

# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

Contemporary the problem of expert testimony is, but new it most certainly is not. For the past half-century—to ignore earlier manifestations of discontent—the common-law method of eliciting expert opinion in the trial of cases has been a target of criticism by the scientists whose testimony has been sought. And the legal writings of the period—judicial opinions, bar association proceedings, treatises, and articles alike—demonstrate that the legal profession has been unable or unwilling to achieve that state of complacency toward the situation which has too often marked its attitude toward malfunctioning in the legal system.

It is regrettable, if not surprising, that this dissatisfaction which the two professional groups have shared in common has more often stimulated the acrimonious interchange of accusations than a striving for mutual understanding of inevitably divergent viewpoints. But there have been notable instances of the latter attitude, and here and there reforms have been effected which give promise of more noteworthy achievements in the future.

Today, as at no previous time, there seems evident a determination on the part of both the bar and the scientific professions to put an end to “the battles of experts” which have aroused the cynical skepticism of the public as to the integrity of both groups. Accordingly, it has seemed appropriate to present a survey of the progress that has been made and of the problems that remain for solution. Such is the primary objective of this issue, undertaken, it should be added, with the realization that the questions incident to the utilization of the services of the expert in the administration of justice are too many and too diverse to make their comprehensive consideration feasible within the limits of this symposium.

In *The Development of the Use of Expert Testimony*, Mr. Lloyd L. Rosenthal has traced the successive adjustments in legal procedure which the need for expert opinion has compelled and which in turn have shaped the method of eliciting that opinion which is employed today. There follows a series of articles dealing with an issue which has been a focal point of popular and professional discontent with the existing system—the determination of mental condition. Here, happily, the efforts for reform have been most fruitful, and in *An Alternative to the Battle of Experts: Hospital Examination of Criminal Defendants before Trial*, Mr. Henry Weihofen surveys and appraises a group of legislative innovations designed to substitute scientific for forensic procedure in the determination of criminal insanity. The

most far-reaching of such measures has been singled out for special treatment. Dr. Winfred Overholser, in *The History and Operation of the Briggs Law of Massachusetts*, deals not only with provisions of that statute but also with the circumstances and conditions which led to its enactment and have contributed to its success.

In civil litigation, it is the will contest which most frequently requires resort to psychiatric testimony. The difficulties arising from the fact that the person whose mental condition is in issue is already dead are discussed in *Psychiatric Testimony in Probate Proceedings* by Dr. Harold S. Hulbert, whose observations, moreover, reflect the reactions of a psychiatrist to the workings of the courts.

Since the value of expert opinion can rise no higher than its source, the task of determining the qualifications of the expert is an important one. A significant attempt to insure the expertness of the expert in one field is described in *The Qualification of Psychiatrists as Experts in Legal Proceedings* by Dr. Israel Strauss.

The rapidly expanding volume of personal injury litigation makes an increasing call upon the medical profession for expert testimony. For the abuses which have developed, especially in large cities, Dr. Frederic E. Elliott and Dr. Ramsay Spillman, in *Medical Testimony in Personal Injury Cases*, have not hesitated to prescribe drastic remedies. Their proposals, which would materially alter the mode of trial of such cases, lend special relevance to Miss Ruth A. Yerion's discussion of the administrative handling of the problem in *Expert Medical Testimony in Compensation Proceedings*.

In psychiatric and medical testimony, the opinion of the expert is all-important, but there exist important fields of expert evidence in which the reasoning of the expert may be basic to the jury's appraisal of his opinion. The need for accommodating the rules of evidence to this fact is persuasively set forth in *Reasons and Reasoning in Expert Testimony* by Mr. Albert S. Osborn who has long held an authoritative position in such a field—handwriting evidence. Since the contributions of science to the problem of crime detection are progressively increasing the fields of evidence of this character, the importance of the judicial attitude toward it is correspondingly enhanced. The current trend is depicted by Mr. Fred E. Inbau in *The Admissibility of Scientific Evidence in Criminal Cases*.

On the Continent the expert enjoys a position quite distinct from that of the expert in Anglo-American law. In *The Expert Witness in Criminal Cases in France, Germany, and Italy*, Mr. Morris Ploscowe not only depicts the expert's rôle but makes evident the fact that these nations have not as yet satisfactorily solved the problem of expert testimony.

A final article by Mr. Horace L. Bomar, Jr., discusses the thorny question of *The Compensation of Expert Witnesses*.

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