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On being a Professional Medical Witness

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Abstract
When asked by the Editor to contribute an article on this topic, I became conscious of the fact that as a result of my arthritic leg which has defied the best efforts of clinical colleagues to heal, my recent Court appearances have been few and far between. Perhaps this means that I can take a relatively detached view of the Court rather than one dominated by current attacks of hyper-adrenalinism.

I doubt if there are many people called to give professional medical evidence who approach the witness box without some quickening of the heartbeat. So if it happens to you, you can at least feel you are in good company. But it is the essence of a good witness that he is free of emotion, and this state depends firstly upon experience, and secondly on one's preparation of material before the trial.

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ON BEING A PROFESSIONAL MEDICAL WITNESS

by
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I doubt if there are many people called to give professional medical evidence who approach the witness box without some quickening of the heartbeat. So if it happens to you, you can at least feel you are in good company. But it is the essence of a good witness that he is free of emotion, and this state depends firstly upon experience, and secondly on one's preparation of material before the trial.

This preparation begins with the reception of the patient. The great majority of cases in which the recently qualified doctor is likely to appear in Court involve trauma and most are due to accident, particularly road traffic accidents — in fact, just the sort of case in which there is least time for reflection and, indeed, most likely to be turmoil during the phase of admission and initial treatment. Nothing must be allowed to interfere with the doctor's true function — the saving of life and the reduction of morbidity — but, if there is time for consideration, it must be remembered that the original findings are going to be of primary evidential importance in any later Court proceedings. If the patient dies, there is bound to be a Fatal Accident Inquiry (or, in England, a Coroner's Inquest with jury) in the case of industrial accident, there may be very serious criminal charges following a vehicular accident, and in a case of apparent deliberate wounding, a man or woman may be on trial for his or her liberty for many years to come. In short, it is not just one's own position as a witness which is in jeopardy but the reputation and living of others. So the first step to a successful Court appearance is the making of accurate notes in all relevant cases. Unless a patient is bleeding to death, it is not a great problem to measure a wound or to make a simple diagram of an abrasion; it is not difficult to incorporate in the notes items which are not strictly relevant medically — e.g. was there any obvious paint around the wound? These notes can be backed up by the retention of items which may form valuable forensic scientific evidence. Thus, particularly in cases of criminal assult, it may be important to preserve any foreign bodies discovered within a wound. Similarly, the clothing should be retained in such cases, most especially if there is a sexual element to the assault; the fact that the clothes are torn, blood-stained and muddy may be an extra good reason for their preservation — not destruction.

There are two additional points about the notes which I would make here. Firstly, it may well be that when the case comes to Court, it is not the obvious medical features which are of main importance — the fact that a man had received a stab wound may be accepted by all parties — but were there bruises on the knuckles indicating that he had been fighting? In other words, so far as is possible, the notes must be comprehensive,

not limited to the primary centre of medical interest. It follows from this that there may be a lot to remember, and no matter what you feel at this time to the contrary, these are easily forgotten details. So the second point to be stressed is that the notes should be written up as soon as possible. One appropriate example concerned a very famous forensic pathologist who gave his opinion as to the time of death in a murder trial; he was asked what he measured the rectal temperature of the body to be and then had to admit that he had no note of it and could not remember! Your notes made at the time may not be very good and you may want to alter them in the clear light of day. However, it is very important from the point of view of a future witness that these are clearly annotated – e.g. "corrected on 1.2.79." or "added on 2.3.79.": significant alterations must never by made after the result is known.

The hospital notes on a patient may be of considerable length; all of them may be required in a later hearing, so it is important when writing them up, to think what they will look and sound like in a criminal or civil court, at a fatal accident inquiry or in a Coroner's court. Don't make judgements. In the incredibly unlikely event of such a thing happening, let the second operation note simply say "a pair of scissors was removed from the pelvic cavity" and not "a pair of scissors which had been negligently left there by Mr. X...." – somebody else will determine that. If a patient is being extremely difficult, don't describe her in the notes as "this dreadful woman" – it can only be an embarrassment when uttered publicly. By and large, chatty remarks seem rather out of place when read out in supercilious monotone. Back in the War (Second World – but I was pretty young at the time) I had a tented sick quarters and what appeared to be an intractable psychoneurotic patient (actually, you were allowed in those days to use the term N.Y.D.N. – which meant "not yet diagnosed – nerves"!). I arranged to evacuate him to a civilian base hospital and did so with a friendly valediction in his notes – "sorry to inflict this snag case on you". It sounded far less of a pleasantry when a coroner's inquiry some weeks later established that he had died following malarial treatment of neurosyphilis! Remember that the precise wording of your notes can rebound on you even though they are in no sense derogatory or inaccurate. More recently, I wrote a report on the examination of a girl in a potential case of rape and said something to the effect "the injuries are compatible with aggressive love-making". Counsel for the defence saw his chance; "We would, of course, bow to your experience in the field", he said with a wide grin on his face, "but perhaps you would give My Lord and Jury your definition of aggressive love-making".

Which prompts me to disabuse you of one popular misconception. Contrary to what you read in books, no Counsel is "out to get" an honest professional witness. In the great majority of cases, the Court wants no more than assistance and to hear a considered opinion from someone fully conversant with the facts. The fire and brimstone impression that persists stems, I think, from the famous days of the evolution of modern British forensic pathology. In the early part of the century, pre-meditated murder was at its height, but forensic medical experts were few and far between. They tended to be very partisan and to regard their evidence as something like the fruits of a visit to Mount Sinai. It was very seldom that an expert of similar calibre was available to oppose the main medical opinion, and as a result, Counsel were forced into forensic chicanery. These conditions do not apply today and the professional man is assured of a courteous hearing provided he does not destroy his own image. So, what are some of the things which have a bearing on this relationship between the witness and the Court?

First, don't be late. Everyone admits that a lot of time is wasted in the witness waiting room but you cannot depend on a delay. Most Courts do their best to clear the doctors early in the case, and if your time is limited the Fiscal will always try to help.

The second general point is equally obvious – do be dressed for the part. Most judges and jurors are fairly "square" and past the first flush of youth; they like their doctors to be of conventional appearance and will probably vaguely distrust the evidence of one who does not come up to expectations. First impressions *are* important.

It goes without saying that the case should have been properly prepared. This will depend on the

type of evidence you are being asked to give – and this will have become clear in precognition – but if you are to be asked about the causation or management of a surgical or medical condition, it is well to be aware of the alternative opinions to your own. There is a tendency to do a literature search for articles favourable to one's own opinion; but the medical advisers to other interested parties will be able to quote from the other side of the page and one must be ready for it. Lawyers love books so I would suggest having a look to see if there is anything relevant to your case in the more widely used text-books of forensic medicine – Glaister (1) is by far the most common reference in Scotland and Simpson (2) in England.

Don't get angry with Counsel – or at any rate, don't let your irritation cloud your judgement and show in public. It is worth reflecting, that if the lawyer is being obtuse, it may well be because your answers are not clear enough to a non-medical man; we are brought up on medical jargon and often find it difficult to appreciate how very little is understood by the lay-man. Above all, don't try to make the Advocate look silly. The temptation to attract a little "laughter in Court" must be resisted, except, perhaps, when it is to no-one's disadvantage. By and large, lawyers have a quicker and more acid wit than doctors who seldom come off best in such exchanges. A stupid mistake on the lawyer's part – and there are very few of them – can be pointed out with deference; a soft answer at least does not attract wrath.

Finally, there is the well known advice to all witnesses to confine oneself to answering the question and to avoid making a speech. By the same token, do not be cajoled into giving opinions on conditions outside your experience. There is a story of the great pathologist, Keith Simpson, being led into giving a clinical assessment of a case; Counsel casually asked, "Tell me, Doctor, when did you last see a live patient?" – the reply must have had the effect of a counter offensive, but it illustrates what I mean. On the other hand, don't be afraid to give a full answer, particularly if it involves several points of importance. You may well expect Counsel to follow up your line of thinking and then be surprised when he does not. Few things are more annoying than finishing the game with an unplayed ace in one's hand and it may be more than just annoying to oneself – justice may have been impeded.

So, dealing with a well prepared and well presented case, you will find that the time has passed quickly and you may be surprised when the Sheriff or Judge says "Thank you, you may be excused now"; looking back on it, the experience has not been nearly so bad as you anticipated. And when it's all over? Well, don't forget to claim your witness fee – it is unlikely that anyone will remind you.

(1) Rentoul, E, and Smith, H. (eds.) (1973) "Glaister's Medical Jurisprudence and Toxicology", 13th edn., Edinburgh and London: Churchill Livingstone.

(2) Simpson, K. (1979) "Forensic Medicine", 8th edn., London: Edward Arnold.

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