

## **Unit 11: The Expert Witness**

### **Welcome to Week 11.**

This week's learning explores concerns related to the digital expert witness. The learning should lead you towards the questioning of bias and accuracy, as well as expertise. You will look at some of the following aspects, implications, and issues:

- Rules around expert evidence in different jurisdictions.
- Presenting your findings.
- Making complex data accessible to a lay audience.

### **On completion of this unit, you will be able to:**

- Explore issues concerning expert witness.
- Practice critical thinking skills.
- Practice research skills.

### **Reflection:**

#### **Expert Witness:**

An expert witness (Wex Definition Team, 2022) is a person with extensive experience or knowledge in a specific area or profession who goes beyond what is expected of a layperson. It is the obligation of the expert witness to use their area of expertise to give the tribunal or court with a professional opinion on certain matters at stake.

There are two types of witnesses in the American legal system: lay witnesses (Wex Definition Team, 2022a) and expert witnesses. An expert witness, as opposed to a lay witness, can testify on matters within their field of expertise, while a lay witness is limited to areas that do not need specialized knowledge. The production of an expert opinion requires a substantial quantity of facts or data in addition to dependable concepts or techniques.

The fundamental job of an expert witness is to provide an unbiased and competent opinion based on the supplied evidence. An expert witness may serve in several capacities during processes such as arbitrations, tribunals, and lawsuits (Cornell Law School, 2019).

#### **The Problem with Relying on Expert Witnesses**

It is inevitable that expert witness testimony would be dramatic. There is no other method for jurors to assess the testimony of expert witnesses but to consider the witness's personal credibility. Achievements such as academic degrees, certification from specialty boards, and publication may enhance one's credibility. Personality, English language proficiency, race, and physical beauty are other crucial factors. One of the most crucial qualities of an expert witness is the ability to communicate knowledge and train people effectively. It is the expert's obligation to educate the jury on the technical elements of the issue at hand, just as he or she would in an introductory physiology course. This exercise is intended to convince the jury that they have a

sufficient grasp of the technical issues. After the audience gets the idea that they know the subject, the expert may next try to convince them that they have independently determined that his or her evidence is true, as opposed to just agreeing with him (Law and Physician).

The challenge is that an uninformed audience may be unable to distinguish between an entertaining tale and the actual scenario. When the evidence refers to issues for which there are no commonly established standards of practice, it is uncommon for the disputing parties to offer the jury with narratives that are irreconcilable with one another. It is very difficult to find independent third parties that are ready to act as scientific reviewers since there are no established requirements. If medical experts cannot agree on common standards of practice, they will never agree on who should testify about these standards. This is shown by suggestions made by organizations representing defendants to limit the number of experts permitted to serve as expert witnesses. All these guidelines stipulate that the persons testifying as experts must have the same education and professional practices as the defendant. They exclude medical school professors and other professionals who do not participate in full-time private practice of medicine, even though their purported target audience is non-clinical professional witnesses. It is feasible that the impact of these proposals will be just as severe on defense witnesses who are physicians engaged in innovative treatments as it would be on plaintiff witnesses with different practice techniques (Law and Physician).

**Dr. Cooper suggested that the members of the panel consider the following difficulties encountered by expert witnesses (Lloyd, 2021):**

1. The availability of expert witnesses; is there a deficiency, and if so, why?
2. Possibility of expert witness prejudice owing to conflicting interests
3. What does it mean specifically for expert witnesses to have integrity?
4. How successful are report writing and virtual/hybrid hearings, and what is the future of these methods?
5. Why are expert witnesses given instructions?

**When expert witness evidence is required**, a request for a medicolegal court report may be submitted. Renowned Psychiatrists, psychologists, social workers, and other medical and mental health professionals are often called upon as expert witnesses throughout the course of legal proceedings. When the court must understand specific issues, such as capacity, purpose, or causation, among others, it is customary to rely upon the help of experts as witnesses. Expert testimony might be helpful in determining the optimal course of action. In cases involving mental illness, for instance, a psychiatrist's testimony may have an influence on how the legal procedures are conducted, it may be helpful in bringing relevant medical evidence, and it may be the determining factor between jail and treatment for mental health difficulties. Numerous high-profile disputes have included expert witnesses.

## **Accusations of manslaughter have been lodged against Sally Challen.**

In 2011, Sally Challen was convicted guilty of murdering her husband at the Guildford Crown Court. Sally Challen said that her husband subjected her to years of psychological torment prior to her murdering him with a hammer. For her crime, she was handed a sentence of life in jail. A private consultant psychiatrist was asked to appear as an expert witness after the defendant had already spent several years in prison. The physician reached certain findings on the patient's mental state at the time of the murder. Her lawyers were able to fight her murder conviction because the psychiatrist revealed that she was suffering from an adjustment disorder at the time she killed her husband. Based on the expert evidence, the Crown accepted her guilty plea to the lower charge of manslaughter on the grounds that her degree of responsibility was diminished. The Crown accepted her plea, even though she was due for a second trial in the Central Criminal Court (Iles, 2020).

As she had already served nine years and four months of her life sentence, she was released once her conviction was overturned. Sally Challen's appeal highlighted the need of providing competent expert evidence when assessing the proper penalty for a mentally ill offender (Iles, 2020).

## **Reflection:**

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