

Review Research Paper

Forensic Pathologist as Expert Witness

¹Bharath Kumar Guntheti

Abstract

A common witness is one who testifies only to the facts observed by him; his evidence requires only common intelligence and knowledge. He is not capable of forming of opinion or drawing conclusions from the facts observed by him. This principle is known as firsthand knowledge. Section 45 IEA deals with opinion of experts. An expert witness, or skilled witness, is one who is skilled in scientific, technical, or professional matters, and who on account of his professional training, experience, and ability, is capable of forming opinions, or drawing inferences an expert witness is especially skilled in Forensic Medicine, science or law, or art. Medico-legal expert, when mentions the nature of injuries and whether they were caused during life or after death, is an expert witness. Personally, the doctor abhors the vicious cross examination of some few trial counsels who resort to degrading the expert medico legal witness when no other means are available to reduce the impact of his direct medical testimony.

Key Words: Indian Evidence Act, Expert Witness, Forensic Pathologist, Forensic, Law, Science, Art

Introduction:

According to Sec. 45 of Indian Evidence Act "Expert witness is the person who is especially skilled in foreign law, technical or professional matter or art or occupation in connection with identity, hand writing or finger impressions etc".

An expert witness is one who, is capable of deducing opinions from knowledge, skill and experience or from the facts observed by him or noticed by others. [5, 6]

Medical experts will be the persons, skilled and adept in any branch of medicine. Opinion of medical experts on the point of medical science is relevant and admissible in evidence under Sec.45 of Indian Evidence Act.

A medico-legal witness can act both as an ordinary as well as an expert.

When he states, what he has seen or describes any wound on the body as to its situation and measurements etc. He will be a common witness. But when he states, death was due to shock or hemorrhage as a result of injuries described, anti-mortem or post-mortem and homicidal, accidental and suicidal in nature or when he opines that the injury was sufficient to cause death in ordinary course of nature, he will be an expert witness. [5]

A medico-legal expert should be relevant, reliable, clear, honest, and impartial.

He should give definite opinion with reasons and his answers should be to the point, brief and precise. The expert witness is the prime source of evidence upon which legal decisions are founded.

His effective use in the administration of justice in the courts is an absolute necessity for a peaceful and orderly society. The expert witness evidence alone and by itself does not prove or disprove the case for prosecution. The court of law will give due consideration to it in the context of other corroborative evidences. [5]

The court can be guilty of judicial superstition, if it fails to appreciate, the problem against scientific background of medical science. The court shall also consider the deposition of medical experts when he answers hypothetical questions.

The value of an expert does not depend upon his qualification; rather upon the soundness of the reasoning advanced by him. The opinion by an expert is of advisory nature and is not a binding upon the court. If the law has made a physician a witness, he should remain a man of science; he has no victim to avenge, no guilty person to convict and no innocent person to save. [4]

The following persons will act as expert witness:

1. Forensic pathologist or medico-legal expert
2. Chemical examiner
3. Finger print expert /foot print expert
4. Hand writing expert

Corresponding author:

¹Assistant Professor,
Department of Forensic Medicine,
Mamata Medical College,
Khammam, Andhra Pradesh; India
Email: bk62743@gmail.com
DOR: 16.03.2013 DOA: 27.03.2014

5. Ballistic expert
6. Serologist or immunobiologist

The Forensic Pathologist he is a person who possesses specialized technical knowledge in fields of science. In case of conflicting opinion of two doctors, the court has the right to accept one and reject the other, specially that one is usually accepted which tallies with the version of the prosecution. It is for the court to decide the competence of witness as an expert if a dispute arises over competency. [6]

The Forensic Pathologist is a vital source of information in medico-legal investigation, and plays a great role in administration of justice by clarifying the issues in the court as expert witness.

Discussion:

1. Know your role
2. Scientific validity
3. Personal impartiality
4. Be prepared
5. And remember
6. Learn from each experience

Careful and proper documentation of injuries, collection of toxicology specimens and collection and submittal of other evidence are important in medico-legal examination cases. Every case should be approached as the case, which eventually goes to trial. Occasionally case that is initially viewed as solved or otherwise unimportant may suddenly become important when new investigative information is provided.

Forensic pathologists are often called on to provide testimony as expert witnesses in court regarding their autopsy findings or to testify on behalf of a colleague forensic pathologist.

A witness is anyone who can provide information to a court. There are different types of witnesses, and an expert witness should be differentiated from a fact witness.

A fact witness merely provides personal observations of an event without interpretation or opinion of it, whereas expert witness is one who has scientific, technical or other specialized knowledge that will help others understand evidence. The opinion of the expert on an issue is described as within reasonable medical probability, within reasonable certainty or similar wording that allows for possible, but unlikely, situations or events as an expert witness.

The Forensic Pathologist has an important role in conveying clear, understandable, and truthful information to the court in an unbiased fashion with experience; one learns how to become a better expert witness. The following are recommendations

provided to aid a Forensic pathologist to become good and efficient expert witness:

Know your Role:

The Forensic Pathologist should understand what his or her role is in the legal process before providing testimony. He is a competent and acute observer in the laboratory that testifies as to his/her factual findings and opinions in a clear, straight forward, unbiased, and professional manner.

The testimony actually begins in the autopsy room where the anatomic studies are conducted and at this time, the Forensic pathologist must recognize, collect, and preserves medical evidence and prepares a report of such findings for possible future testimony. Once on the stand, the Forensic expert testimony revolves around autopsy findings and the correlation of the autopsy findings with other case information.

This requires expending the case file and critical review of the information to the fullest. This may involve ancillary information collected to enhance to findings and support conclusions. The Forensic expert interprets how a death came about and may be questioned on various aspects of the death such as what type of instrument may have been used to inflict an injury, how long an injured individual may have survived, and how long an individual may have been dead until he was found.

The Forensic Pathologist does not carry the full burden of the case and does not win or lose a case although the anatomic findings and opinions are important and necessary, rarely do they alone permit the court to come up with an enlightened verdict. The Forensic Pathologist's opinion must never be biased for or against the prosecution or defense. It is a factual presentation of evidence collected during the course of an entire death investigation.

In the end, a well-prepared Forensic Pathologist, who knows his role in the legal process is less likely to be stressed and, therefore, more likely to provide efficient testimony.

There are two key features of sound medical testimony: scientific validity and personal impartiality.

Scientific Validity:

Forensic Pathologist is to restrict his testimony to facts objectively noted, analyzed in detail, and accurately recorded, and to opinions solidly derived from these data. The Forensic Pathologist's observations must be of high professional caliber and be thoroughly and well documented. Few things are as meaningful and

indestructible as testimony based on well-documented, solid, factual observation in the end, the verdict can be no better than the factual data and expert opinion on which it is based. [1]

Personal Impartiality:

The Forensic Pathologist, although usually called to testify by the prosecution, must give fair and dispassionate testimony and must not permit himself to become a prosecuting witness or, worse yet, a persecuting witness. [1] The testimony of Forensic Pathologist must not a prosecution minded or defense minded.

The goal is to present the truth, willingly and unemotionally which is possible within the bounds of unbiased and disinterested observations, to help the court to reach a just verdict. [1] As quoted by Paul C.H. Brouardel, a French medico-legalist,

“If the law has made you [the physician] a witness, remain a man of science; you have no victim to avenge, no guilty person to convict, and no innocent person to save .you must bear testimony within the limits of science”. [1]

Be Prepared:

The Forensic Pathologist needs to review the case file to be familiar not only with the case information, but also the scientific principles behind any findings. He must review any toxicological results and determine what, if any, role drugs might have had in the person’s death one might anticipate questions and formulate answers. Often times, this comes only with experience, but the better one can anticipate the important issues in a case, the easier time one will have answering those questions in court.

Examples of this are endless, but commonly include whether an individual would have been conscious after an injury, which injuries most serious, what physical abilities might have been possible after a certain injury, and how long an individual might have lived after being injured. One must realize that it is not always possible to know the answers to all questions, and it is important to state “I do not know” when asked a question that is not immediately solvable.

In some situations, it may be proper to estimate, but even estimates may not be broad. Finally, one should arrange the data for rapid, succinct review when on the stand.

And remember.....

- Conjecture is not evidence.
- Presumption is not proof.

The value of the most competently performed autopsy is diminished in the court room if the information derived from it is

presented by poor witness: one who mumbles, argues with judiciary persons, or commits a number of other violations of good or proper testimony that “damn his testimony in the judgment of the court”. [1]

Learn from Each Experience:

Every court appearance is a learning opportunity, no matter how many times you have previously testified in the court.

Prepare a clear summary of findings including pertinent information. Modify formats, procedures, and policies to improve data collection and arrangement and minimized wasted time. Prepare a clarification diagram in the case file. The autopsy report and case file should be constructed to allow for the quick, efficient retrieval of easily interpreted, pertinent information.

Deficiencies that are identified should not be taken personally, but rather viewed as an opportunity to make changes to enhance one’s format. This may include rearranging the autopsy report to include a separate “injury section” to uniformly sub divided the injury section or to provide a concise “findings” section near the end of the report.

The finding section of a multiple gunshot wound case may provide skeleton information about each gunshot wound including entrance site, injury and whether or not a bullet was recovered or if the bullet exited the body. Other improvements may include refining collection methods of toxicology specimens, or better documentation of clothing and other personal effects or valuables.

Providing expert testimony he should not be feared from event that induces anxiety or panic. When he remembers what his role is, what is expected from him, knows the limitations of what he can say, and knows that it is up to the advocate to ask the appropriate questions to win or lose the case, then the expert witness, through experience, will be more comfortable in his role and provide effective, appropriate, and proper testimony. Like so many other aspects of other professions, it is important to learn from each experience and to strive to do a better job each time.

If problems arise, procedures can be modified to prevent that problem from happening it again. Various resources are available to help improve one’s understanding of legal process and improve one’s expert witness. [2, 3, 7]

Do:

Always tell the truth ‘Say: I don’t knows or “I don’t remember” when uncertain about something. It is better to admit to not knowing

something than to guess and potentially provide false information; a speculative opinion is of no use. Make it clear when questions or issues fall outside of your area of expertise-admit to the limits of your knowledge. Be a neutral witness.

Provide an objective, unbiased opinion. Speak in a clear, loud voice. Be alert, objective, and unemotional. Maintain dignity, credibility, and self-control. Sit still and stay organized. [4]

Acknowledge the magistrate when he is asking a question, then turn your attention to the prosecution or defense and direct your answer to the magistrate. Provide answers in a matter of fact, manner and be concise.

Pause briefly when answering questions posed during cross examination to allow the opposing by prosecution or defense to may any objections. If you have begun to answer a question when an objection is raised, do not complete an answer until instructed to do so by the judge, because if the objection is sustained, the question should not be answered. Answer only the question being asked.

Don't:

Be smug, self-assured, or dogmatic and adversarial. Fiddle with a ring, watch, necktie, or other object, shift your weight or repeatedly/repetitively change your body position; these unconscious behaviors can give the appearance that an expert witness is uncomfortable.

Look at the advocate who called you to testify when answering questions posed during cross examination. This may give the appearance that you are being coached by the opposite advocate.

Allow yourself to be "pinned down" to a narrow window of possibility when you are not comfortable with it; examples include attempts to replace a replay of "likely with" 65 percent probability of occurring" or narrowing a likely

survival time from "a few hours or so" to "between 60 and 90 minutes".

Do not discuss the case until the trial is over or observe any other aspects of the trial if a "witness rule" has been invoked. This is done to ensure that the testimony of another witness is not influenced by the testimony of an opposing witness. Do not answer beyond the scope of a question. Allow yourself to be forced to answer "yes" or "no" to a confusing, nebulous, or compound question, if you must, ask the judge if you may explain your answer.

Do not allow yourself answer to a question to be interrupted before you can finish in instances when an inadequately or partially answered question may give an inaccurate interpretation that you did not intend.

Conclusions:

An expert witness can volunteer a statement in a court which a common witness cannot. As experienced and trained Forensic Pathologist knows that the opinion on crime will surely give clear idea about the nature of crime, how it has committed. The Forensic Pathologist as expert witness should limit his role as a doctor and medico-legal expert, nothing more and nothing less.

References:

1. **Adelson L.** Symposium on autopsy and the law .the anatomy of justices. Bull N Y Acad Med 1971; 47(7): 745-57.
2. **Wetly C.** On being an expert witness .Lab Med 1989; 545-50.
3. **Scarrow A M, Scarrow MR.** Providing expert witness testimony. Surg Neurol 2002; 57(4); 278-82; discussion 82-3.
4. **Krishan Vj.** Test Book of Forensic Medicine and Toxicology. 4th Edition, Indian Legal System, pp20, Elsevier, New Delhi.
5. **J.B. Mukerjee's** Forensic Medicine and Toxicology, 4th Edition 2011, Edited by R.N. Karmarkar, Academic Publishers. Indian Legal System; pp.29.
6. **K. Mathiharan, Amrit K Patnaik.** Modi's Medical Jurisprudence and Toxicology, 23rd Edition, Medical Evidence and Medical Witness, pp. 63; LexisNexis New Delhi.
7. **David Dolinak, Evan Matshes, Emma Lew.** Forensic Pathology Principles and Practice; Elsevier Academic Press, 2005; PP.669-671.