

Viewpoint of Industrial Medicine

T. Conrad Wolff

Follow this and additional works at: <http://digitalcommons.law.umaryland.edu/mlr>



Part of the [Litigation Commons](#)

Recommended Citation

T. C. Wolff, *Viewpoint of Industrial Medicine*, 13 Md. L. Rev. 293 (1953)

Available at: <http://digitalcommons.law.umaryland.edu/mlr/vol13/iss4/3>

This Article is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized administrator of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

VIEWPOINT OF INDUSTRIAL MEDICINE

By T. CONRAD WOLFF, M.D.*

The Medical Board of the State Industrial Accident Commission was started some years ago as an advisory board to the State Industrial Accident Commission in matters of disease as distinct from traumatic injury.

We deal consequently in the Medical Board for occupational diseases with such things as silicosis, silicosis tuberculosis, dermatitis, and an infinite idiological variety of diseases resulting from contact with industrial fumes, and an infinite variety of other conditions that come largely under the head of internal medicine.

Expert Evidence by competent authority in Industrial Medicine, a division of Internal Medicine, should be utilized wherever there exists litigation about Industrial disease as distinct from Industrial injury.

Litigation commonly takes place in the form of hearings before Judge and Jury or before duly appointed Commissions or Boards of Inquiry. Lawyers representing both sides of the dispute hire their expert evidence and these experts are expected to speak for their side.

Such is the current system. Nobody regards it as ideal but there is no widespread movement to correct it.

If you would be understood, define your terms. Do any of you know a definition of "Expert Evidence" as it applies to Medicine? The average lawyer will probably tell you that it means "Evidence on a medical subject by a Doctor of Medicine". Such a definition, so all-inclusive, becomes an absurdity when one realizes the infinite complexity of Modern Medicine. No single Doctor of Medicine could become familiar with all branches of Medicine to a degree where his testimony could be rated as universally expert. Yet it is not uncommon practice for lawyers to seek as Expert Evidence physicians who have insufficient familiarity with the subjects at issue. The reasoning appears to

* Litt. B., 1911, Laval University, Faculty of Art; M.D.C.M., 1917, McGill University, Faculty of Medicine. Deceased, August 25, 1953.

be "He is a Doctor of Medicine. He knows something about the subject. We can use him".

The author has no wish to reopen old cases nor to indulge in personalities. He therefore submits to you two cases as examples, making a few fictitious changes in some of the details while preserving enough of the essentials so that the cases may serve as valid examples.

A widow appears in court to claim damages because her husband may have died from an occupational lung disease. Her Attorney has brought to the hearing a Doctor of Medicine for "Expert Testimony". This Doctor seems to have had something of a migratory career. Currently, he is doing a general practice. At one time he was an Interne on the Staff of a rather obscure Institution for the treatment of Diseases of the Chest — but that was many years ago. The hearing is held before a Medical Board for Occupational Disease composed of Doctors who owe their appointments to approval by their State Medical Society, and not to any political considerations.

These Doctors cross question the "Expert Witness" and learn almost at once that his knowledge is fundamentally lacking. He reasons falsely from ignorance of basic science. His conclusions are untenable. However, he is glib and has picked up enough pseudo-professional jargon so that in the hands of a sharp lawyer he could probably impress a jury. However, he is heard by Physicians, not by jurymen, and the value of his testimony is zero.

Why has the Attorney brought such a man to the witness stand as his Expert Witness? Why has such a Doctor connived at being rated as an Expert Witness in a matter in which his knowledge was so palpably deficient?

Before citing the second case, let me remind you that in the Profession of Medicine, highly qualified men from internationally famous Institutions of Research constantly reexamine our stocks of professional information — text books and such like. The results of their labors often oblige us to revise opinions held in respect for years. Many text books contain items of information which current research

has rendered untenable. Bear this in mind as the second case is cited.

A skilled laborer who had spent his working life in contact with various metals died during one of the terminal events of Arteriosclerotic¹ Cardio-Vascular² Disease. His widow remarked to her attorney that her husband's life had been healthy until recently except for an attack of lead poisoning many years previously. The attorney then told her in effect that lead poisoning causes arteriosclerosis. He reminded her that her husband had worked for the same firm for 40 years; that he had developed lead poisoning while in the employ of this firm; that the firm was, therefore, liable for her husband's death on the grounds of occupational disease.

A hearing is held before the Occupational Disease Board. The members of this Board are aware that according to the recent findings of a Research Organization of high international repute any connection between the disease of arteriosclerosis and lead poisoning is purely coincidental. The decision of the Board absolves the Insurer from responsibility in the death of the man.

A member of the State Industrial Accident Commission, a lawyer, reverses the decision of the Medical Board.

The Board announces its reversal to the Director of the above mentioned Research Organization who in turn agrees to attend a re-hearing of the case as the Board's Expert Witness. He spends considerable time in outlining the processes whereby the Research Organization had arrived at its conclusions in respect to the coincidental character of lead poisoning and arteriosclerosis. He submits to cross questioning by opposing counsel.

As rebuttal the Attorney for the Widow introduces his Expert Witness. This is a Doctor of Medicine who admits that his specialty is far removed from the subject of Industrial Poisons and their effects. He denies that he has ever

¹ "A condition marked by loss of elasticity, thickening and hardening of the arteries." DORLAND, THE AMERICAN ILLUSTRATED MEDICAL DICTIONARY (1951).

² "Pertaining to the heart and blood vessels." DORLAND, *ibid.*

treated any cases of Industrial Poisoning. It seems that he has had no particular interest in the subject until employed by the Attorney as an Expert Witness. He states that the texts he has read on the subject favor the hypothesis that lead poisoning produces arteriosclerosis.

The case ultimately proceeds to a higher court, where the outdated opinion of the Text Books is upheld and so now, for all time, Scientific Research of the highest type to the contrary notwithstanding, the law asserts that lead poisoning produces arteriosclerosis — and all is embalmed and hallowed in legal precedent. It does not require an abnormal imagination to visualize the gainful opportunities for old men who at one time suffered from lead poisoning, not to mention the financial emoluments accruing to the type of lawyer and doctor who would prod them into litigation.

Do the gentlemen of the Law and Medicine in the State of Maryland approve such techniques of their brother professionals as I have referred to? If they disapprove, is there any present machinery whereby they may visit their disapproval upon those who incur it? If there is no present machinery, can some be devised?

Inasmuch as I know of no generally accepted definition of an Expert Medical Witness, I am emboldened to hazard one of my own.

An Expert Medical Witness may be defined as a Doctor of Medicine who restricts his testimony to subject matter wherein he has become familiar through years of interest as manifested by study, research or practice; that his competence in such subject matter is known to his colleagues; and that his reputation for integrity has not been called into question.

The author would like to see the Governing Body of our Medical Society issue at specified time intervals a panel of such Expert Medical Witnesses, properly classified as to their fields of knowledge. These witnesses' periods of availability should be short and some provision should be made to defend them against repeated demands on their

time. However, these witnesses should meet reasonable demands as a matter of civic responsibility.

Such a panel of Expert Medical Witnesses should be available to the Bar Association.

And now with great hesitancy, the author poses what seem to him to be a few important questions.

1. Is it possible in a difficult and complicated medical litigation, that the presiding officer of the Court, Commission or Board of Inquiry should have the power to draw from the panel issued by the Medical Society the names of whatever Expert Witnesses may seem to him to be necessary? Or, alternatively, could the Medical Society make these nominations at his request?

2. Would it be possible that these Expert Witnesses be furnished with Case Histories, Laboratory Reports and stenographic transcripts of the legal procedures that have already taken place?

3. Would it be possible to accord these Expert Witnesses reasonably adequate time in which to review the medical evidence before them and reach reasonable conclusions?

4. Would it be possible to arrange for the protection of these witnesses against the importunities of Counsel or other interested persons while reviewing the evidence, though subject to Cross Questioning in Court after they had reached their conclusions?

5. Would it be possible to arrange that the emoluments of these Expert Witnesses be added to the Court Costs and defrayed ultimately according to the direction of the presiding officer of the Court?

6. Would not such a system as this do away with the undesirable situation where each side to the dispute has its own "Expert Witness"?

I should like very much to see these matters discussed, because, as I view it, constructive changes in some present techniques may very well be indicated.

SUMMARY

A. A suggestion is made that a definition of "EXPERT MEDICAL WITNESS" be reached by consultation and agreement between our Legal and Medical Organizations.

B. Testimony of such EXPERT MEDICAL WITNESSES as so defined will be the only type admitted as EXPERT EVIDENCE before Courts, Commissions and Boards of Special Inquiry. Infraction or attempted infraction of this stipulation by Lawyers or Doctors should incur the displeasure and appropriate disciplinary action of the Law and Medical Organizations.

C. That a properly classified panel of such EXPERT MEDICAL WITNESSES be nominated by the Medical Society for short periods of service, to be replaced by another such panel when the period of service has expired, and that the Doctors on such panels reply to calls for such service as a matter of civic obligation.

D. That such EXPERT MEDICAL WITNESSES be selected as seems necessary by the presiding officers of Courts, Commissions and Boards of Inquiry, and that these WITNESSES serve as representatives of the Courts etc.

E. That the present practice wherein each side of a litigation hires and pays its so-called EXPERT MEDICAL WITNESS be discontinued.

F. That emoluments accruing to EXPERT MEDICAL WITNESSES be added to the Court Costs and defrayed through Court Order, so that the EXPERT MEDICAL WITNESS has therefore no conceivable personal or prejudiced interest in the outcome of the dispute.