

## **Opening Address for the Medical Expert Witness Training Course 2017**

(3-day Interactive Course — 24 June, 15 and 29 July 2017)

A Joint Collaboration between Medical (Singapore Medical Association and Academy of Medicine) & Legal (Singapore Academy of Law, State Courts and Law Society) Professions

The Chambers Dictionary defines an expert as ‘someone who is skilled in any art or science; a specialist; a scientific or professional witness’. That is the definition of ‘expert’ as a noun. The definitive features of an expert, or in dictionary terms, the adjective of that word, is just as important to us. The adjective of ‘expert’ is defined as ‘taught by practice; having a thorough knowledge; having a facility of performance; skillful or adroit’.

When Google was launched in 1998, that event changed the world of the expert. The launch of Google is almost like the giant asteroid that hit the earth millions of years ago and wiped out the dinosaurs. Some people dispute this theory. Some claim it as fact. I will return to this point. But the dinosaurs are gone. There are no witnesses. Let’s get back to Google. What has it done?

Let me tell you a true story. In the years BG (Before Google, before 1998), the medical expert is king in court — somehow, my mind conjures the image of my dear friend Prof Chao Tze Cheng as I say these words — aided by Bolam, he (the expert, not just Prof Chao) almost has a divine right to determine the outcome of all cases in court. When there are two kings holding opposing views, they clash, often tooth and nail, and the judge who, not any wiser, picks the winner.

Now, we are in AG (After Google). In 2004, there was a case in the District Court in which an accused person with Marfans Syndrome was sentenced to jail and caning. His counsel tried to persuade the court that a person with this medical condition should not be caned. The facts and the outcome are not relevant to us today. What is relevant is that the judge, to use the now standard word in all forms of English, ‘googled’ the term ‘Marfans Syndrome’ himself. When the case came before me on review — neither the decision below (which I agreed with) nor mine is relevant today. But in my written judgment, I reminded judges that impartiality and transparency are the pillars of justice. A judge should not consult an expert or (in the case of googling, a panel of experts) without letting the parties know and

letting them test the evidence of those experts. This case was only eight years after Google was launched.

Today, everyone googles — except, perhaps, the judge. If justice is to be served, the judge has no basis to survey (I believe the word is surf) the net for information and views on the issues before him. The expertise and correctness of the views he receives may not be right. The persons expressing those views may not be experts. But this does not detract from the fact that everyone else will google. The lawyer who instructs you will google; his client will google; the opposing lawyer and his client will google; the opposing expert will google; and, so will you.

Googling has a tremendous impact on modern (AG) expert testimony. Why? Because now, everybody can talk like an expert. And because they can, they do. The judge (who is not any wiser, remember?) will face a barrage of conflicting claims. This is not only because medical science and technology have improved tremendously, the availability and facility of the internet has also led to unstoppable and extravagant correspondence and writing. The consequence is that theories proliferate. This brings me back to the point I made earlier about theory and fact.

Facts, by definition, are true. They are indefeasible. Theories are suppositions, and until proven to be true, some theories appear more credible than others, and some are plainly invalid. Many things have changed After Google, but some important ones have not. What are those immutable things that an expert must remember and hold true? Just as before in BG times, the judge has to decide which expert's evidence to accept. Just as before, the judge is likely to choose the expert who has a coherent theory, or a closer, more complete examination of the patient, and who has a clearer way of explaining his evidence; and, most important of all, the one who has gained his trust and confidence. An honest expert is one who calls it as he sees it — just as a judge would do; he is not a mercenary who says what his instructing solicitor or client wishes him to say. He is not in court to defend anyone or any cause — except his own reputation.

The more doctors, scientists, and researchers discover about the human mind and body, the more difficult it may be for those, who, like lawyers and judges, have to determine what are to be accepted as facts, and who have to make

judgments as to the motives and intentions that form in the minds of witnesses. I began this address with a story. I shall end with another. This is also a true story only that it is not my own. It comes from the book 'The Fact of a Body', by Alexandria Marzano-Lesnevich.

Alexandria Marzano tells the story of the murder of a six-year-old boy, Jeremy Guillory, by Ricky Langley, an awkward, small-built young man of 26. Ricky had been convicted of child molestation twice. He found a job and a home in Ioway, a small town in Louisiana, after his release from detention. He stayed in the house of his colleague Pearl Lawson, her husband Terry. The Lawsons had two young children who were about the same age as Jeremy. When she was a law student at Harvard, Alexandria Marzano interned with Ricky's lawyer, Clive Stafford Smith during her summer break. She read the record and examined the evidence related to Ricky's trials. She visited the graves of Jeremy, Terry and Joey Lawson, and Oscar Langley and his parents.

In brief, Jeremy was invited into the Lawsons' house by Ricky on a day in 1992 when no one else was home. Within a short while, Ricky strangled Jeremy to death and hid his body in a closet in his room. The boy was reported missing by his mother Lorilei, and his body was found three days later. Ricky was tried for murder in 1994 and sentenced to death. In 2002 he was granted a retrial on a technicality. He was again found guilty but the death sentence was changed to life imprisonment after Lorilei, the victim's mother told the court that although she had not forgiven Ricky, she could understand the circumstances that led him to do what he did. Clive Smith got Ricky a second retrial with the hope of proving that he was not guilty because of insanity. Ricky was still found guilty after the third trial, but the appeal court held that the death penalty would not be re-imposed since Ricky had already been let off it once, and it would be wrong to reinstate the death sentence.

This story is complicated by many factors. Ricky himself testified that he had also been a victim of abuse. It was also not disputed that although his semen was found on Jeremy's t-shirt, a strand of pubic hair recovered from Jeremy's lip had DNA that was not Ricky's. A month after the body was discovered, Terry Lawson took his son Joey on a motorcycle and crashed it against the second car of a fast-moving train, killing Joey and himself. How could Lawson have accidentally crashed

into the second car of the train was a question that was not answered. It was also not disputed that years before Ricky was born, Ricky's father crashed the car in which he was carrying his wife Bessie (Ricky's mother), his 5-year-old son, Oscar, and his three daughters. Oscar was the only one who died — his head completely severed in the crash. Ricky was born when his mother was still hospitalised — almost year after the accident. Bessie conceived Ricky and carried the pregnancy when her body was wrapped in cast. How she got pregnant in those circumstances was another unanswered question. Ricky was born prematurely, and against the advice of all the doctors telling his mother to abort the pregnancy.

Ricky testified that for years he was visited by Oscar. He testified that he did not know that he was killing Jeremy. Clive Smith pressed hard for the third trial, partly because his own father was insane, and Clive Smith knew what living with insanity was like. Ricky thought he was killing Oscar. The more Alexandria Marzano's learned about the case, the more she realized that facts are not easy to establish or perceive, especially when one does not have the right lenses on. On the contrary, depending on one's own experiences, wrong impressions might be formed. Alexandria Marzano revealed that when she was about Jeremy's age, she and her younger sister Nicola were sexually assaulted by their grandfather (their mother's father) on a regular basis. Nicola eventually went into denial and acted as if the past did not happen. Alexandria could not. The lesson she wanted to impart is that all of us, including professionals and experts, must abandon arrogance and be humble enough to appreciate that our perception of fact and the making of sound judgment may not be as reliable as we may lead ourselves to believe.

Let me quote a passage from her book: 'I see the jury's verdict differently now. While the verdict the jury voted is legally incoherent, what strikes me now is its elegant, human beauty. It says what cannot be true in law, but can only be true in life: that Ricky is both responsible and not. The law the jurors were presented with didn't have room for this middle ground. They created it, as though they opened up space in the law, inventing a category that doesn't exist. Ricky.'

I trust that this course will help you become more effective expert witnesses. I hope it will also help lawyers learn the right techniques of eliciting expert evidence. The practical skills of testifying in court are just as important as the fundamental elements of being an expert that I mentioned this afternoon. If after

all the sessions you still need to know more, just google: 'How to speak like an expert'. I prefer to end, not with a joke, but on a serious note, and so let me say, in conclusion, when you search the web for information, beware, be very careful. On the expressway of the internet, fame and infamy travel at the same speed.

Choo Han Teck  
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