

Thinking Inside the Witness Box

British doctors now live in fear: not very great fear, perhaps, but it is never entirely absent. They fear their patients might sue them; they fear to say what they think to their managers; they fear that they might fall foul of the Crown Prosecution Service if one of their patients dies unexpectedly; they fear to protest when they are subjected to absurd and meaningless bureaucratic procedures; above all, they fear the General Medical Council.

The Council's striking off the medical register of Dr Waney Squier, the neuropathologist who gave evidence in trials concerning babies allegedly shaken to death by their parents, will have sent shivers down the spine of many a medical expert witness in Britain. Among Dr Squier's faults, apparently, were dogmatism and failure to give due weight to the opinion of her colleagues. Where are we, one feels like asking? The Soviet Union? Maoist China?

In the witness box I am firm, not rigid or dogmatic. It is my colleagues who appear for the other side who are rigid or dogmatic. Not that we experts take sides, of course: we are merely assisting the court. We give scientific evidence; we do not make a case.

Human nature and competitiveness being what they are, however, the desire to win – to have one's view of the matter accepted by the judge or jury – can sometimes impede one's impartiality. One begins to think not in terms of facts, but of arguments to support a pre-formed position. Moreover, no one likes to let down the legal team that has made his evidence part of its case. Fatal error in a witness!

I have seen some pretty bad expert evidence given in court,

often by the most eminent men in their field. It can be embarrassing to see their destruction in the witness box, though a brilliant cross-examination is a thing of beauty provided that one isn't at the receiving end of it.

I once saw the most celebrated scientist in his little field deny categorically for medical reasons that the accused could have climbed some stairs when it had already been proved beyond all doubt, and accepted by all sides, that he had in fact climbed those stairs. That was the end of his evidence; he left the witness box completely unaware of the ass he had just made of himself.

Luckily, one recovers one's self-esteem quickly after a mauling in which one's evidence has been torn to shreds. When it comes to *amour propre*, the human immune system works wonders. Who was it who said that the greatest fool may ask more than the wisest man can know? The counsel for the other side is just a paid hack who will use any trick of sophistry to gain his point and throw dust in the eyes of the judge and jury. Moreover, he has the inherent advantage of any interrogator over any person interrogated. He has no interest at all in The Truth – unlike oneself, of course. It is all too easy to persuade yourself that you did pretty well in the circumstances.

If I were seeking experts, I should not choose the most eminent men in their field. This is for two reasons. The first is that, being so eminent, that have often grown unused to having their opinion challenged. Not all are like this, naturally, but many are. They suffer from what a student friend of mine, now an eminent professor himself, called a hardening of the concepts.

In the witness box, then, they can become inflexible. I have found by experience that the best tactic when opposing counsel makes a good point (I can't help thinking in the language of victory and defeat rather than of assistance to the court) is

to admit it at once. This, more often than not, deflates him, as he was hoping for a foolish obduracy on the part of the witness. He will then be denied the opportunity of a thespian display of quivering indignation.

The second reason why the most eminent men are not necessarily the best witnesses is that they are often very busy. They have a paper to deliver in Prague next week, followed by a departmental meeting, while the deadline for a chapter of a book approaches. They are also on duty for the hospital the day after tomorrow: therefore they have only limited time to devote to the 2,000 pages of documents in the case. They read them as an eagle glides over a mountain range; but the devil is in the detail. Mastery of the papers is what makes a good, or any rate a convincing, witness – assuming, of course, a basic competence in the matter at issue.

What is needed, then, is not a star, but a jobbing but competent plodder who does not consider himself too important to read 2,000 largely irrelevant pages, if only because he fears being decimated in the box. Caution, fear and a certain degree of fight (but not too much) are what make a good witness in the game of law.

The law is not only a game, however: much that is real depends on it. But strategy and tactics are as necessary for the witness to carry his point as possession of the truth uttered with the certainty of an Old Testament prophet. I was once having a torrid time in the box (over a point of no importance, but counsel knew that the jury wouldn't realise that; he was merely trying to discredit me in advance, and doing quite a good job of it) when I changed the atmosphere by a mild witticism that made even the judge laugh. I think it was a turning point in the trial: certainly counsel never fully recovered the initiative. But one must never try to be Oscar Wilde in the witness box: humour is to be employed in small doses and at precisely the right time.

If medical experts are to be struck off because their evidence is deemed deficient in some way, there will soon be a deficiency of experts. It is, after all, the duty of the courts to sift the evidential wheat from the chaff, and in my experience they do it rather well – considering the imperfectability of man, that is.

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