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MEDICAL EXPERT TESTIMONY

By James J. Walsh, M. D., Ph. D.

Nothing is more of a scandal to the medical profession at the present time than the so-called medical expert testimony. It seems perfectly possible to go out and get supposed medical experts who will testify on either side of an insanity case, if a proper retainer is given them. The reason we have this state of things is, of course, that we have no accurate definition of insanity such as will satisfy those who know most about it. A rather disturbing state of affairs, true, but not to be wondered at when we consider that neither is there a definition for bodily health on which all authorities agree. When any definition has been adopted it has been found that frequently people will fall short of the criterion set and yet be quite hale. Any standard that could be set would have to be adjustable, so as to take into account the subject's peculiar characteristic,—his individuality, in other words.

Thus, the difficulty in declaring a certain person sane or insane. Without a knowledge of the patient's individuality the expert is powerless to assign him definitely to the realm of sanity or insanity. And when a decision is to be made, it is almost needless to say that it should not be made by someone whose fee depends upon his statement. There is no doubt at all that alienists have most difficult problems to decide. The ordinary physician has presented to him in the course of his work some equally difficult problems. Dear old Dr. Parry of Bath used to say that, "It is much more important to know what sort of individual has a disease than what sort of disease an individual has." As he used this expression 150 years ago most people would be inclined to think that very probably because of the progress of medical science the formula is long since without any application to modern problems. Professor Osler who was undoubtedly the greatest teacher of medicine in the English speaking world and probably the greatest teacher of medicine anywhere in the world before his death some five years ago, used to like to
repeat old Dr. Parry's expression and manifestly thought that it was extremely significant for our day as for every other day in medicine. The expression is indeed really Hippocratean and comes to us from the great Greek father of medicine, though not exactly in these words.

The most important element in medicine is the individual. We do not treat cases of particular diseases but patients suffering from certain affections which are modified by the individuality of the patient. To know what an individual takes into a disease with him is extremely important. If he has a bad heart or bad kidneys or weak lungs, the outlook is very different from what it would be if these important organs were in good condition. Individuality is the keynote of medical diagnosis and practice. Paraphrasing Lincoln's phrase, it may be said that the Lord must have loved individuality, He made so much of it. No two human beings who have ever lived have probably been exactly alike. This truth is even more evident of the inside of the body than of the outside. Not a single cubic centimeter of any tissue, from the scalp and the brain to the foot and the toes, is exactly like that of any other individual.

This makes it easy to understand why physicians have to face a very intricate problem in the diagnosis of disease of both body and mind. No wonder that it has been said of some of the problems which physicians have to face are complex indeed, compared to the questions which come before the United States Supreme Court for decision. We are not surprised when the Supreme Court occasionally divides five to four on what seems to be after all a comparatively simple question. (At least if you were to ask almost any man in the street he would settle it for you practically off hand.) Less acute divisions of the Supreme Court are, I understand, rather frequent. I believe that unanimous decisions of the court are comparatively rarer than those in which there is some division of opinion. We do not think for a moment of impugning the knowledge of law of our Supreme Court justices. Neither do we think that they are swayed by personal motives and of course we are sure that no ulterior motive influences them.

Surely the doctor should have the right to at least as generous a consideration as we give to the Supreme Court in this
matter. Doctors often disagree and patients and their friends often find it rather difficult to understand why there should be such rather radical disagreement between physicians, and are prone to accuse them of lack of knowledge or of some ulterior motive. To do anything like this is manifestly unfair to the profession that has to do the best it can in solving problems so intricate that they are as yet quite beyond assured solution. When doctors disagree their opinions are not worth much, because as a rule they have assumed a knowledge which they do not really possess. Here is the reason that makes the present mode of procedure in the introduction of medical expert witnesses into criminal cases eminently absurd.

The difference, though, between Supreme Court justices and medical experts is that the fee of the justices does not depend upon their judgment.

And yet this is the position in which the medical expert hired by one side in a criminal case finds himself. No amount of knowledge will protect him from the corrosive influence of large fees; that alone will not insure a man from being influenced by material and personal considerations when an important decision has to be rendered.

It is quite unfair to put medical experts in this position. The one fair way would be to have a man of known knowledge and experience appointed as amicus curiae to help judge and jury with his advice and counsel. It is very probable that even a single one would not be sufficient for important cases but there should be a commission of three. Under these circumstances our criminal trials would lack some of the sensations which the testimony of medical experts afford at the present time and the public would not be confronted with so many new long words especially Greek derivatives, like schizophrenia, the meaning of which they would be supposed to understand with facility from newspaper reports. It is time however, to put an end to the scandal of paid-for expert medical testimony, for the medical expert under these conditions is really only another hired advocate but without that legal training and professional obligation as an attorney that would most effectively help the Court in the elucidation of the problem to be solved. Some of the countries of Europe are distinctly ahead of us in this matter and Germany, particularly has done much better.