



education & training

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Training psychiatrists to be expert witnesses

There is an increasing tendency in criminal, civil and family proceedings to rely on expert medical evidence. Within psychiatry, this role is traditionally regarded as falling within the remit of those specialising in forensic psychiatry. However, there is an increasing demand for psychiatrists working in other specialities to undertake this work.

According to the *Higher Specialist Training Handbook* (Royal College of Psychiatrists, 1998), all trainees (regardless of speciality) should have acquired the skills needed to prepare court reports by the completion of their specialist training. However, little mention is made in the *Handbook* of the need to acquire skills in giving oral expert witness testimony. Consequently, many psychiatric expert witnesses may be unprepared for the rigours of cross-examination and fail to present their evidence in a manner that the court will understand.

Some insights into the court routine and adversarial process may be gained by observing consultant colleagues giving evidence or by attending a course such as the one run by the Royal Society of Medicine. However, psychiatric colleagues and lawyers can only provide half the story. It is important to remember that the people who actually decide on the value of expert testimony are the judge and jury. It is of little consequence that a psychiatric colleague or lawyer has been impressed by the testimony if the judge or jury have found the evidence to be unclear or unconvincing.

In an attempt to gain a better understanding of how judges evaluate expert medical evidence I spent 7 days at the Royal Courts of Justice. During this time I had helpful discussions with a number of judges from the Queen's Bench and Family Divisions regarding their views about the role of medical experts. I also observed a number of medical experts giving evidence and had the opportunity afterwards to compare my impressions of their performance with those of the judges.

Judicial expectations of expert witnesses

Expert witnesses are valued for having knowledge in a specific area that is not within the common knowledge of the court. Experts are invited to give evidence because of their qualifications and experience in their field of expertise. It is for the court to establish the degree of

expertise of each witness. Recently several important cases have collapsed after expert medical witnesses were found to have given erroneous evidence. This has led to witnesses' claims to expertise being scrutinised much more closely. All the judges I spoke to stressed the importance of including a detailed, up-to-date curriculum vitae as an appendix to any court report. They advised that this should include details of current practice as well as past experience and information about research publications. Experts should expect to be questioned in court about the basis for their claim to expertise.

It is important to note that expert witnesses are not expected to have expert legal knowledge. The only area of law with which the judges expected expert witnesses to be well acquainted was Part 35 of the Civil Procedure Rules 1998. This covers the Practice Direction for expert witnesses and is derived from Lord Woolf's civil justice reforms. It currently only applies to civil cases but contains much that would be helpful to those involved in criminal work too. A copy of Part 35 can be downloaded from www.lcd.gov.uk/civil/procrules_fin/menus/rule.htm.

In accordance with the Woolf reforms, the judges advised that expert witnesses should take care to undertake a balance of prosecution and defence cases. This will prevent allegations that the expert is becoming a 'hired gun', brought in to win cases. An expert should be an impartial educator and should seek to protect the independence of his or her reputation.

Observation of medical expert witnesses

Over the course of my placement I had the opportunity to listen to evidence given by a number of different medical expert witnesses. It seems that expert witnesses divide into three groups: the good, the nervous and the arrogant.

Signs such as shuffling feet, inaudible responses and a failure to answer the question asked readily identified the nervous group of witnesses. However, it was only with practice that I began to be able to distinguish between the good and the arrogant groups. After hearing the evidence of several nervous witnesses I was initially impressed by the evidence of the next witness. He was an eminent medical academic who appeared at home in the witness stand and spoke in an authoritative



manner. He seemed confident in his opinion and stuck to it when he was cross-examined. Afterwards when I discussed the case with the judge I discovered that he had been less impressed by the same witness's evidence. During cross-examination the witness had been presented with new evidence but had maintained his original opinion. He failed to convince the judge that he had fully considered the implications of the new evidence; instead, the judge formed the impression that the witness had dismissed the new evidence pre-emptively and had doggedly stuck to his original opinion. What I had initially viewed as confidence was regarded by the judge as arrogance.

Another medical witness I observed told the court that she had significant experience of court work, and certainly seemed knowledgeable about both the medical and legal matters of the particular case. However, during cross-examination she seemed to become offended when her opinion was questioned and began to respond to the barrister in a rather confrontational way. She argued with him and started to answer his questions with questions of her own. Afterwards the judge told me that he had been unimpressed by her petulant and condescending manner. He thought her evidence had been extremely partisan and she had been more of an advocate than a disinterested helper of the court.

The good medical expert witnesses I observed were all notable for their lack of showmanship and rather understated manner. They seemed to regard themselves as separate from the legal agendas of the solicitors and barristers, and instead presented themselves as neutral agents who were assisting the court with clinical issues only. They listened patiently to each question and took care to ensure they addressed all the issues asked. They confined their evidence to their own field of expertise and made it clear when they felt they were being drawn away from this. During cross-examination these witnesses did not become defensive when their opinion was tested and seemed to regard it as an opportunity to educate the court. When giving opinions on complex medical matters they all started by outlining the range of medical opinion in that area before going on to state where their own opinion lay along the spectrum of views. They were meticulous in providing evidence to back up any opinion voiced.

What did I learn from this placement?

I found my time at the Royal Courts of Justice both interesting and enlightening. I have gained a much better understanding of what it is that the court requires of medical expert witnesses. The legal cut and thrust of the court can be very seductive and I saw how easy it was for witnesses to become drawn into the adversarial process. However, it became clear to me that this is not the role

of the expert witness. Instead, the expert witness needs to make efforts to maintain a neutral position and act as an impartial assistant to the court. The expert witnesses who were most highly valued by the judges were not self-important, legally knowledgeable figures making dramatic pronouncements, but were unassuming and friendly witnesses who tried hard to help the court by demystifying medical issues.

During my placement I also acquired an insight into the behind-the-scenes workings of the courts and legal system. Without exception I found everyone approachable and willing to answer my questions and provide explanations.

Arranging similar placements

I arranged my 7-day placement at the Royal Courts of Justice through a personal contact, and my consultant was supportive of my using study leave for this purpose. I think that this is the sort of opportunity that psychiatric trainees in all specialities would benefit from undertaking, and suggest that similar placements should be made more widely available. It would probably not be necessary for most trainees to undertake such an extended placement, but spending a day or two in court observing expert medical witnesses and having the opportunity for discussion afterwards with the judge would be a valuable experience for most trainees. The judges with whom I spent my placement said that they thought that such arrangements would be warmly welcomed by the judiciary. Some child and adolescent psychiatry training schemes have begun to set up regular placements for trainees with Family Court judges, but according to the National Conference of Specialist Registrars in Child and Adolescent Psychiatry held in January 2003 such arrangements remain patchy nationally. I suggest that all training programme directors should be encouraged to make links with their local courts and make formal arrangements for psychiatric trainees to undertake placements with judges.

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Reference

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