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Psychiatrist as expert witness – ethics, clinical matters, and reflections

Dr Andrew Shepherd

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Summary by Frank Kelley

Dr Andrew Shepherd is a consultant forensic psychiatrist working in secure hospital and prison settings. He also carries out work as an expert witness, aiding the courts in relation to criminal legal proceedings. He is an honorary lecturer in the University of Manchester and his research interests focus on the psychosocial dynamics that influence care provision in secure settings. His most recent paper is on the support needs of prison staff.

Andrew had run a therapy group for women in custody at HMP Styal. The prison officers asked if it should be for them and gave a bleak description of working with violent offenders. Their work is officially a legal function rather like the Police. In practice their job was more like a social worker or a mental health worker.

His topic for this seminar was about his role as an expert witness. This is crucially different from most of his work as a psychiatrist and is something he has been involved in for thirty years.

As doctor his Hippocratic Oath means his first responsibility is to his patients. In his title forensic psychiatrist the adjective forensic comes from the Latin word forensis, meaning “in open court” or “public.” This means his first responsibility is to the law and the court to provide an expert opinion, rather than a doctor's responsibility for the mental health of people undergoing these police investigations and court proceedings.

The film and TV depiction of this work emphasises the emotional appeal to a jury to convict or discharge. In contrast to these vivid images he presents evidence to the court which is scientific, statistical and dull. He does similar work for Family Courts. Here he gives an opinion on the person's ability to parent and how this is affected by their mental health. More recently he has been involved in investigation proceedings and immigration proceedings.

What he is entitled to bring to the court is legally hearsay as he is not a direct witness to a crime. The Crown Prosecution service gives him their dossier of evidence. He may also be instructed by the defence. He has the opportunity to interview the alleged perpetrator.

The expertise that is recognised by the legal system is purely in his particular field of psychiatry. He is recognised as having expertise in the diagnosis and treatment of mental health. Pathologists and psychologists are also recognised as being expert witnesses. Like any other witness he can be questioned in court. He is expected to be independent. If a case involves a patient of his then he is in court as a treating witness rather than an expert witness.

For all these reasons he cannot offer his usual medical duty of confidentiality. He has a duty of candour which means anything said in his interviews with alleged perpetrators can be brought into the court. Using therapeutic skills for the non-therapeutic purpose of gathering evidence is morally conflicted especially if you later see the person for therapy.

Many court proceedings will not involve a psychiatric expert witness. However with murder courts often seek a mental health witness. With arson an opinion is always sought as mental health and leaning difficulties are often involved in arson.

A crucial part of his work is in contributing to a view on insanity and of diminished responsibility. This legal concept of insanity is a defence which is summarised under the McNaughton Rules.

To establish the defence of insanity it must be proved that at the time of committing the act the defendant was labouring under a defect of reason from a disease of the mind as not to know the nature and quality of the act he was doing or if he did know it that he did not know that what he was doing was wrong.

Mens rea refers to the offender's mental state at the time of the crime, whereas actus reus relates to the physical act of committing a crime.

Insanity in the legal sense means somebody does not have a guilty mind and so cannot be convicted of the crime. It is also a question of intent. If someone died but there is no intent to murder then it is likely to result in a verdict of manslaughter rather than murder. Murder is a crime of specific intent and clear understanding of the consequences of actions.

A conviction for manslaughter by reason of diminished responsibility necessarily means that the offender's ability to understand the nature of their conduct, form a rational judgment and/or exercise self-control was substantially impaired. Andrew gave the example of a man who killed his father because he believed his father interrupted his work of curing covid and developing weapons. It is also used in cases of infanticide and where women kill an abuser.

Thank you Dr Andrew Shepherd for the clarity in his description of his work. His grasp of therapy shone through his talk which was skilfully oriented to an audience of counsellors and psychotherapists.