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TRANSCRIPT OF PROCEEDINGS

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THE MEDICO-LEGAL SOCIETY OF VICTORIA

THE ROYAL AUTOMOBILE CLUB OF VICTORIA

MELBOURNE

FRIDAY 14 OCTOBER 2011

PRESENTED BY: The Honourable Justice Virginia Bell

1 DR HOWLETT: Members and guests, it gives me great pleasure to  
2 introduce Justice Virginia Bell to this general meeting of  
3 the Medico-Legal Society of Victoria here at the RACV  
4 Club. The society has been very fortunate in the  
5 attention paid to it by past and present members of the  
6 High Court of Australia. In 1933 Sir Owen Dixon addressed  
7 the society on the topic of science and judicial  
8 proceedings. Sir John Latham, Chief Justice of the Court  
9 from 1935 to 1952, was president of the society from 1937  
10 to 1938. Many current members of the society will recall  
11 with pleasure the addresses given by the late Sir Ronald  
12 Wilson, Sir Ninian Stephen and Justice Michael Kirby.

13 Most recently in 2009 the society in this same room  
14 had the privilege of hearing from the present Chief  
15 Justice Robert French. Chief Justice French, reflecting  
16 on Sir Owen Dixon's address, spoke on the topic of science  
17 and judicial proceedings 76 years on. It gives me  
18 particular pleasure to welcome Justice Bell as the first  
19 female member of the High Court to address the society.

20 Justice Bell was appointed to the High Court on 3  
21 February 2009, the 48th person and fourth woman appointed  
22 to the High Court since Federation. Her Honour was a  
23 judge of appeal of the Supreme Court of New South Wales  
24 prior to her appointment to the High Court. Justice Bell  
25 began her legal career as a solicitor at Redfern Legal  
26 Centre in 1978 and practiced as a lawyer for over 20  
27 years, before being appointed a judge of the New South  
28 Wales Supreme Court in 1999.

29 Her Honour's time in practice included service as a  
30 public defender as counsel assisting the Royal Commission  
31 into the New South Wales Police Service and as a part-time

1 Commissioner of the New South Wales Law Reform Commission.  
2 She served as president of the Australasian Institute of  
3 Judicial Administration. Please welcome Justice Bell.

4 JUSTICE BELL: Thank you Mr President. Members of the  
5 committee and members of the society, might I say that it  
6 was a delight to be invited to come to address the Medico-  
7 Legal Society of Victoria in no small part because I love  
8 every opportunity to come to Melbourne. I had an  
9 appreciation that this was the finest and most liveable of  
10 the capital cities, well before you acquired your  
11 international celebrity.

12 The dodger advertising tonight's meeting of the  
13 society said rather delphically that I would be speaking  
14 on a topic of my own choosing. That is partly because I  
15 do not mind being a little enigmatic, but it is also true  
16 to say, as some of you may have guessed, that at the time  
17 the enquiry was made concerning my topic I had not  
18 completely settled on it.

19 I have had in mind that there are a number of well  
20 rehearsed areas of intersection between the professions of  
21 law and medicine. One of them being the defence of  
22 insanity. I understand that that has for long exerted a  
23 peculiar fascination for those whose training is medical,  
24 and who seem to have some difficulty in understanding the  
25 lawyers fidelity to the statement of what is said to be a  
26 medical test, propounded before the condition was  
27 understood and bearing no relief into psychiatric learning  
28 or practice.

29 I should say that at a meeting of the society before  
30 he addressed it in 1932, going back to the April 2 meeting  
31 in 1932, Sir Owen Dixon commented on a paper delivered by

1 Dr Ellery on the topic of the defence of insanity. Ten  
2 months after commenting on that paper Sir Owen Dixon in  
3 what would now be unheard of as a Justice of the High  
4 Court, presided at a trial of a man charged with murder in  
5 the ACT. The man had administered Strychnine into his  
6 child when as we would say the balance of his mind was  
7 disordered. His name was Porter, he raised the defence of  
8 insanity and after having thrashed out a number of issues  
9 respecting that defence at meetings of this society, Sir  
10 Owen gave directions concerning the second limb of the  
11 McNaughton Test, that were later to be published as an  
12 addendum to the proceedings of this society and you can  
13 find them still on the society's webpage.

14 Once one appreciates that the law is not really  
15 coming to terms with psychiatry in the defence on  
16 insanity, but one is looking at questions of criminal  
17 responsibility. Can I commend to you Sir Owen's  
18 explanation to the jury in Porter's case for a very  
19 civilised statement of the values that inhere in our  
20 system of criminal justice.

21 We are inclined in the law to move at a stately pace  
22 so that Sir Owen's directions to the jury in Porter's case  
23 given in February 1933, are still given by judges  
24 directing juries today as the template as it were. So it  
25 seemed to me that it was not necessary for me to deal with  
26 that topic by way of an update for the society. I thought  
27 of addressing the role of the medical practitioner as  
28 expert witness in light of recent developments respecting  
29 the taking of expert evidence. You may be aware that  
30 nowadays a number of courts pressure parties to have their  
31 experts meet and jointly confer and prepare joint reports.

1           There is indeed a practice in some courts of having  
2 experts in the same field or allied fields giving their  
3 evidence concurrently. It is a practice that is known in  
4 the Federal Court as 'hot-tubbing'. I thought that that  
5 might be a little too sensational for meetings of the  
6 society. Just as I was dismissing the notion of the  
7 doctor as expert from consideration, I chanced upon an  
8 article in the British Medical Journal which seemed to me  
9 to offer scope for rather greater interest.

10           It was published in 2000 around the time of the  
11 trial of Dr Harold Shipman for murder. The author was a  
12 former consultant psychiatrist Dr Kinnell. Shortly put it  
13 was Dr Kinnell's thesis that medicine has thrown up more  
14 serial killers than all the other professions put  
15 together. Dentistry, he pointed out, also has its  
16 notorious characters although to my mind intuitively, he  
17 observed that veterinarians are as a profession entirely  
18 unknown to homicide.

19           In any event Dr Kinnell's thesis which by omission  
20 cast the legal profession in a very favourable light  
21 relative to the medical profession I thought might be an  
22 interesting topic for debate. He appears to have been  
23 moved to write his article in response to a suggestion  
24 from the former chairman of the British Medical  
25 Association who had suggested that the case of Dr Shipman  
26 was unique. I have got no doubt that members of this  
27 audience will remember the Shipman case. He was the  
28 general practitioner working just outside Manchester who  
29 in 1998 was arrested and charged with and later convicted  
30 of the murder of 15 of his patients. Most of them elderly  
31 female patients who died as the result of an overdose of

1           heroin.

2           Following Dr Shipman's conviction for what now must  
3           fairly be regarded as a sample of his killings, a  
4           commission of enquiry was established under the Right  
5           Honourable Lady Justice Smith. Four years later after an  
6           exhaustive enquiry into the circumstances of the deaths of  
7           all Harold Shipman's patients, she concluded that he had  
8           killed 218 of them and that the deaths of a further 60  
9           were as she put it deeply suspicious.

10          In light of the findings of the Smith Commission it  
11          can hardly be doubted that Dr Shipman was a serial killer  
12          but if I may come back to Dr Kinnell's larger proposition  
13          I think it has to be said that one serial killer does not  
14          make a Summer. If one puts to one side people, like as  
15          one person with whom I having a discussion about this  
16          topic a little earlier drew to attention, if one puts to  
17          one side doctors like Crippen who kill for all the reasons  
18          that people in all walks of life kill. The claim mounted  
19          by Dr Kinnell is significantly dependent upon acceptance  
20          that Dr Shipman's role model was Dr John Bodkin Adams.  
21          Again I would expect that many members of this audience  
22          would be familiar with the name of Dr Adams. He is  
23          certainly well known to anyone who enjoys that literary  
24          category known as crime non-fiction.

25          His life and trial has been the subject of a number  
26          of books and television drama and I suspect some of you  
27          might have listened to radio national's resident medical  
28          historian Dr Jim Leavesley speaking about the Adams case.  
29          Nonetheless for those of you a little too refined to take  
30          an interest in mass killings I will just briefly outline  
31          the facts.

1           He was a general practitioner in Eastbourne. In  
2           1957 he stood trial for the murder of Edith Morrell an  
3           elderly patient alleged to have died as the result of an  
4           overdose of opiates. In his article Dr Kinnell repeated  
5           the claim which had currency at the time that Dr Adams had  
6           been responsible for the murder of 400 of his elderly  
7           female patients. What Dr Kinnell omitted to mention was  
8           that Dr Adams had been acquitted of the only murder for  
9           which he had ever been charged.

10           I think in fairness to Dr Kinnell I should not take  
11           him too much to task for canvassing the jury's verdict  
12           given that the presiding judge was later to do that also.  
13           Dr Adam's trial attracted a very great deal of publicity.  
14           The presiding judge Mr Justice Devlin was an extremely  
15           eminent lawyer later as Lord Devlin to be appointed to the  
16           Judicial Committee of the House of Lords.

17           In that capacity he is distinguished for having  
18           confessed to finding the life of an appellate judge to be  
19           dreary beyond belief. By contrast, presiding at the trial  
20           of Dr Adams seems to have engaged Mr Justice Devlin's  
21           attention very fully.

22           After the trial and after the death of Dr Adams many  
23           years later, Lord Devlin wrote a book in which he gave an  
24           extremely frank account of his perception of the conduct  
25           of the trial and his own views of the probable guilt of Dr  
26           Adams. It was unprecedented then and remains  
27           unprecedented for a judge to give a personal account of a  
28           trial over which the judge has presided. I am inclined to  
29           think that is a good precedent but nonetheless I would  
30           have to say Lord Devlin's book makes interesting reading.

31           In the 1950's attending sensational criminal trials

1 was still a form of popular public entertainment and at  
2 the trial of Dr Adams in the public gallery was Sybille  
3 Bedford. Ms Bedford is a truly marvellous writer whose  
4 bland Anglo-Saxon name belies her exotic background born  
5 around the turn of the last century into the minor  
6 European Aristocracy she was raised in an unorthodox sort  
7 of life between the Riviera and London.

8 In London she boarded with bohemian artists and  
9 never bothered attending school but what she did do was  
10 spend quite a bit of her time at the Royal Courts of  
11 Justice, and it was there that she became as she described  
12 it an unlearned aficionado of the law. She is in my view  
13 amongst the finest exponents of English writing of the  
14 last century and among her books is her account of the  
15 trial of Dr John Bodkin Adams.

16 Celebrated trials are very often the subject of pot  
17 boilers. What is interesting about the trial of Dr Adams  
18 is that we have the elegant account of the presiding trial  
19 judge and the equally elegant account of the insightful  
20 informed member of the public, together they make good  
21 reading. Mr Justice Devlin did not for a moment doubt the  
22 correctness of the jury's verdict in the Adams case. He  
23 summed up for an acquittal. The fact that he privately  
24 happened to think it likely that Dr Adams had killed Mrs  
25 Morrell is not inconsistent with his conviction,  
26 respecting the verdict which after all could only be  
27 guilty on proof beyond reasonable doubt.

28 For her part, Mrs Bedford came away from listening  
29 to everyday of the trial and making a very detailed note  
30 of all of the evidence with a settled conviction that the  
31 jury had got it right. What I thought I might do in just



1 a little bit longer this evening is discuss aspects of the  
2 criminal justice system reflected in my view in those  
3 books in a very creditable light, against the background  
4 of what Jim Leavesley has described as the greatest  
5 medical murder trial. In that way that rather suggests  
6 medical murder trials are pretty common.

7 Dr Adams took up practice in Eastbourne, a coastal  
8 resort in England, in the 1920's. Understandably it had a  
9 large population of elderly, relatively well off female  
10 residents, many of whom were to become his patients. He  
11 was regarded as a conscientious and compassionate doctor,  
12 he was a bachelor, rather over weight, a teetotaler with  
13 an interest in motor cars, shooting clay pigeons and  
14 photography.

15 Lord Devlin sketched him in this way he said "True  
16 he was a bachelor but he was one of those bachelors with  
17 an amplitude which seemed to strain his waist coat and  
18 with features so comforting as to make him the equal of a  
19 family man." He had a very good bed side manner and a  
20 devoted following, a phenomenon that may have been  
21 encouraged by his practice at the time not so unusual to  
22 prescribe morphine and heroin with liberality.

23 He also encouraged his patients to remember him in  
24 their wills. Lord Devlin observed that the two  
25 manifestations of Dr Adams professional life as the  
26 dispenser of drugs and as the persuasive legatee were not  
27 many thought disconnected. Over the years there came to  
28 be quite a deal of talking in Eastbourne about the high  
29 incidence of patients who died leaving bequests to Dr  
30 Adams.

31 In the case of one in 1956, Mrs Hullett who died of

1 a massive overdose of barbiturates, the rumours took hold  
2 in a very lively fashion. There was a coronial inquest,  
3 it was attended by the press and they were feeding off the  
4 stories that Dr Adams was given to killing off all his  
5 female patients.

6 Michael Foot who was then the editor of Tribune said  
7 of the newspaper coverage of the Hullett inquest, that it  
8 was one of the most appalling examples of newspaper  
9 sensationalism and persecution in the history of British  
10 journalism. In the event the verdict returned at the  
11 inquest was that Mrs Hullett had died of suicide. Mrs  
12 Hullett had certainly been threatening to do so for a long  
13 time. The inquest and the surrounding rumours led to an  
14 investigation by New Scotland Yard it was headed by  
15 superintendent Hannam.

16 The descriptions of Superintendent Hannam are of an  
17 aristocratic investigator with a fondness for quality  
18 cigars and a style of sartorial elegance not all that well  
19 known at New Scotland Yard. He acquired celebrity in a  
20 way that you expect only a British policeman could ever  
21 acquire celebrity. His name became synonymous with his  
22 successful investigation of the Teddington Towpath  
23 murders.

24 Thereafter he was named by the press - Hannam of the  
25 Yard. Hannam of the Yard impressed Lord Devlin as very  
26 early settling on a fixed belief that Dr Adams was a mass  
27 murderer of the nastiest type. Lord Devlin in what seemed  
28 to me to be a rather more nuanced assessment, described Dr  
29 Adams as a legacy hunter. Not of the nice type but not of  
30 the nastiest type taking into account that he had never  
31 made any efforts to hide his pursuant of bequests.

1           In the usual cases, as Lord Devlin pointed, out a  
2       police officer is presented with a crime and he or she  
3       starts to look for a suspect. In this case Superintendent  
4       Hannam was presented with a suspect and set about looking  
5       for a crime. He started by investigating the deaths of  
6       the 132 patients of Dr Adams who had left him gifts in  
7       their wills and ultimately the enquiry focused in on Edith  
8       Morrell. A wealthy widow, at 79 she had had a stroke, she  
9       had moved to Eastbourne and for the next 10 and a half  
10      months she was under the care of Dr Adams.

11           She was bed ridden, paralysed on the left side,  
12      little in the way of interesting life except changing her  
13      will from time to time. The expert evidence was that she  
14      was a woman dying of cerebral arteriosclerosis, a  
15      condition which the experts pointed out was unlikely to  
16      have caused her much pain and for which there was no  
17      requirement to administer the large quantities of opiates,  
18      with which Dr Adams treated her.

19           There was evidence about periodic changes to her  
20      will, in some instances gifts were made to Dr Adams. On  
21      other occasions they were revoked when for example he took  
22      a holiday without consulting her. In the event at the  
23      time of her death the last will of Mrs Morrell did not  
24      leave any bequests to Dr Adams. An issue at the trial was  
25      his awareness of that.

26           The prosecution case was never strong. It depended  
27      in part upon statements said to have been made by him to  
28      Superintendent Hannam. Those were the subject of  
29      challenge at the trial. It was Superintendent Hannam's  
30      account that on telling Dr Adams that he was continuing to  
31      investigate the circumstances of Mrs Morrell's death, Dr

1 Adams had replied "Easing the passing of a dying person is  
2 not all that wicked. She wanted to die, that cannot be  
3 murder. It is impossible to accuse a doctor."

4 After he was arrested and cautioned, the garrulous  
5 Dr Adams was alleged to have said "Murder, murder, can  
6 you prove it was murder? I did not think you could prove  
7 murder, she was dying in any event." Dr Adams did not  
8 give evidence at the trial but his counsel Mr Lawrence of  
9 Queen's Counsel in a very gentlemanly cross-examination  
10 suggested that those conversations had not taken place.

11 Before reforms, throughout all the Australian  
12 jurisdictions, a great deal of time was taken up at many  
13 criminal trials with challenging confessional statements  
14 known as verbals. Frequently in my experience with not  
15 quite the elegant restraint that Mr Lawrence adopted in  
16 his cross-examination of Hannam of the Yard.

17 Nowadays in all the Australian jurisdictions the  
18 admissibility of confessional statements made to a person  
19 in authority in the course of a criminal investigation are  
20 generally made to depend upon the electronic recording of  
21 the interview. That single amendment to our laws of  
22 evidence at the State and Commonwealth level has led to an  
23 improvement in the quality of police investigations, which  
24 to anyone working in the field is palpable.

25 It has in my view almost eliminated the problem  
26 which Justice Wood, reporting in the mid 1990's about the  
27 New South Wales police service, described as the  
28 phenomenon of noble cause corruption. However I digress.  
29 At the preliminary hearing on the charge against Dr Adams  
30 of murdering Edith Morrell, the prosecution sought to and  
31 did lead evidence of the deaths of two other patients

1 including Mrs Hullett.

2 They did so in an effort to demonstrate that the  
3 cases were so strikingly similar that it was impossible to  
4 accept that the coincidence was an explanation and that  
5 the only rational explanation was that Dr Adams had  
6 murdered them all. The reception of evidence of that type  
7 known as similar fact evidence is something that common  
8 lawyers always struggle with.

9 We are a little inclined to the view that if you are  
10 going to be charged with an offence it is not a bad thing  
11 for the prosecution to prove that you committed that  
12 offence as distinct from proving that you are generally  
13 the sort of person who goes about doing bad things.  
14 Nonetheless some circumstances can strain even common  
15 lawyers resistance to reasoning based on the probative  
16 value of the improbability of events occurring by  
17 coincidence.

18 So it was at the turn of the century in New South  
19 Wales when two baby farmers Sarah and John Makin were  
20 charged in connection with the death of a baby found  
21 buried in the rented premises in which they were then  
22 residing. It was difficult for the Crown to prove they  
23 had murdered the child, what the Crown sought to do was to  
24 show that in the three other premises that they had lived  
25 in, in the inner west of Sydney when they dug up the  
26 backyards they also found babies bodies, in all 12.

27 Ultimately the Privy Council but not without  
28 considerable difficulty given the complexity of the matter  
29 respecting the law of evidence, the Privy Council  
30 anticipating - because this was in about 1893 so they were  
31 anticipating the reasoning of Lady Bracknell. They

1 concluded that to move into rented premises in which there  
2 is a body of a baby buried in the backyard may be a  
3 misfortune. But to move into three successive premises  
4 with successive bodies was murder. It still took us quite  
5 a degree of time to come to terms with this theory.  
6 Startling for its ramifications so nearly - more than 20  
7 years later at the trial of Joseph Smith for the murder of  
8 his young bride who died in the bath. She having,  
9 according to Smith, taken an epileptic fit.

10 This was in the course of their honeymoon. The  
11 Crown called the redoubtable Dr Bernard Spilsbury, the  
12 home office pathologist. Dr Spilsbury gave evidence of  
13 the mechanism of death from a bath tub brought into the  
14 well of the Old Bailey. Some of you with medical training  
15 may think that perhaps the limits of Dr Spilsbury's very  
16 considerable expertise might have been reached, in  
17 expressing the opinion that the bride had died of drowning  
18 as opposed to the precise mechanism of how it was Joseph  
19 Smith had killed her.

20 What the Crown sought to do there was to prove that  
21 two other brides of Joseph Smith had also died on their  
22 honeymoons with him in the bath. In each case having  
23 suffered, so he said, an epileptic fit. The Court of  
24 Appeal in a landmark case accepted that the evidence had  
25 been rightly admitted, and I know that there will be those  
26 of you with medical training sitting here tonight who will  
27 think it astounding. That it ever took lawyers any time  
28 to have doubted that the evidence that Joseph Smith had  
29 been unlucky enough to have those three brides die in  
30 those circumstances was admissible in proof of the death  
31 of one.

1           The brides in the bath case is of course the text  
2 book case on similar fact evidence and its strongly  
3 probative value but Dr Adams case tended to show the other  
4 side of the coin. At the committal hearing there was  
5 enormous publicity, it was really unprecedented in the  
6 history of criminal trials and in the full glare of that  
7 publicity the Crown ran its case about the killings of  
8 these other two patients.

9           Mr Lawrence exploded the view that one of them might  
10 have died at Dr Adam's hand and as Lord Devlin pointed out  
11 having reviewed the evidence concerning Mrs Hullett's  
12 death, there was no substance to the suggestion that Dr  
13 Adams had had any role in that either and no reason to  
14 doubt the coroner's verdict.

15           The Attorney General of the day Sir Reginald  
16 Manningham-Buller prosecuted Dr Adams. Though he did not  
17 appear at that preliminary hearing, Lord Devlin clearly  
18 held him responsible having regard to the overall conduct  
19 of the prosecution for the decision to lead that evidence,  
20 inviting the enormous prejudicial publicity that it did  
21 and then not to even try to lead it at the trial.

22           That I think may explain Lord Devlin's portrait of  
23 Sir Reginald Manningham-Buller, it is not a kind one. He  
24 said that he had been called Reggie by friend and foe  
25 alike because he was the sort of person who so obviously  
26 would be called Regi. He brought to mind so Lord Devlin  
27 said, "Widmerpool in A Dance to the Music of Time." The  
28 reappearances of Widmerpool throughout that splendid  
29 chronical each time seemingly having climbed one run  
30 higher up the ladder. According to Lord Devlin it was  
31 exactly the way his contemporaries viewed Reggie.

1           Small wonder that Lord Devlin characterised the  
2 attorney's opening address to the jury as having been  
3 delivered in a tone suggestive of a higher degree of  
4 villainy than the facts seemed to warrant. A tone that  
5 was appropriate to what was not said which were the  
6 unspoken rumours about the other patients.

7           That tone was not lost on Mrs Bedford. She wrote of  
8 the view that she had entertained having heard the  
9 attorney's opening with what she described as the  
10 bewilderingly inadequate motive that a person in Dr Adams  
11 position would kill for the paltry bequest that he might  
12 have been left in the will.

13           What she pointed out was that the motive had, as she  
14 put it, drawn substance from the innuendo from the items  
15 half remembered from the preliminary hearing. There was  
16 she thought a most disturbing element to the case which  
17 she described as extramural half knowledge that cannot be  
18 admitted and cannot be kept out. It was exactly what  
19 troubled Mr Justice Devlin.

20           He was conscious that since the Crown had led this  
21 evidence at the preliminary hearing but did not do so at  
22 the trial, Mr Lawrence did not have the opportunity of  
23 giving it the lie. Mr Lawrence expressed the view to Lord  
24 Devlin in preliminary discussions taking place between the  
25 judge and counsel that it was impossible for Dr Adams to  
26 get a fair trial. Writing later, Lord Devlin said had he  
27 entertained that view he would not have tried Dr Adams.  
28 May I say that is a very fine sentiment and one that I  
29 think every common law judge would endorse but in reality  
30 the problem is a little more difficult than that.

31           No system of criminal justice can maintain public



1 confidence. If it refuses to try an accused because of  
2 the heinousness of the offence with which the accused is  
3 charged, and the publicity that the heinousness of that  
4 offence has generated. Securing a fair trial for an  
5 accused in circumstances of wide spread, very prejudicial  
6 publicity is a problem for the courts.

7 It was when Lord Devlin was writing. Nowadays it  
8 has become acute and it has become acute because of the  
9 internet. We were accustomed to the law of contempt,  
10 exercising some restraining influence as it does on the  
11 responsible media.

12 So that accepting that the press is entirely free to  
13 publish the sensational details of ugly crimes, the courts  
14 have acted on the assumption that by the time the matter  
15 comes on for trial and indeed if need be by delaying the  
16 trial for some months, the glare of publicity will become  
17 dimmed in the public mind.

18 Now we face the fact that on the internet one can  
19 recover every newspaper article. One can go to the  
20 websites of the victim groups who publish all sorts of  
21 material, highly prejudicial, speculative, often grossly  
22 inaccurate about the accused. It was an issue that the  
23 High Court considered last year arising out of a murder  
24 case here in Victoria. A case in which a man convicted of  
25 the three extremely vicious and brutal murders of women  
26 was facing trial for the murder of another woman. The  
27 publicity had been enormous. He applied to the court for  
28 a stay contending that in the circumstances the courts  
29 could not secure for him a fair trial in the foreseeable  
30 future. And that consistently with the sentiment Lord  
31 Devlin had expressed - not that counsel put it this way -

1 but that the courts should not try him. The Victorian  
2 Court of Appeal rejected that.

3 One of the Justices of Appeal did consider that the  
4 publicity was truly an extreme instance of a grossly  
5 prejudicial character. Nonetheless he approached the  
6 matter on the basis that there was a social imperative  
7 that the accused be brought to trial.

8 The High Court considered that that was an  
9 appropriate matter to take into account and it rejected  
10 any unanimous judgment. The idea that extensive publicity  
11 surrounding notorious cases deprives an accused of the  
12 ability to have a fair trial, because it is considered  
13 that courts can relieve against prejudice. Largely by the  
14 directions given to juries by the trial judge and by an  
15 assumption that juries are aware of the solemn  
16 responsibility that they have and that they will  
17 conscientiously put extraneous matters of prejudice out of  
18 their minds.

19 I have to say that it is very comforting in the last  
20 15 years or so there has been extensive quality research  
21 on jury deliberations which has been very gratifying in  
22 terms of the results, which do confirm the rightness of  
23 the court's assumption in that respect.

24 It is easy to go on about the Adams trial at length  
25 and it was a very sensational trial but I think dinner is  
26 awaiting. So suffice it to say that it was a trial  
27 attended by many sensational twists, by an expert led by  
28 the prosecution Dr Douthwaite of whom Justice Devlin was  
29 critical for his unbending approach. An approach which  
30 saw him expressing different and inconsistent views  
31 respecting the cause of Mrs Morrell's death. Given that

1 Dr Adams was on trial at that time for an offence which  
2 carried the death penalty, I rather get the impression  
3 Lord Devlin did not think that was cricket.

4 Nonetheless his real criticism again came back to  
5 the Attorney General for the failure to adequately spend  
6 time with the doctor ensuring that he had a developed and  
7 concluded view about the mechanism of death before leading  
8 him to give evidence. Interestingly, Lord Devlin spoke  
9 about his view at a point in the trial when the  
10 prosecution had produced yet a third theory as to the  
11 mechanism of death. A rather improbable theory being  
12 that Dr Adams had a fortnight before Mrs Morrell's death  
13 at a time when she was, in the Crown's expert view, a  
14 woman with only weeks left to live a fortnight before Dr  
15 Douthwaite expressed the opinion that a decision had been  
16 deliberately taken to take her off morphia in order to  
17 reduce her tolerance to the drug. Only so when it was re-  
18 administered to make her susceptible to gradually  
19 increased doses leading to the fatal dose 13 days after  
20 the murderous intention was first formed.

21 That was approaching the case in a way that Lord  
22 Devlin considered was as he put it too staunch. The thing  
23 that troubled him was his belief after that third theory  
24 had hove into view, that it was likely that the  
25 prosecution would shift to what seemed to him to be the  
26 more obvious account which was a mercy killing. Talking  
27 at a time when the death penalty was the punishment for  
28 murder he spoke of the degree of concern that that had  
29 caused to him. And his view of the inadequacy of the law,  
30 given the failure to distinguish in the matter of murder  
31 between the sadist and the mercy killer.

1                   Notes produced by the nurses at the time of her  
2                   treatment which Hannam of the Yard had overlooked seizing  
3                   from Dr Adam's chambers showed that the final injections  
4                   that had been given to Mrs Morrell were not of opiates,  
5                   not the morphia or heroin that he had been injecting but  
6                   the notes recorded that they were injections of  
7                   paraldehyde, an apparently relatively harmless sedative  
8                   that provided quite a hole in the prosecution's case. In  
9                   the course of his cross-examination of Dr Douthwaite, Mr  
10                  Lawrence extracted from him against that background, a  
11                  concession that though he believed the doctor had been  
12                  possessed of a murderous intent throughout, it was  
13                  possible that another doctor commenting on a doctor  
14                  administering that treatment might not come to that  
15                  conclusion. That was you would appreciate a very precious  
16                  concession from the defence point of view. After that Mr  
17                  Justice Devlin decided to ask Dr Douthwaite a few  
18                  questions just to clarify a matter for his summing up. He  
19                  asked him some questions concerning precisely when in Dr  
20                  Douthwaite's opinion the murderous intent had been formed  
21                  respecting the course of treatment and it was at that  
22                  point that this entirely new theory hove into view. Mrs  
23                  Bedford reporting on that part of the trial describes it  
24                  with interest. She describes how Mr Justice Devlin calmly  
25                  kept probing in an effort to get to the bottom of Dr  
26                  Douthwaite's evidence. She says it with evident  
27                  admiration. I had a rather different take on it when I  
28                  read it. "It is not the role of a trial judge to get into  
29                  the arena, it is not the role of a trial judge to help out  
30                  the Crown if it is in difficulties or the defence, if the  
31                  defence is incompetently represented. It is the role of

1 the trial judge to stand above the fray. Let the parties  
2 select the battle ground and let the parties delineate the  
3 issues and let the trial judge make the rulings in  
4 accordance with laws of procedure and evidence and  
5 ultimately direct the jury."

6 So for a trial judge to have embarked on a course of  
7 questioning leading to an emergence of an entirely new  
8 theory about how it was the accused had killed the  
9 deceased, I rather suspect it was causing Mr Justice  
10 Devlin's blood pressure to rise ever so slightly,  
11 notwithstanding Mrs Bedford's astute observations.

12 Dr Douthwaite stuck to his guns and so in the event  
13 did Reggie. He went to the jury guns blazing on all three  
14 entirely inconsistent scenarios as to how Mrs Morrell had  
15 been murdered by the villainous Dr Adams. After the  
16 summing up the jury retired for three quarters of an hour  
17 and returned with a verdict of not guilty.

18 Mr Lawrence's settled belief that the fair trial of  
19 his client was impossible, was not in the event correct.  
20 Despite what is said to have been greater prejudicial  
21 publicity than had accompanied any trial at the time Dr  
22 Adams was acquitted. Lord Devlin's account in terms of  
23 the evidence at trial leaves very little room to doubt the  
24 correctness of that verdict. It is clear that the jury  
25 did rise above the rumours and innuendo that were plainly  
26 rife.

27 When he came to write his book a quarter of a  
28 century later, Lord Devlin said that the reviewing the  
29 transcript had done little to change his view that he had  
30 formed at the time. He thought the suggestion of Dr Adams  
31 as a monster going about murdering his patients for

1           pecuniary gain was absurd.

2           The legacies that he received were mostly modest.  
3           They came from his fee paying patients. In 1957 Lord  
4           Devlin thought that the National Health patients were  
5           unlikely to have had much in the way of property to leave  
6           to anyone. So he characterised the fee paying patients  
7           as capital assets who were yielding an annual dividend  
8           during life and who if they could be induced to provide a  
9           legacy a tax free bonus on death. The bonus in Lord  
10          Devlin's view was hardly large enough to provide a motive  
11          for cashing in on the investment before its maturity.

12          He saw nothing to suggest that the prosecution had  
13          been wrong to select the case of Mrs Morrell as the  
14          strongest of those 132 deaths that Hannam of the Yard  
15          investigated. It was as Lord Devlin said, "The least weak  
16          of those cases." One thing that one of the nurses had  
17          volunteering inadmissible as it was, was that Mrs Morrell  
18          had said that Dr Adams had promised her he would not let  
19          her suffer at the end. Lord Devlin reflecting on the  
20          evidence thought it strange that the nurses notes showed  
21          that in the last couple of days Mrs Morrell had appeared  
22          to be in distress. She had been making jerky, spasm like  
23          gestures, they distressed the nurses, the experts said it  
24          was unlikely that she was in pain. But Lord Devlin who  
25          did not think a great deal of Dr Adams medical ability was  
26          inclined to the view that he would not have understood  
27          that.

28          Lord Devlin reflected on this; The only reason to  
29          know that the last two injections were paraldehyde was  
30          because that is what Dr Adams had told the nurse who  
31          administered them. The nurse remembered administering

1           them but she could not remember what the substance was,  
2           and Lord Devlin like a good arm chair detective 25 years  
3           later thought isn't it strange. We all remember smells  
4           but we do not remember something that does not smell and  
5           paraldehyde smells revolting. So he thought it would not  
6           be surprising if those last two injections given were very  
7           substantial injections of opiates designed to ease the  
8           passing consistent with the promise. For good or ill  
9           though Dr Adams has gone down in history as a mass  
10          murderer. A recent account by a woman called Cullen would  
11          have it that the bundling of the prosecution was part of a  
12          very large homosexual conspiracy involving people  
13          including Prime Minister Macmillan.

14                My inclination is to favour Lord Devlin's view of  
15          the matter. On the whole I think that the evidence in  
16          support of Mr Kinnell's thesis to the extent that it  
17          depends on John Bodkin Adams as a maniacal serial killer  
18          is not without its difficulties, and I offer that to the  
19          medical members of the society for such comfort as it may  
20          provide. Thank you.

21 DR HOWLETT: Thank you, Your Honour. Her Honour has kindly  
22          agreed to take some questions from the floor. So if we do  
23          have a couple of questions this evening now is your  
24          opportunity.

25 JUSTICE BELL: I forgot the questions, yes.

26 MEMBER: Thank you. Thank you for your talk and it was easy to  
27          hear which is terrific.

28 JUSTICE BELL: I am sorry?

29 MEMBER: Your talk was easy to hear which is absolutely  
30          terrific. Last week I stayed with the defending solicitor  
31          of Bodkin Adams and I said to him "Now look, he was as

1 guilty as anything wasn't he?" And he said, "No, he was  
2 found not guilty." And I was just wondering if some of  
3 the lawyers here would say what they thought if they  
4 thought someone was really guilty and you could persuade  
5 them, "Come on look -" but my friend said, "No he was not  
6 guilty."

7 He was a kindly general practitioner and he had  
8 spent months with him. Everyone else in England thought  
9 he was guilty but he did not. Certainly Arthur Douthwaite  
10 made the great mistake of saying, "Morphia should be  
11 limited to 30 milligrams and never more" and nowadays of  
12 course morphia is handed around to relieve pain and you do  
13 not consider the dose, and he made really a fool of  
14 himself and he never recovered.

15 JUSTICE BELL: My sense about that was that he was not saying  
16 that it would not have been appropriate had Mrs Morrell  
17 been dying of cancer and I think he would have accepted  
18 substantial doses. It was the view that she was not in  
19 pain, she was comatose and there was no reason to suspect  
20 that she was in pain and therefore no justification for  
21 substantial doses. That was my reading of the summary of  
22 the evidence in those two books.

23 MEMBER: Yes that was true but unfortunately I think the nurses  
24 did not like Bodkin Adams.

25 JUSTICE BELL: No.

26 MEMBER: Because he exceeded the dose and he often would give  
27 the morphia himself which they thought was not correct.  
28 And so there was antagonism between the nursing staff and  
29 Bodkin Adams.

30 JUSTICE BELL: What I think about that is undoubtedly by the  
31 trial there was - they clearly gave evidence that was



1 perhaps not intentionally so but slanted against him but  
2 that is of course after events which had made many people  
3 in Eastbourne develop a settled conviction that he was a  
4 serial killer. When one looked at the nursing notes those  
5 seemed to show a less sinister complexion on the  
6 treatment.

7 MEMBER: Yes, I think that is correct.

8 JUSTICE BELL: And they were contemporaneous we would tend I  
9 think always to rely on the contemporaneous note and not  
10 the frailty of memory.

11 MEMBER: Yes, that is true, yes. I did notice that the  
12 solicitor was riding around on a ride on mower which was  
13 given to him by Bodkin Adams.

14 JUSTICE BELL: Bodkin Adams died in 1984. He did not have  
15 offspring and he left bequests to all who had supported  
16 him. There are about 47 or some large number of people to  
17 whom - each of whom he remembered. Yes.

18 DR HOWLETT: We will take one more question.

19 MEMBER: Following his acquittal did Bodkin Adams continue in  
20 practice or were patients rather wary of him?

21 JUSTICE BELL: No, it is interesting. What happened was he was  
22 then charged with some summary offences. He had been  
23 inclined to sign cremation certificates stating that he  
24 had no pecuniary interest in the - under the will of the  
25 deceased. So he was charged with offences arising out of  
26 the forgery of those cremation certificates. His evidence  
27 and I might say I think there was support for this in  
28 terms of the practice at the time was that it was not  
29 uncommon for doctors to do that. Including doctors who  
30 had received small bequests, because it did not delay the  
31 cremation and cause distress to the family.

1                   But nonetheless in the circumstances of his practice  
2                   Dr Adams was charged, convicted and struck off. He was  
3                   off the register for a number of years but then he was re-  
4                   admitted and he continued practice and had patients and  
5                   loyal patients. I think I would have been guarded. Yes,  
6                   that I think might be it.

7   DR HOWLETT: I call upon Mr Michael Gronow member of the  
8                   committee and member of the Victorian Bar to give the vote  
9                   of thanks.

10 MR GRONOW: Thank you very much Mr President. There are at  
11                  least four reasons why we should be grateful to Her Honour  
12                  for speaking to us tonight. The first of course if that  
13                  Her Honour is the latest but by no means the least of a  
14                  long line of very distinguished members of the High Court  
15                  who have come to address us. The second reason is that  
16                  Her Honour has been gracious enough to acknowledge that  
17                  the weather in Melbourne today at least was better than  
18                  that in Sydney and those of us who live south of the  
19                  Murray must be very grateful for this. The third if I may  
20                  say so is Her Honour's emphasis on the importance of logic  
21                  and common sense in the law and particularly in judicial  
22                  decisions. I shall be fortified by this when I next have  
23                  to explain a number of High Court decisions to a trial  
24                  judge, which will occur shortly after 10.30 a.m. on  
25                  Monday. I will be even more fortified by it when I have  
26                  to explain some High Court decisions to a large group of  
27                  smart alec law students, which will occur shortly after  
28                  5.15 p.m. next Wednesday.

29                  Lastly Her Honour has confirmed my view that members  
30                  of the medical profession are much more likely to be  
31                  latent serial killers than members of the legal

1       profession. I have often been struck by this,  
2       particularly when attending committee meetings of this  
3       society. So for all these reasons I would ask you to join  
4       with me in expressing gratitude to Her Honour for flying  
5       south of the Murray to address us and also I would like to  
6       give Her Honour a small token of our appreciation. Thank  
7       you.

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