American Medical Jurisprudence and the Expert Witness

In this country medical jurisprudence, that is, the practical application of medical knowledge to problems in the administration of law, remains in a more or less chaotic state. That there is a general lack of interest by officers of government and by the medical and legal professions in building up this valuable branch of medicine is seen in our low standards of postmortem examination, in our methods of toxicology and other analyses, in the failure of even our largest cities to maintain adequate medicolegal institutes, and in the dearth of organizations and publications to deal with the many scientific and practical questions of medical jurisprudence in its various ramifications, which consequently lingers in an unorganized and discreditable state without gaining in social value.

Unquestionably, a most serious obstacle to better things in medical jurisprudence here is the method of selecting and paying the expert witness by the litigants themselves. Under this system, expert testimony only too often is of no value; the conflicting experts, called by plaintiff and defendant, merely bewilder the jury and amuse or disgust the public. In a recent presidential address before the Ohio State Bar Association, C. E. McBride1 pleads for selection of expert witnesses by the court, and compensation by the state or county or to be collected as part of the costs of the trial, as a remedy for the manifest evils of the present system. These evils are emphasized strongly, as illustrated by quotations from different judges in support of the general statement that “the uncertain and contradictory character of expert testimony has weakened its force and effect in the trial of causes”:

“Considerable experience has taught me that the testimony of experts who are selected by the party in whose behalf their testimony is to be given, and where testimony in his favor is assured beforehand, is likely to be considerably influenced by the fact that the experts have been employed as such by the party calling them, and that while on the stand they are paid to have a theory, which they are zealous to maintain; and as a general rule they fail short of that impartiality which characterizes ordinary witnesses in courts; and this observation has led me to scrutinize with great care the testimony given under such circumstances....

“The present system of presenting the testimony of experts, in the courts, is poorly calculated to assist in arriving at the exact truth. The expert produced as a witness has almost invariably given assurance that he will swear to an opinion favorable to the party calling him, and for this he usually receives a fee proportioned to his estimate of the value of his opinion to the side for which he testifies....

“Expert evidence, so called, or, in other words, evidence of the mere opinions of witnesses, has been used to such an extent that the evidence given by them has come to be looked upon with great suspicion by both courts and juries, and the fact has become very plain that in any case where opinion evidence is admissible the particular kind of an opinion desired by any party to the investigation can be readily procured by paying the market price therefor. He (the expert) comes on the stand to swear in favor of the party calling him, and it may be said he always justifies by his works the faith that has been placed in him.”

From the nature of the case, the introduction of better methods than the present rests largely with the legal profession; but physicians in general, and particularly all who are interested in medical jurisprudence, will favor strongly the adoption of some system that shall increase and not hamper the services which this branch of medicine, properly used, can render to society. In the meantime, determined efforts should be made by organization of those who are concerned directly, and in other ways, to promote the development of American medical jurisprudence.

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