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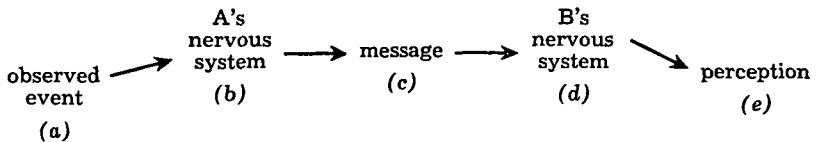
How to Handle Medico-Legal Semantics

Hugh Miracle*

ONE OF THE MAIN OBJECTS of counsel in evidence presentation, both from the plaintiff and the defense side, is to instill in the minds of the jury a sufficiently clear and understandable knowledge of the medical facts of the case. In order to reach such a result, it is helpful to consider the medico-legal work in a trial from the viewpoint of semantics.

In talking about "semantics" in this connection the writer is not talking about simply the "meaning of words." The "semantics" involved here is more properly called "general semantics." "General semantics" involves the study and application of the appropriate means of communication of an idea from one person's central nervous system to another person's central nervous system. In the trial situation, this generally means the communication of an idea arising in the mind of a physician (from events he has witnessed) to the mind of a juror, with the intention that subsequently the juror will use the information he has received for the purpose of making a determination of fact.

In order properly to understand the process which appears to take place in the foregoing situation, it would be advantageous to describe, in a "general semantics" manner, the process which should occur in order to obtain the best results. Therefore, let us make a diagram of the activity involved:



(a) In the above diagram the observed event in a medico-legal case would usually be the injury sustained by a claimant. In a criminal case, it might be the condition of a dead body under autopsy.

(b) Is the nervous system of a physician who is observing the event.

(c) Is the testimony in the trial, including demonstrative evidence.

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(d) Is the nervous system of each juror.

(e) Is the informed state of mind of the juror after receiving the evidence contained in the message (c) above.

The primary object of this note is to give the trial lawyer an awareness that the process described in the diagram must be carried out as successfully as possible under the circumstances. This task puts a full strain on the ingenuity and intelligence of the trial lawyer, both in the preparation of his case and in the trial.

Let us consider some of the factors in this job of achieving good communication. In the first place, when *A* observes the event we must remember that it is *A*'s nervous system which is doing the observing. That includes *A*'s education, his personality, his total experiences, his prejudices, likes and dislikes, and all the other things that go to make up *A* as an individual. In the medico-legal situation, *A* could be a neurologist, an orthopedic surgeon, an internist, or some other specialist. In the case of physicians who have been involved in traumatic injury work so much that they have been in the medico-legal situation quite frequently, we may find physicians who are "defense minded" or "plaintiff minded"; or physicians who tend to belittle injuries that they observe; or physicians who tend to project a patient's injuries in such a way that they are able to conceive of numerous possibilities of complications stemming from the injury observed.

After the observed event has been established in *A*'s nervous system, the next step in the chain of communication is to transfer the observed information from *A*'s nervous system, and this ordinarily is done by a message formulated in *A*'s own terms (words or gestures or chosen demonstrative objects). It should be borne in mind that *A*'s terms are his own and may not be the same as the trial lawyer's terms, or the jury members' terms. In this connection, an awareness of the latter condition will lead to a "thrashing out" of the apparent chances for an inadequate communication of the details of the observed event to *B*'s nervous system.

The trial lawyer's task is to see that (c), the *Message*, is the best and clearest transfer of the observed event from *A*'s nervous system to *B*'s nervous system.

The next "awareness" obligation of the trial lawyer is the duty to remember that the message is being put into the nervous system of each of twelve jurors. No two of the jurors' nervous

systems are the same, and each of the jurors is receiving a different message although there is only one message transferred from A. From a practical standpoint, this should dictate to the trial lawyer that he arrange the message in such terms as will be most clearly received by the greatest number of the jurors. In the trial of a medico-legal case, the situation demands that the jurors have an understanding of certain fundamentals of the medical aspects of the case. This calls for such necessary parts of medical proof as: A short lesson in anatomy; a laymen's definition of medical terms by the medical witness; use of drawings, charts and other visual aids to be sure that the jurors are approaching the job of listening to the message from A with understanding ears.

The last part of the diagram "perception" is the state of mind of each juror after the medical testimony is furnished. The entire transaction can never be 100% perfect. From a "general semantics" standpoint, it is impossible to say *all* there is to say about any one thing.

The best that can be achieved will be as close to as real a picture of the observed event in the mind of the juror as is possible, while acting with an awareness of the elements of the transaction described in the diagram.

Implementing the Communication

In the foregoing discussion the "message" (c) is conveyed by the use of symbols. In the earlier days of trial practice, these symbols consisted almost completely of words spoken by the medical witness within the hearing of the jury. This was the least effective means of communication, and it was often complicated by the tendency of the physician witness to use technical terminology which was probably not understood by the majority of jurors.

With a general semantic approach, the symbols have been simplified by the use of diagrams, photographs, X-rays, drawings, colored slides, plastic reproductions of skeletal components, actual surgical instruments, moving pictures, etc. By using such "extensional" objects for the purpose of communicating to the jury, the message avoids words which have "intentional" characteristics, which tend to fail to convey the intended meaning to the juror because the words used by a medical witness have one

“meaning” for the medical witness and another “meaning” for the juror.

A lawyer planning the presentation of medical evidence and being aware of the communication problem, will design the presentation of his medical evidence so that it will include as many object symbols as are necessary to convey a clear perception of the medical fact or facts to a juror who has had about eight years of formal education. If this is done and the lawyer approaches the problem with a degree of humility and lets the better-educated jurors know that he is attempting to make the medical evidence understandable to all concerned, he will probably come as close to success in the conveying of medical information as can be achieved in a courtroom. In order to do this adequately he should freely explore the field of instrumentalities available and should be at his creative best in choosing the various object symbols.

In addition to getting the idea across to the juror, the presentation of medico-legal evidence by means other than words makes the trial interesting and absorbing to the jurors. The ultimate result has a much better chance of being a favorable verdict.