have been identical. Only the label would have been different.

That is not to say that I am about to embark on a confession nor an exposé of the activities in the many massage parlours of Melbourne — ‘Sin City of the South’ as screamed a headline in a medical comic after I had presented a paper some years ago in the Northern hemisphere on Police Surgeon activities in Melbourne. Nor am I going to describe the activities of the strumpets on the sidewalks of St. Kilda, so well advertised in some of our local periodicals. I do not wish to be the cause of a Victorian Fitzgerald inquiry. I could easily have added to the title I chose — ‘Madness, Mischief and Malice’. I recall my predecessor, I believe, addressed this Society on ‘Murder and Mayhem’ and these too could easily have been added to the mixture on the label.

My Police record stretches back a long way — in fact having just attained pensionable age — for a public servant medical officer and not a judge I hasten to add — I can admit that my association with police spans more than 6 decades. My father introduced me to many Police Officers for he toiled for 30 years or more at New Scotland Yard as an architect. It was because of this connection that my training at St. Thomas’s Hospital — ‘our’ hospital as the Metropolitan Police called it — produced many other confrontations with officers of the law. As medical students we were required to pass a tube for a stomach wash-out regularly 3–4 times

a day on policemen admitted for the surgical removal of their stomach for ulcers. This provides a very good way to get to know a man. As front-row forward in the hospital Rugby XV the confrontation was of a different kind when playing the Metropolitan Police. On those occasions I found we did not always have the advantages that a white coat gave in a hospital ward.

Mr. President, I appreciate and thank you for this privilege and opportunity to bare my soul, to reminisce and to comment on some of the experiences and thoughts of a professional lifetime spent initially in part and for the past 10 years wholly working in association with police as Police Surgeon.

My choice of material has some limitations, for I must take care in this company. Although retired, my past is still catching up with me and I may still have to appear before or be cross examined, or both by distinguished members of this society. I considered the use of slides. My wife advised against it. She has seen some of them and has no stomach for blood and gore and in any case I wondered if their probative value to my tale and arguments might be outweighed by their prejudicial effect on your digestions. This probative/prejudicial argument is one of the myths and mysteries which I see as a simple doctor in my interpretation of the law.

It is not possible to cover the whole range of activities nor the vast breadth of enquiries presented by police and others over the past 40 years but I could include a number of amusing and bizarre events, at times one and the same thing, as well as tragedies and sadnesses, for example, the man who attempted to open a bank account with a jar of coffee, and the woman with 13 cats living in squalor in Brunswick. The Social Services were providing meals on wheels which the cats enjoyed while she was living on cat food. Another example is that of the lady who had been previously convicted of murder of her two children who, with her husband, maintained vigorously that the act of killing was not child abuse as it had been carried out as an act of love.

In the past 10 years my practice has extended from west of Werribee to east of Warburton, from north of Seymour to south of Rosebud. The practical responsibilities have covered the state of Victoria with occasional excursions to courts interstate. The work load has included attention to the disturbed — the differentiation between the mad, bad, sad and the odd and the intellectually disabled and the intoxicated. These have been found in a range

of situations and surroundings extending from Parliament House to Pentridge, the Hilton Hotel to hospital beds, homes in Toorak to hovels in the suburbs, from courts in the city and the country to casualty departments as well as cars, caravans and conveniences in all sorts of places. They have also included members of the medical and legal professions in almost equal numbers.

The work has required care for the victims of crime, examination of convicted offenders, accused suspects or witnesses, determination of an ability to drive and also included attention to judges and other court officials. I cannot recall having to certify any judges but was asked on one occasion to see the foreman of a jury after their retirement to consider a verdict, for it was reported that he appeared to have lost his power of rational thought. In the absence of a father who guaranteed to ensure his admission to hospital for psychiatric treatment, I would have had no alternative but to recommend him.

To paint such a picture even a Turner, a Constable or a Buckmaster would have required an enormous canvas. The brush work would be detailed. On the other hand Rolf Harris could be relied upon to provide an impression in a few moments. I shall attempt something in between.

Legal medicine is not new. The first 'Police Surgeon' or forensic pathologist was Antistus; who examined the body of the murdered Caesar and pronounced that only one of the twenty three wounds was fatal.

There is no record of medical evidence being given in the courts in the time of Hippocrates in the 5th century B.C. (460 B.C.) but the Hippocratic oath defines ethical principles concerning secrecy and confidentiality, abortion and the administration of harmful substances.

In ancient India the right to practise medicine was restricted to certain castes, and their writings feature such topics as cause of death, violence, sexual offences and toxicology. The practice of medicine was an art long before it became a science; legal medicine began to contribute to the administration of justice only after the science of medicine began to develop.

'There is a kind of medical knowledge which is not so much concerned with the cure of disease as the detection of error and the conviction of guilt.'

So legal medicine was described by Samuel Farr in 1788.

In modern times the police who are charged by a community with the responsibility of maintaining and upholding law and order find crime still has the same components. A difference is an increasing complexity of technology, mobility, range of weapons and variety of instruments (I nearly said aids) which are available to the criminal. It is necessary therefore for the investigators and forensic experts to have correspondingly modern techniques and equipment with which to counter the activities of those bent on destruction or other crime. The development of the new State Forensic Laboratory and the Victorian Institute of Forensic Pathology in this State will have a very significant impact in this direction, for these Institutions will bring to Victoria the latest and most advanced technology and knowledge in forensic science and pathology.

Forensic science has seen an explosion of new knowledge, technology and advances. Science in the main deals with finite matter; medicine and its practitioners primarily with people. Forensic science is concerned with investigation into the cause of events, explanation of circumstances, constitution and identification of material presented to the scientist. The forensic physician — primarily and always a doctor — is also concerned with such events and material, but in addition has the responsibility of the care of people. He or she remains a doctor, and has that responsibility and privilege in any contact which as it opens, becomes a doctor/patient relationship, irrespective of whether the patient is victim, bystander, witness, offender or one of the other caring professions. That relationship inevitably attracts all its legal, professional and social implications.

One major difference for the doctor in forensic medicine is that his patient is less likely to have selected him as the doctor of his or her own choice.

Frazer and Taylor described 6 categories of victims in their survey of those affected by the Air New Zealand plane crash into Mount Erebus in Antarctica in 1979. Besides the primary victims — in that case there were no survivors in this group — the other groups included the relatives and friends of those most affected, the carers, the police investigators, ambulance and mortuary staff; the sorrowing community at large; the voyeuristic ghouls and souvenir hunters; and last but not least those that by chance

were not primary victims but felt some guilt and responsibility — the families who had contributed together to give elderly parents the flight of a lifetime as a golden wedding present or the executive who had at the last moment handed over his tickets to his secretary and her boy friend.

In just such a categorization the victims of crime can be seen to include as well as the murder or rape victim, the families, the caring professions and so on. The recent shootings in Clifton Hill and Queen Street provide obvious parallels.

The clinical forensic physician must remain aware of all these groups and in addition to providing care for the rape victim and the battered child he or she must be aware of the needs of those also affected but appearing to be on the periphery or even out of sight. In a recent letter one of my colleagues in England stimulated by his reading of Andrew Rule's recently published book 'Cuckoo' giving the story of Mr. Stinky, the Heywood Madill sex killer writes:

'It was interesting to notice how the establishment (viz us) almost ignored the pleas of the victims of domestic violence and child sexual abuse so few years ago.'

By drawing attention to these other groups I do not wish to minimise the needs of the primary victims of crime, particularly the assault victim, the sex assault victim and the maltreated children but to point out the wider ramifications of much criminal activity which so often is concealed and therefore forgotten and neglected by society at large. It is for these and other reasons that the need for Organisations such as V.O.C.A.L. (The Victims of Crime Assistance League) and the Victorian Court Information and Welfare Network has been recognised.

Levine and Koenig (Why Men Rape) quote the father of Anne, a rape victim:

'It makes me a little bit bitter at times, to think that so much effort is spent on trying to repair the life of an assailant, who's done an act which there is no reason for — and yet nothing is done to try and repair the lives of all those who are affected by his deeds' . . .

Anne's death has changed a lot of lives.

It's upset her sister's life completely. It's changed her character;

she is now afraid to do a lot of things that normal girls can do and don't think about. And Anne's best friend, who wasn't the one she was with that night (because Anne had lots of friends) has been heavily affected. She's so broken up because she was supposed to have been with Anne that night, but didn't go because she thought she'd study.

Her family have had to move out of town, she just can't even live in the same area.

My wife can't sleep . . .

Retribution, if it comes, does not necessarily balance the scales for the victim. Sitting outside a court only last week I was conscious of the number of other witnesses, relatives or friends of one of the participants in the hearing — an intrafamily child abuse murder situation — I didn't know what was going on and I'm sure they didn't. Mention was made of 'legal argument', 'the admissibility of evidence', but who bothered to tell them? This care for the victims I shall return to later.

But to go back to the beginning . . .

After my hospital appointments my medical practice commenced in Barnstaple in North Devon, a pleasant country market town in a beautiful part of England. The large family practice catered for an urban and rural community. Crimes occurred although I don't recall in 17 years a murder. I remember seeing the charred body of a farmer's wife who set light to herself in a field. 'Suicide by burning' said all the forensic text books 'occurred occasionally in the east'. The greater proportion of police medical contact I had was in the early hours of the morning at the Police Station undertaking a clinical examination of someone whom the constabulary believed to be 'under the influence to such an extent' . . . It was that phrase that caused many worries . . . but not on the occasion I recall when a Baronet . . . Those were the days before the courts accepted blood or urine tests for alcohol. After the examination some weeks or months later one was required to appear in court and describe in full the clinical examination conducted at 2 a.m. in the Police Station.

Three incidents clearly come to mind. After a careful and detailed recital of my examination findings in such a case I recall a cross examination which went something like this.

Q. Doctor, you have described your findings on examination of my client?

A. Yes.

Q. Was there anything else you noticed which you have not told the court?

A. No.

Q. Doctor, what was the colour of his eyes?

Of course I had not the faintest idea and had to admit this to the court.

As has been referred to in other texts it is clear that the object of this exercise was to demonstrate my fallibility and not any relevance to the case at issue. I learned that in a court of law the important issue is proof and not necessarily truth, for in fact the truth may be an embarrassment.

On a second occasion I do recall being summoned from the local rugby club dinner to the Police Station to examine a drinking driver. I had been enjoying the company of a good friend, a local solicitor. In court some weeks' later I discovered that my friend was defending the accused driver. Being good friends we agreed that he would not ask me whence I had been summoned to the Police Station if I did not make any mention of the smell of his breath! I suppose this could be said to be my earliest introduction to a sort of plea bargaining.

The third incident I recall was when I was asked to examine a local schoolmaster, a solid figure in the local society. I believed, and so certified, and I still believe that attending a Lodge Dinner he had imbibed too freely and was 'under the influence to such an extent . . .'

This case was a good example of a potential difficulty of conflict of interest a doctor could confront in a small community. In some respects life is easier these days with breathalisers, blood alcohols and so on but there are still, as most here will know, many problems.

To continue . . .

Having made the decision to uproot ourselves and migrate 12,000 miles I was advised to write to the only person who could give me any information on Police Medical work in Melbourne — the then Victoria Police Surgeon. I did. His reply I still have. He said, amongst other things,

'Police Surgeon work is wide open anywhere in Australia because we are so many years behind the times; because the Chief Commissioners of Police don't realise their value, because politicians don't want to budget money for them and police work is not respectable anyway. The status of police and anything connected with a police force is not high in Australia possibly due to our heritage'.

After reference to the incredibly small retainer even in those days that he was receiving — I can't say enjoying — he stated he also retained the right of private practice.

'The latter is purely theoretial as in '64 I saw:

234 carnal knowledges

42 incests

36 indecent assaults

40 rapes

21 buggeries

25 assaults

73 drunk drivers and

23 blood tests

35 ill prisoners

489 mental cases involving 384 certifications, sick parades, dead bodies, abortions, 200 court appearances, over 100 driver licence files, etc., etc., and this is only a fraction of the medico-legal work to be done'.

To prove the point he made, the figures for the last financial year show that the police surgeons now in this state saw 570 persons in connection with sexual offence examinations, 1533 disturbed persons, 804 persons in connection with drug offences or drug offenders and withdrawal symptoms, 1575 sick prisoners. There is one other very significant feature of those lists. In Dr. Birrell's list of 1964 the word 'drugs' does not appear.

The breadth of responsibility relating to the current situation springs from the advice given to me by Mr. S.I. Miller, until recently Chief Commissioner, on my appointment when I asked for a job specification; neither he nor I could find one and so he told me to go and write my own.

Amongst those items are many stories, stories of horror, violence and brutality, stories of assault, distress, families unable to

obtain appropriate and continuing treatment for schizophrenics, stories of fear, witnesses of violent crimes caught up in the criminal jungle in fear for their lives pending trial of one or more accused, stories of tragic loss of life, children and young people on the roads, Police Woman Angela Taylor the victim of the Russell Street bombing, the rape victims, the child victims of ill treatment and abuse.

Stories too of bravery, courage, heroism, devotion to duty, persistence against heavy odds, of intensive investigations and indeed of many other myths and mysteries among all the mayhem and the madness.

*The myths associated with rape and sexual assaults.*

They all like it . . .

They ask for it . . .

Woman can run faster with skirt up than man with pants down

. . .

No one claims rape falsely.

*The myths of child abuse.*

Children are very sexy and often provoke adults by the way they act, asking for the abuse . . .

Incest is a way of life in some families. It's an accepted part of some sub-cultures . . .

Incest is harmless . . .

Mother always knows and is colluding . . .

Incest reflects a caring relationship . . .

and two more . . .

Children and adolescents often fantasise and make up stories so they cannot be trusted . . .

All parents are at all times ever-loving.

*And the myths of domestic violence.*

Women deserve to be beaten . . .

Domestic violence is restricted to 'the lower classes' . . .

Alcohol causes domestic violence.

*And the myths of alcohol.*

Alcohol doesn't affect me . . .

I drive better when I'm drunk . . .

and at the other extreme . . .

All crimes are caused by alcohol.

These are all so patently incorrect and mythical that I believe they have been in the main discredited. On the other hand some court procedures and protective mechanisms for an accused which were based upon and initiated by many of these myths still persist. I have no solution to the problems of providing better protection for the complainant or victim of a rape in a court scenario, but I am only too much aware of the stress which is caused to a rape victim by the fourth stage of rape, the court procedures.

This minefield of law affecting social behaviour involving medicine has no easy, simple pathway by which society can reach its ideal . . .

The protection and care of the victims has improved. Although the incidence of the primary rape by the assailant may not have been reduced, the care and attention in the management of the police and medical stages has improved, reducing hopefully the traumas of the secondary and tertiary rapes but in the fourth stage of rape for the hapless victim, the treatment by the law and the courts, there is still much that can be improved to make her path easier. Readiness to report is influenced by fear, fear of medical, police and court processes as much as fear of other peoples attitudes. But one of the major, if not the greatest problems of all is the knowledge that a proportion — how large this is and in which complaint it occurs is the difficulty, — a proportion of alleged victims are in fact for one reason or another making a false report, possibly and not infrequently associated with a number of self inflicted injuries.

'I am nine years old . . . John is my mum's ex-boy friend . . . Yesterday I told my Grandma that John had touched me down below . . . with his fingers and his penis . . . What I told my Grandma was lies . . . I didn't want to live with John any more . . . I told the doctor and the Police lady lies . . . Then I told the truth . . .'

If adult so called rape victims can be responsible for their own injuries and making complaints when no offence has occurred and there is no offender to be apprehended, in the field of child abuse or maltreatment it is more often that the victim goes unrecognised by the professionals. Years of incestuous behaviour is concealed within the family unit until a perceptive health nurse, school teacher, doctor, psychiatrist or even grandmother unearths a

secret which has remained for so long hidden because of guilt, of fear, of threat, of betrayal. Medical examination may confirm findings consistent with sexual activity or physical injury but psychological traumas, intense and deep will not necessarily be relieved by the conviction and incarceration of an offending father.

The recent problems which have arisen in Cleveland in the United Kingdom relating to the examination of a number of children by one or two paediatricians which resulted in the involuntary detention of those children have received worldwide publicity. An enquiry is under way into this series of events. My information from Police Surgeon colleagues in the United Kingdom is that reliance had been placed on certain clinical findings which are not universally considered to be diagnostic nor pathognomonic of anal interference. The editor of the journal of the Association of Police Surgeons of Great Britain, perhaps understandably but equally justifiably writes:

‘... One thing that went badly wrong was the failure to ensure that Police Surgeons were involved to an adequate extent. Essentially all allegations of sexual abuse implicate one or more members of the family, or an individual close to the family, in the investigation of an offence. There are exceptions but crime investigation is within the province of the police. Intervention and investigation by the police and any decision to charge a named individual are not seen in some quarters as helpful, and there may be powerful arguments to advance for such a point of view in these cases, but the final arraignment is a matter for the prosecution authorities, and their discretion is trammelled by wider political and social obligations.

Police Surgeons have been looking at the female perineum, of all ages, for years with a view to corroborating a history of interference, and should know all too well the difficulties. That accumulated experience ought to have been tapped and herein lies the basis of the whole furore.’

The recently published book ‘Cuckoo’ to which I have already referred is the story of Raymond Edmunds — the Shepparton teenagers killer. This book has been used and I believe rightly used to illustrate some of the problems of modern policing in this state. It is neither the place nor have I the time to argue the merits or the

rights of police to finger print suspects nor the length of time a suspect may be questioned. But I would add to that mystery the comment that it is not known how many times or for what minor offences Edmunds may have come to police notice in the past 20 years without any record being able to link him with those murders in 1966, nor is it known how many sexual offences or rapes he committed during that time without detection.

It is in his foreword Mr. Miller writes 'the book raises the question of whether Edmunds could have or should have been caught earlier. It introduces the tantalising possibility that if Edmunds had been finger printed in the late 1950's after his only previous arrest he would have gone to jail in 1966 rather than 19 years and dozens of sex attacks later'.

In all the recent hype and allegedly non political controversy over guns and gun licensing it remains a mystery to me why the shooting of eight individuals in the space of a few minutes produces such a disproportionate response to the death of eight persons in a weekend slaughter on the roads — many as a result of motor murder; or the numbers of children being abused. In Queen Street and Hoddle Street there was only one individual who went berserk. On the roads there are hundreds and the deaths of their victims pass almost unread and unnoticed except for a few lines on Monday morning in the newspapers.

The myths presented to magistrates and juries on the relationship between the effects of alcohol and the ability of a person to have adequate control of a motor vehicle and why one is permitted to give evidence to this fact in one court and not in another on the same day still remains to me a mystery. I have of course been interested to see recent pronouncements from the Government relating to the proposal for an introduction of a universal zero blood alcohol law. I have been challenged in court on many occasions and accused of conducting a campaign on drink driving which in fact I have never denied, but I have consistently stated that in my opinion the only absolutely safe blood alcohol level for all drivers is zero.

Alcohol, drugs, sex offences, maltreated children, the tasks of the job however do have lighter moments. Unfortunately the lighter moments are so frequently tinged with a sadness, for the harmless and at times amusing delusion is associated with a severe

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and frequently intractable psychosis. The company one meets usually as a result of disturbed behaviour which has brought them to the notice of the police. Three Jesus Christs, one Virgin Mary and on one occasion God Himself — the daughter of Dwight Eisenhower and others who have claimed romantic association with the Duke of Edinburgh, Napoleon, pop stars and other figures of past and present. It would be unwise to mention them all just in case . . .

I recall on one occasion driving home after having sent one of these Jesus Christs to Larundel Hospital, wondering if in fact he was correct, and it was I who had made the mistake. In completing the form and asking his name the response to a query for his birthday was quite simple, 'the 25th of December, you fool'.

These delusional symptoms tiresome and distressing to patient and family are frequently the manifestations of a schizophrenic illness. It is easy to smile and sometimes one can laugh with the patient, at other times the sadness of the situation and particularly the inability of families to obtain appropriate and proper care and help for the sick patient can cause considerable distress also to a doctor when required to perform a statutory home certification. The mystery of society's acceptance of the civil libertarian and anti psychiatry lobbies remains with me.

The depressed — the acute despair — the disillusionment — the effects of their work on police and incidentally on ambulance and other personnel.

'What's the use Doc?' when a conscientious police officer informant sees a case dismissed on a matter of law. He has to accept as I have come to accept the mystery of the truths.

Justice is not the same as law,

only the truth is necessary for justice to be done.

Good law is not necessarily justice, nor is it necessarily good humanity.

There are, have been and will be crooked cops. This one must admit — but there are also crooked doctors, lawyers, and miscreants in every profession and trade. What matters is that the vast majority of police like the vast majority of people in all walks of life are honest and attempt to do their job for the benefit of the community as best they can. The perpetuation of the myth that they don't is a constant mystery to me. For forty years I have been comfortable as a doctor working with police, not necessarily for

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police. In Victoria the Force has a sub motto 'WE CARE'. I have been comfortable in that association.

It is good to reflect, to look back on one's successes and one's failures hoping that the former outnumber the latter. I have found it encouraging and warming to have some continuing contact with people whom one has seen in adversity of one sort or another. I believe that in Victoria now there is an opportunity for a new team of professionals in many disciplines to build a relationship and a structure which will ensure the continuance of an objective examination of all forensic material, be it clinical, scientific or pathological and a multi-disciplinary approach to the legal processes.

I was fascinated to read this week in the 'Age' the comment attributed to Professor Sir Douglas Wright . . .

'Our basic philosophy in the medical school was an old one. With one sheep dog, you can drive 100 sheep. With two sheep dogs, you can drive 10,000. The important thing is to work together.'

This philosophy is so applicable to our work — in the forensic and the caring fields.

All of this in conjunction with objectivity of thought which means the continual exercise of suspicion together with an awareness of the possibilities, but at no time should science and technology take over completely from the practice of the art of medicine. That art includes compassion, caring and concern.

Over the years I have found more questions than answers. Perhaps it is always thus.

Mr. President, I conclude with what my family tells me has become my signature tune — 'I MUST GO'. I believe this has been dictated by the requirements of the job over forty years. They tell me this will be inscribed on my tombstone. But before I go I should like to conclude with a little triplet which is certainly no myth although it remains to me a mystery.

NONE COULD TELL ME WHERE MY SOUL MIGHT BE  
I SEARCHED FOR GOD BUT HE ELUDED ME,  
I SOUGHT MY FELLOW MAN AND FOUND ALL THREE.

*PETER BUSH*