

THE TEACHING OF LEGAL MEDICINE

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IN the organization of the curriculum of the Duke University School of Medicine the inadequacy of legal medicine was recognized, and an effort to provide suitable instruction in this subject was sought. A preliminary outline of a suggested method of handling this instruction was presented by Forbus and Bradway¹ in 1933. It was early recognized that the cooperation of the law school and of the medical school was a desirable feature of any plan adopted. A course of lectures, while serving to outline the problems involved, did not introduce the medical student to legal procedure — particularly to the duties of the expert witness in court. Likewise it was desirable to introduce the law student to the problems of handling highly specialized testimony. It was also desirable to familiarize both groups of students with the attitude and problems of the opposite group and thereby bring about a mutual understanding of cooperation between the physician and lawyer — an understanding which is essential if the two groups are to work together successfully. Accordingly the following plan was instituted and has been followed since 1933.

COURSE

The course is given every other year and is required of medical students in their junior or senior year. The law students are invited to attend the series of lectures and participate in the practical trial. A series of seven lectures are given to provide the groundwork of the subject. These lectures are designed to acquaint the medical student with some of the legal problems that will arise in the course of his medical practice, as well as the medical aspects of medico-legal investigations. These lectures also serve to instruct the law student in the particular phases of medicine that may be of value to him and in the types of cases in which medical and toxicological investigation can and should be applied.

The lectures are divided as follows:

- (1) Introductory — by a member of the law faculty.
 - Problems of Legal Medicine.
 - Jurisdiction of the Coroner and Medical Examiner.
 - The Medical Expert in Court.
 - Legal Liability of Physicians.
- (2 and 3) Medico-legal Pathology and the Medico-legal Autopsy — by a member of the Department of Pathology.
- (4) Toxicology — including homicidal, suicidal, and industrial poisoning.

- (5) Asphyxia.
 - Medico-legal Aspects of Alcoholism.
- (6) Serological Examination of Blood and Stains.
 - Examination of Fibers.
 - Lectures No. 4, 5 and 6 are given by the Toxicologist.
- (7) Traumatic Injuries.
 - Malingering and Workmen's Compensation — by a member of the Department of Surgery.

In addition to the above lectures one medico-legal case is argued by the law students, using medical students as expert witnesses. This trial is open to the public. It has proved to be of immense value and interest to both the School of Medicine and the School of Law and is described in detail as follows:

TRIAL

The cooperative purpose is to improve medico-legal relations, but each group anticipates certain benefits peculiar to it. The medical school desires to develop its program by providing in addition to textbooks and lectures, a clinical approach. More specifically, it is designed to help the student: (1) familiarize himself with the technique of the expert witness; (2) recognize the importance to the individual physician of ability to diagnose promptly the existence of a problem which may have legal implications and which if adequate preventive measures are not employed may involve him in legal entanglements; (3) understand how a lawyer and a physician may cooperate in solving a particular case and thus better serve the public. On the other hand, the law school, long accustomed to the case method of instruction, is feeling its way in the direction of clinical material, methods and objectives. It expects that its students will: (1) become more proficient in the art of law practice; (2) learn how to prepare an expert witness for the ordeal of direct and cross-examination so that his testimony may be clear, accurate, convincing and brief; (3) understand how to present in behalf of a client, and before a court and jury, the facts of a case which has repercussions in another professional field than the law, and to employ with facility the resources, discipline and experience of that other field; and (4) function in public as well as in the class room.

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¹Wiley D. Forbus and John S. Bradway, *Medico-legal Investigation*, 26 *Southern Medical Journal*, 768 (1933).

The procedure suggests, but differs from, the traditional "mock trial." The material is an actual case with facts which cannot be changed or enlarged upon to suit the competitive desires of either side. The legal technicalities of pleading, interlocutory motions and evidence upon uncontroverted facts are eliminated and witness baiting and unnecessary objections to evidence are reduced to a minimum. The prevailing system is the result of several years of experimentation and while the fundamental values of the exercise are no longer in question it is expected that further improvements will be made. The procedure may be described in a series of steps.

1. General supervision of the work is in the hands of the Curriculum Committee of the Faculty of the Medical School and the staff of the Legal Aid Clinic of the Law School. The supervision consists of discussing general policies and improvements, selecting specific cases, working out the details, collecting and considering constructive criticisms.

2. Each year a single case is selected. Experience indicates that when more than one case is presented in a single year the interest of the spectators and participants declines.

3. The following notice handed to the spectators is a statement of the fact situation employed in 1938. The names of the participants and the form of the issues illustrate much of the mechanics of the exercise.

MEDICO-LEGAL CONFERENCE
March 13, 1939

Counsel for plaintiff:	Counsel for defendant:
P. Bradley Morrah	William F. Womble
Charles H. Gibbs	Edward W. Cooley
Witnesses for plaintiff:	Witnesses for defendant:
Dr. Robert Nixon	Dr. Robert Miller
Dr. John Moss	Dr. Wayne Rundles

Judge: A. H. Borland

Rosie O'Grady, hereinafter called plaintiff, a single woman thirty-nine years of age, was employed by the XYZ Can Company, Raleigh, N. C., hereinafter called defendant, as a bottle capper. On October 28, 1935, while in the course of her employment, she ran a sliver of tin into the end of her right thumb. She pulled out some pieces of tin from her thumb and continued with her work. An infection developed and on December 4, 1935, she consulted a doctor. Since that date plaintiff has seen some thirteen doctors, among whom were general practitioners, a neurosurgeon, an orthopedic surgeon, and a neuro-psychiatrist.

The defendant admitted liability for plaintiff's injury and is compensating plaintiff for her injury and disability. The defendant has paid all of plaintiff's medical and hospital expenses to date. Plaintiff has requested the defendant to pay for further medical treatment. The defendant refused.

This hearing was requested by the plaintiff to ascertain if, under the provisions of the N. C. Workmen's Compensation Act,

she is entitled to further medical treatment at the expense of the defendant.

Section 8081 (gg) of the N. C. Workmen's Compensation Act reads as follows:

Medical treatment and supplies. Medical, surgical, hospital, and other treatment, including medical and surgical supplies as may be reasonably required, for a period not exceeding ten weeks from date of injury to effect a cure or give relief and for such additional time as in the judgment of the commission will tend to lessen the period of disability, and in addition thereto such original artificial members as may be reasonably necessary at the end of the healing period shall be provided by the employer. In case of a controversy arising between the employer and employee relative to the continuance of medical, surgical, hospital, or other treatment, the industrial commission may order such further treatments as may in the discretion of the commission be necessary . . .

Question for Determination:

The sole question to be determined is whether or not, under the above section of the Workmen's Compensation Act, the defendant should be required to pay for further medical treatment for the plaintiff.

Judge and counsel are selected by the Legal Aid Clinic; witnesses by the medical school. The judge is a recent graduate of the Law School; the counsel and witnesses are senior students. The process of selection of participants is an important factor in the success of the work. In this way it is possible: to control the amount of attention to be devoted respectively to incidental matters and to the main issue; to control the care and extent of preparation; to lift the tone of the conference from a plan of "smart alec" bickering to a dignified search for a solution. Similarly, care in the selection of a topic insures a balancing of the equities on either side and a closely drawn set of issues which heighten the interest of participants and audience.

4. At a preliminary meeting there are usually present members of the supervisory committee and the participating students. The set of facts is submitted, discussed and refined; the issues are clarified, sharpened and balanced; the general outline of the procedure is considered and mimeographed or verbal instructions issued on details.

5. Counsel and witnesses for each side then hold a series of preliminary meetings. First, it is necessary for the law students to become familiar with medical terms and the medical students to orient themselves in legal phraseology. After this phase each side gathers its facts, plans its campaign, agrees upon a strategy which emphasizes strong points and minimizes the weak ones. It is during this period that the cooperative value of the exercise is most clearly evident to the participants. Members of the supervisory committee

hold themselves ready to aid, but prefer that the students should feel a sense of responsibility.

6. The law students are required to reduce to writing their introductory statements to court and jury and their direct examination questions and answers. This expedites the trial, clarifies the testimony, and avoids the interruptions arising from objections to the relevancy of poorly framed questions. The participants prepare their testimony in legally admissible form and the result is a better exhibition of the art of dealing with an expert witness. Good form becomes a more important phase of the exercise than the dramatic victory, though, in general, victory goes to the side which is better prepared.

7. An attempt to impose an arbitrary time limit seems restrictive. Two hours and a half should cover even a moderately difficult case—allowing an hour for each side and the other half hour for such matters as preliminary announcements, charge to the jury, jury deliberation and vote, and final discussion of the case. In an hour or less each side should be able to present its contentions, examine directly two witnesses, cross examine two opposing witnesses, and make a concluding address to the jury. Time is an important factor. More than two hours and a half is tiring to the audience.

Perhaps a word should be said as to the value of these preliminary plans from the standpoint of their educational value to the student. It is no mean task for a student trained for several years according to the strict disciplines of either law or medicine to find a common ground for approaching a mutual problem with another student accustomed to a different set of mental concepts. The breaking down of the wall of professional isolation in favor of interprofessional cooperation is the first benefit derived from this process. The second is the stimulation of the students, in the light of approaching public competition, to seek from their instructors, both in law and medicine, more information. The third is the experience gained in the allocation of various aspects of the problem between the two professions. Here is a client to be served, a problem to be solved. The students working together must decide upon the best goal and the most effective means of attainment.

8. Preparation for the actual trial involves informing the "judge" of the issues in the case and inviting the student groups in law and medicine to attend. The judge should be alert to prevent

slovenly presentation, to enforce reasonable rules of evidence, to keep the case moving, to protect witnesses against undignified attacks of counsel, and to compel witnesses to answer questions seriously, responsively and quickly. It has been found helpful for members of the supervisory group to sit near the judge so that he may readily confer with them on matters as they arise. The trial is held in the amphitheatre of the Medical School. Three tables and a few chairs provide places for the "judge" and opposing counsel. The agreed statement of facts is mimeographed and a copy handed to each spectator. This materially shortens the trial and permits everyone to focus attention on the essence of the problem. It should be recalled that this is primarily an exercise in medico-legal cooperation, and only incidentally in the mechanics of a trial at law.

9. In the presence of some three hundred persons, the trial opens at 7:30 p.m. on a convenient evening. There are two preliminary steps: briefly explaining the experiment to the spectators, and selecting a jury. Both of these are usually done by a member of the staff of the Legal Aid Clinic. The jury consists of six law students and six medical students chosen arbitrarily from among the spectators. They render a verdict at the end of the case, but it need not be unanimous. Counsel can thus direct their arguments at a flesh and blood judge and jury with the knowledge that a decision will be reached.

10. With these preliminaries disposed of, the judge raps for order and instructs the plaintiff's attorneys to proceed. The preliminary address by each side to the jury explaining the respective theories of the case are important in forcing the students to organize their ideas and decide just what it is that they are trying to prove. The direct examination may be made a model of clear and concise presentation of facts. The cross-examination brings out mental flexibility. Nimble thinking, both to set and avoid traps is characteristic of the good expert witness, and, while a single exercise cannot turn an inexperienced medical student into a polished veteran, it, at least, indicates some of the problems to be met and overcome.

A valuable educational phase of the trial is the interchange of ideas between the medical students and their counsel during cross-examination. A physician may be employed either as an expert witness to appear upon the stand or as a technical adviser, to sit beside the lawyer and follow each

step of the testimony. The physician's functions in these two cases are substantially different and seldom, if ever, is he called upon to do both in the same case. If proper cooperative relations have been established the attorney conducting the cross examination is at all times in touch with his own witnesses. They suggest to him weaknesses in the testimony being given by the witness on the stand.

During the trial it is frequently necessary for counsel to object to some question or answer. Such points are ruled upon by the "judge." A few objections serve as illustrations of how the record of a trial is kept in shape for appeal, helps the spectators to understand the nature and reason for the rules of legal evidence. More than one or two objections slows down the exercise and diverts attention from the main issue.

The summing up by counsel at the close of the evidence again sharpens the points of conflict.

The jury renders a majority verdict and the spectators are asked to vote also as to which side has presented the better case. The session closes when the doctor who appeared in the actual case discusses briefly the way it came out and comments upon various phases of the present proceeding.

In evaluating an experiment in which it seems likely the future will disclose improvements, it is well to remember that three groups are concerned: the instructors, the participating students and the spectators. The instructors find the device useful in developing in the minds of the students a point of view. It becomes increasingly clear that if any professional group is to serve the public, it should be equipped with means for cooperating with other

professional bodies in the handling of actual cases. The exercise described seems to the supervisory group a practical means to that end.

The students show much interest in the problems. It is likely that they are more concerned with the details of the particular case than with the broader rules of which the case is only an example. No one expects that the medical students will feel prepared to practice law, or that the law students will feel prepared to practice medicine. The purpose of the plan is to demonstrate to each that the field of the other is profound and that whenever any professional man catches sight of a situation in which a problem in some other professional field is presented he should at once secure the advice and assistance of a representative of that other field. This point seems fairly clear to the participants. They do not always know how to "diagnose" the presence of an unfamiliar problem, but that is something which probably will come only after long and patient experience. It is perhaps sufficient that at present they know what to do with it when it has been recognized.

As to the spectators it is difficult to determine the limits of their interest. It is a dramatic spectacle. They enjoy the excitement of the contest. They cheer their own friends who are participating. They see how to do and how not to do certain things. It is clear that the benefits of the exercise do outweigh the disadvantages; that the labor and worry involved is compensated for by the educational values and that an opportunity is provided everyone to step, at least temporarily, out of his own professional groove and broaden his horizon.

Medico-Legal Graduate Study:—The A.M.A. Council on Medical Education and Hospitals is undertaking a survey on graduate education and graduate study opportunities. It is hoped that the problem of medico-legal education will not be slighted. Daily there arise incidents that indicate the need for competent medico-legal experts. This need must be met by providing opportunity in our colleges and universities for graduate study in this field.