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WHO ARE THESE CHARACTERS IN FANCY DRESS?

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INTRODUCTION

Courts are places where well-rehearsed dramas of sex, violence and passion are performed for the public benefit with the main actors appearing in period costume. Audience participation is actively

encouraged and quite often twelve or so members of the public are brought in, mostly against their wishes, to sit through the entire performance.

In medieval times in Britain, trials were heard at the Castle and the accused would then be dragged off or carted to a spot just outside the city gates where he was hung. In public of course! Nothing much seems to have changed except the hanging bit. The author has experience of two courts held in castles; one in Inverness in Scotland and the other at the opposite end of the country in Exeter in Devon. At the time of writing the Crown Courts in Exeter is at the Exeter castle. (The old gallows site is just outside the city wall at a place officially known as Gallows Corner! See the last para for details)

Americans have no imagination. American courts lack the atmosphere of British courts but have the advantage that they allow TV cameras in court.

...The number of court-room-based-dramas seen on British television is an indication of the popularity of real life court dramas. The tabloid newspapers report the juicier bits of court drama especially if any of the players happen to be distally related to anybody distally associated with the Royal Family...

The number of court-room-based-dramas seen on British television is an indication of the popularity of real life court dramas. The tabloid newspapers report the juicier bits of court drama especially if any of the players happen to be distally related to anybody distally associated with the Royal Family. To ensure audience interest the act known as Medical Evidence is thrown in and this is where the medical profession falls flat on its face.

DOCTORS AND COURTS

Doctors make bad witnesses and doctors don't like courts. The more senior and knowledgeable a doctor is the more likely is he to be a poor witness. Any doctor called upon to give evidence should be aware of the Great Banana Skin Theory:

"No matter who you are, you are just as likely as the next man to end up flat on your backside with a silly grin on your face and four red cheeks!"

Doctors generally fall into three categories: The Good, The Bad and The Downright Unlucky. The Good are good in their chosen field and are often household names. They are also very honest. Sadly they don't often make very good witnesses. There is nothing sadder than the spectacle of seeing an eminent Professor of GastroBiliaryPancreato Surgery on the slippery slopes largely littered with his own banana peelings. Then there is The Bad. These are usually doctors who are either not very honest or, like psychiatrists, work in that sort of field where nothing ever makes any sense. They leave the courts, and themselves as well, totally and utterly confused.

Lastly there is the Downright Unlucky: the young doctor so anxious not to step on the cracks in the pavement that he puts his foot right on the banana! The only reason that these young doctors survive is largely because of the considerable public sympathy that their performance generates. (Experienced Forensic Practitioners are usually in a class of their own but may occasionally fall into one or the other the first two categories!)

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Most doctors do their best to stay clear of courts. Some choose specialities such as Dermatology or Endocrinology. Junior doctors move around the country or emigrate, making it difficult for the courts to track them down. When eventually they end up as witnesses the performance of these reluctant witnesses leaves a lot to be desired often providing the sorry spectacle of "learned medical men" not only contradicting their colleagues, but themselves as well and in the process denying all knowledge of well established medical principles.

The primary reason doctors don't like courts--to use sporting terminology--is that in court they find themselves playing what is known as "an away game". They are well away from their surgeries, clinics and operating theatres with absolutely no help available from their juniors or nurses. The legal professions, on the other hand, are playing on their own patch to their own set of rules. For instance in their own circles the medical profession rely heavily on "med speak" or medical jargon but in courts they are forced to define medical terms and speak in lay terms.

THE FAULTS IN THE SYSTEM

There are a number of faults in the system not the least of which, is the amount of time wasted by medical (and other) witnesses in court.

Nobody denies that this probably a very important reason that doctors avoid courts. Courts appear to be totally disorganised. There have been instances that I personally know of, where medical witnesses have been dragged all the way from the USA, Australia and New Zealand only to be told that they were no longer required. One of my friends and a fellow Forensic Pathologist who immigrated briefly to New Zealand, insisted on Business Class seats when she had to return to Britain to give evidence. They couldn't force her to return but then nobody wants a criminal to walk out of court on a technicality, do they? The lawyers and judges work to their own timetables. They are not unduly worried about your problems with surgeries, patients, funerals or holidays. My own holidays have been disrupted to such an extent that I once missed a flight from London to Bangkok. On another occasion I was asked to fly back from Cypress on a military aircraft (no doubt leaving my wife behind! but I refused; and I stopped answering the phone!) My long-suffering wife now gets extremely uptight in the days leading up to the start of our holidays.

...Over the years, the salaries of doctors in Britain have fallen behind the income of other comparable professions, such as lawyers, to such an extent that most have partly opted out of the Health Service to do private work..... A day out in courts is therefore bad news and a loss of income...

Then there is the problem of court fees (or Expert Witness Fees). Over the years, the salaries of doctors in Britain have fallen behind the income of other comparable professions, such as lawyers, to such an extent that most have partly opted out of the Health Service to do private work. These days an increasing number of doctors do private work to bring their income to a decent level. ***A day out in courts is therefore bad news and a loss of income***. Court fees have not kept up with inflation and are derisive.

Barristers on the other hand are not only paid well but insist on employing their Juniors to assist them (who are also well paid, thank you!) A junior barrister earns considerably higher fees than an Expert Medical Witness does. Barristers are paid by the day and I have often wondered if this is the reason that trials seem to drag on. (Courts never sit before 10.30 a.m. and wind up by 4 p.m. In between there are generous breaks, especially if the judge's piles are playing up!)

However, it is my view that the fundamental problem is the sad demise of Forensic Medicine in British Medical Schools. Forensic Medicine was once a very important part of the medical curriculum. In the medical schools that the British left behind in their former Empire, Forensic Medicine still continues to flourish. Unfortunately most British medical schools have dropped the subject altogether. The others, notably the Scottish Universities , still continue to teach Forensic Medicine but have reduced it to ten lectures. During my time at the University of Edinburgh, the medical students were exposed only to ten hours of Forensic Medicine where as the Law Students had three terms worth and an examination at the end of it! Even Histopathologists, who do the bulk of the so-called Coroner's autopsies have very little or no forensic experience. (I always cringe when I hear Histopathologists giving medical evidence on forensic matters). ***Be warned! Lawyers know more Forensic Medicine than Doctors! The writing is on the wall!*** Unfortunately things, as they say, need to get worse before they get better.

HOW TO SURVIVE AS A MEDICAL WITNESS

There is not much point in criticism and cynicism if help cannot be offered. The following is a survival kit.

1.BE PREPARED

Most witnesses ignore one of the most basic principles of being a good witness: READ YOUR REPORT BEFORE YOU GET INTO THE WITNESS BOX FOR GOD'S SAKE!

This is where you discover that your secretary is either dyslexic or has been entertaining naughty thoughts whilst typing your report ("bacterial ORGASMS" instead of "organisms".!).It is also very easy to get right and left mixed up (a common mistake on my part) or 0.5 centimetres with 5 centimetres. All of this has happened to me!

There is always plenty of time to correct silly mistakes like that before you get in the box. Remember to take your original notes with you.

...Whilst fashions and dress sense has changed considerably over the last few years the courts appear to have been caught in a time warp! Young doctors of today look like Rock Stars or like the Spice Girls or both. Judges and Lawyers on the other hand wear horsehair wigs on their heads...

2.APPEARANCES

2.1 DRESS PROPERLY

"Judges and juries must assess witnesses as well as their evidence, but they only see the witness for a short period and in a very artificial setting. Like all of us, when they see a new witness they come to conclusions using stereotypes."---David Carson

Whilst fashions and dress sense has changed considerably over the last few years the courts appear to have been caught in a time warp! Young doctors of today look like Rock Stars or like the Spice Girls or both. Judges and Lawyers on the other hand wear horsehair wigs on their heads! The public's idea of what a doctor in court should look like is largely based on TV dramas. Don't try to look like a TV doctor but do dress well so that you come across as a professional. Tight Levi jeans may look good on the screen but not in the box. By the way, make sure your flies are not undone before you walk in to courts.

2.2. RELAX

This is easier said than done and even after over 25 years in the business the butterflies are still there. Don't appear too cocky either. Nobody likes a smart arse! By all means pace up and down and smoke as many cigarettes as you want BEFORE you get in the box. Once in the box do stand up straight. Don't fidget, don't look shifty and don't avoid eye contact. Acknowledge that the judge is in charge by looking at him briefly, but don't get too familiar Never address him as "Hi, me ol'mate"! Holding your report in your hands is the best thing that you can do with your hands. Never ever put your hands in your pockets! If you feel that your throat may go dry ask for a glass of water to be placed in the box before you get in the box. Never ever request a glass of water when the cross-examination gets bad. You might as well die of thirst if you can't stand the temperature!

If you have difficulty in relaxing always bear in mind that you are not the accused and the chances of you being carted away to "Gallows Corner" for a public hanging are rather slim.

...The clowns in the wigs are only trying to make a living (and so are you!) Be nice to them. Don't get irritated. It is best to make eye contact with an intelligent looking member of the jury and thereafter direct all your attention to that person; but don't forget the old judge...

2.3 BE IMPARTIAL.

Be impartial not only in your evidence(see below) but in your demeanour as well. The clowns in the wigs are only trying to make a living(and so are you!) Be nice to them. Don't get irritated. It is best to make eye contact with an intelligent looking member of the jury and thereafter direct all your attention to that person; but don't forget the old judge. As far as the opposing parties go (and I mean the Defence and the Prosecution and not the guys trying to strangle each other outside the courthouse!) it is up to you and how well you know them. Glance at the opposing Barrister as a matter of courtesy but don't fall for the "look what the cat has brought in ploy" (see Dirty Tricks, below) but above all don't try to be the Prosecutor's Darling!

3.SPEAK NOW OR REMAIN SILENT FOR EVER.well at least until the re-trial!

3.1 SPEAK LOUD AND CLEAR..

But don't shout and don't mumble when the going gets hot. Don't let your voice get too high pitched and squeaky when in a "I-wish-I-was-not-here"situation.

3.2 ANSWER THE QUESTION!

There is not much point in providing an answer to a question that you would have liked to be asked. A very good habit is to listen to the whole question first. Unlike in a TV Game Show you are not competing and there is no need to keep you fingers on the buzzer to interrupt the question. (There is no BIG MONEY at the end of it anyway!)

3.3 DON'T OFFER UNASKED FOR INFORMATION

"The medical witness should answer only what is asked and not volunteer any elaboration, as the expert defence counsel is adept at allowing, or indeed encouraging, the doctor to use sufficient rope to entangle himself." Bernard Knight

Stick to the point and answer the question but don't go beyond the confines of the question unless you find that you are confronted with a particularly devious type of question, which needs a fuller answer (see below). Don't offer more ammunition and do remember: Stop digging when you find yourself in a hole. Strangely, people suddenly become garrulous when they are in a mess!

...If you are a Radiologist stick to X-rays and don't speculate on what you expect the Pathologists to have found or not found! (Even with modern imaging techniques skull fractures can be missed, but most pathologists will find them!) Likewise Pathologists should stick to Pathology...

3.4 DON'T STRAY INTO OTHER PEOPLE'S FIELDS..

Or the bulls might gore you! If you are a Radiologist stick to X-rays and don't speculate on what you expect the Pathologists to have found or not found! (Even with modern imaging techniques skull fractures can be missed, but most pathologists will find them!) Likewise Pathologists should stick to Pathology. There is not much point quoting the adverse reactions of therapeutic agents from your well-thumbed copy of a Pharmacology text, a relic from your medical student days. (Oh and by the way all you non-forensic people out there: some of the old forensic texts are collector's items only. Don't think that because you once read a forensic text that you are an expert on forensic matters!)

3.5 AVOID LEGAL WORDS AND AWKWARD EXPRESSIONS

Avoid legal definitions such as RAPE. Instead say " The injuries to the private parts are suggestive of forcible sex". The word "drunk" should be avoided. Instead refer to the actual blood alcohol levels and compare it with a standard such as the legal limit for driving.

4.THE EVIDENCE

4.1 and the impartiality of it..

After all this is what appearing in the box is about. How happy are you about the scientific basis, accuracy and the impartiality of your evidence . Are you sure? Has it been peer reviewed? Are your own views based on scientific facts and your own experience? Are you a bigoted old fool suffering from delusions of grandeur? Do you like to disagree for the sake of putting down a colleague and generating business for yourself? Would you give the same evidence if it were your own kith and kin out there baying for justice? (or freedom, depending on which side they are on). Have the Police and the Prosecution put subtle (or even overt!) pressure on you? Has the Defence approached you with money in envelopes? Have any Bookmakers got in touch with you.. If you are uncomfortable with this aspect of medical evidence then you are in the wrong business. Please leave the class. This minute.!

4.2 IS YOUR EVIDENCE CLEAR

Is your evidence clear and are you able to deliver it plain English. Can you explain anatomical and pathological matters to the jury? Can you describe the course of the vertebral arteries in a manner that the jury can understand?

...The approach [of lawyers] these days is rather mellow/subtle: "Dr Fernando, as an experienced pathologist I am sure you will agree that this is a clear case of..." (Do watch out for flattering questions of this nature. There could be a sting in the tail!)...

OBJECTIVES OF THE GUYS IN THE WIGS

The Lawyers objectives are to lay the foundations, organise the question to get a black and white answer, confuse the issues and break the witness.

These are all legitimate ploys except that these days, trying to break an expert witness for the sake of breaking a witness is likely to be looked down upon by the judge and moreover likely to have a negative effect on the jury especially if you have followed all the points above. Do remember that lawyers only ask questions to which they already know the answers. They do not like unexpected answers because they then run the risk of losing control. Do not however try to outsmart lawyers with unexpected and smart arse answers. It is as dangerous as tackling the goalkeeper. Remember it is their game and the referee (the judge) is a lawyer as well. By all means lead them on to score own goals but don't tackle them.

Both sides lay the foundations using witnesses as bricklayers. The sustainability of a case depends on the foundations and in turn on the bricks and on the bricklayers. In fact these days most of the foundations are laid on paper without the actual presence of the bricklayers. However, both sides like to keep their bricklayers on stand by as a threat to the other side (which explains the last minute disruption of holidays etc..)

A favourite way of laying a rather solid foundation is to offer a different scenario on the lines of " I put it to you Doctor." or " Am I right in thinking Doctor." This is rather old hat. The approach these days is rather mellow/subtle: " Dr Fernando, as an experienced pathologist I am sure you will agree that this is a clear case of." (Do watch out for flattering questions of this nature. There could be a sting in the tail!)

DIRTY TRICKS

The tricks or verbal sleight of hand vary considerably. The following is just a guide

...[Psychological warfare] is really the dirtier end of the spectrum of dirty tricks. Experienced witnesses ignore these. The "Look-What-The-Cat-Has-Brought-In" ploy involves the Barrister for the Defence totally ignoring you (by pretending to be busy with his notes) when you first step into the box. The minute you start talking he will turn towards you, adjust his spectacles and stare at you with a slight sneer of contempt as if to say "Look what the cat has brought in..")...

1.Psychological warfare

This is really the dirtier end of the spectrum of dirty tricks. Experienced witnesses ignore these. The "Look-What-The-Cat-Has-Brought-In" ploy involves the Barrister for the Defence totally ignoring you (by pretending to be busy with his notes) when you first step into the box. The minute you start

talking he will turn towards you, adjust his spectacles and stare at you with a slight sneer of contempt as if to say " Look what the cat has brought in.!")

Other tricks on these lines involve staring, shaking his head or prominently displaying medical texts in front of him. The trick is to look at the judge or the jury and not at the defence.

2.Rapid fire or the "Rabbit Season, Duck Season" ploy

This is a rapid-fire question and answer session in the hope of tripping up the witness not unlike sequences in cartoon films. In a bugs bunny cartoon there is the following sequence. Elmer Fudd is hunting ducks but Daffy Duck insists it is the rabbit-hunting season and not the duck-hunting season and points towards Bugs Bunny. Bugs insists it is the duck season. This develops into a rapid-fire argument on the lines of "Rabbit Season!" "Duck Season!" "Rabbit Season!" "Duck Season!" "Rabbit Season!" "Duck Season.!".....Then without breaking his stride Bugs Bunny suddenly shifts ground and says "Rabbit Season". This confuses Daffy who insists it is the duck season and turns the gun towards himself. Elmer Fudd fires. It is not silly as that usually but the same question can be asked and the same arguments offered over and over in a slightly different way. On one memorable occasion I was giving evidence at the Old Bailey in London and coming under a fair bit of fire when the judge intervened to remind the Defence Barrister that he had asked me the same question four times and I had given the same answer. This came as a total surprise to me because up to that point I had not realised that I had been asked the same question four times!

The remedy is simple: Pause and think before answering each question.

3.Convoluted or very long questions

By the time the lawyer finishes asking this type of question you would have probably forgotten the beginning! If so ask the question to be repeated. Chances are that the questioner himself would have forgotten his own question or the judge might intervene to say that he didn't understand the question either! The longer the question the longer you should take before answering.

4.Double barrelled questions or questions with prefatory remarks

With this type of question the question is prefaced with a remark or a statement. If you say "yes" to the actual question then you are agreeing with the attached remark as well. E.g. "Doctor, I am sure you aware of the reason article by Professor.in the Journal of Pathology. Now tell me: Did the Injuries to this child show any evidence of healing?" If you go on to answer the question you are then implying that you agree with the article. You may not agree with the rubbish written by the Professor. The way to tackle this is to break up the question and answer it in two parts.

5.Slippery slopes

...As far as forensic pathologist go the usual situation where this [slippery slopes] happens is when they are asked to comment on the time taken to die in cases of strangling. If you say approximately a minute or so then you are asked if it could be less than a minute, say 45secs. If you agree to this it then comes back as half a minute. Before long you have agreed to 10 sec...
This is a very common ploy and difficult one to avoid. As far as forensic pathologist go the usual situation where this happens is when they are asked to comment on the time taken to die in cases of strangling. If you say approximately a minute or so then you are asked if it could be less than a minute, say 45secs. If you agree to this it then comes back as half a minute. Before long you have agreed to 10 sec. You are now well and truly on the slippery slope! (See Bernard Knight's views on

the subject of time taken to die in strangling). Other similar situation is the time taken to bleed to death, for instance a ruptured spleen in a baby. A few minutes? Ten minutes? Half an hour? An hour?

6. Black and White

Lawyers sometimes demand black and white answers. In some situations to answer yes or no to a particular question would be to give a misleading answer. Try to give an explanatory type of answer. If the lawyers persist, say that to give a simple answer would be to mislead the jury. That will catch the judge's attention.

AND FINALLY...

The more you appear in courts the more experienced you become. It is also useful to listen to other expert witnesses giving evidence. Remember once you get used to it, giving evidence is probably the most satisfying part of being a Forensic Pathologist.

References and bibliography

1. David Carson of Southampton University wrote one of the better articles on the subject in an obscure journal the British Journal of Hospital Medicine in May 1985. In writing this article I have used some of his ideas.

2. Bernard Knight's little book Legal Aspects of Medical Practice, 3rd edition, Churchill Livingstone, London, 1982 is a useful guide to the British courts and legal system.

3. Forensic Pathology by Bernard Knight, 3rd edition Arnold, London 1996 is probably the best book on Forensic Pathology in the English language.

Footnotes

Gallows Corner

Gallows Corner, in Exeter, Devon is a real place. It is now in a built-up area approximately halfway between Exeter Crown Courts (The Castle) and my place of work, The Police Headquarters at Middlemoor, Exeter. A few years ago a man digging up his garden to build a patio type extension to his house at Gallows Corner found a skeleton. At that time not many people knew that the place was called Gallows Corner but a police officer living nearby did. It was probably a good thing that somebody knew the history of the place considering that this happened sometime after the case of the mass murderer Frederick West (who buried his victims under the patio!). I was called out and started digging only to discover at least eight ancient skeletons stacked one on top of each other. We realised that these were unfortunate individuals who had gone to the gallows and left them there.