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Forensic Testimony: What Judges Want

The Honorable Ronald B. Adrine*

I wanted to start with a couple of quick stories. I got here today and found that the folks here at the Pace Center have worked extraordinarily hard to insure the success of this conference, making sure all the i's are dotted and t's are crossed. So, they were really concerned when they encountered a little difficulty finding my badge. I said, "Don't worry about the badge because I'm going to be the only Judge from Ohio here."

You know, when talking about forensic evidence, it makes me feel a whole lot like another trial judge who found himself in a duck blind, where some folks were doing some hunting. In addition to him, there was a law professor and also an appellate court judge. The three of them were sitting there, waiting for ducks to break cover and take wing. When the first duck took flight, the law professor stood to take a shot, but before he did so, he started to explain to his companions the dynamics of flight and how it was possible for something such as a duck to fly and the evolution of the hunting laws in America. By the time he turned his attention back to the duck, of course, it was long gone. When the second duck broke cover and took off, the appellate court judge stood to take his turn, but before leveling his weapon at the duck, he explained to the other two about distinguishing a duck from a goose by its markings and cited the law and the penalties for hunting ducks out of season and, of course, by the time he got his shot off, the duck was also gone. When the third duck broke cover, the trial court judge stood up and immediately shot it. The duck fell to the ground, and the trial court judge said to his friends, "Damn, I sure hope that

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was a duck!" It's that kind of position that trial court judges find themselves in everyday in their courtrooms. That's because we must make split second decisions with whatever information is available to us at that moment. We then hope that we've made the right decision based upon our training and what is being presented to us. To that end, we therefore, are extremely dependent upon the kind of information that we're able to take in, in order to make any intelligent instant decision with the confidence of that judicial duck hunter. I think this is most particularly true when we're talking about domestic violence cases. I had put together a whole presentation, which I now think that I'm going to abandon, and just talk to you about some of these other things that I think are important concerning forensics and trial courts.

I've spent some time as a prosecutor, and I've also spent some time as a criminal defense attorney. In each instance, I had opportunities to deal with individuals who were charged with fairly horrific crimes, where their mental health, at a minimum, was questioned. One that comes immediately to mind is a fellow that killed his cousin. His name was Anthony, and I represented him as defense counsel shortly after I went into private practice. The first time that I went to see Anthony, he was in the lock-up, and he was brought to court for a pre-trial. He and I were in a little conference room where they would lock you down with these folks. So, I'm sitting there, and I'm talking to him, explaining to him about the fact that we have some issues that we are going to have to overcome, since Anthony had made a six-page, single-spaced statement to the police outlining, chapter-and-verse, exactly how he thought he had seen his cousin stealing money from him that the two of them had stolen earlier and how he had watched as his cousin secreted that money in his boot, how he never confronted his cousin as they traveled from California to Chicago to New York, and finally to Cleveland. Anthony detailed how, before they got to Cleveland, he became certain that his cousin definitely had stolen from him, and how, upon their arrival in Cleveland, in the middle of a family gathering, Anthony killed his cousin. So, I tried to explain it all to him, saying, "You know, this is going to be really difficult and we probably should try to figure out if there is some way that I can assist you in not being executed!" He lis-

tened to me and at the conclusion of my presentation to him, he said, "Well, you know, that's all very fine and good, and we can do that, but I have just one question." I said, "Well, what's your question?" He said, with all due sincerity, "What are they going to do to my cousin?" He said, "That wasn't right what he did to me, so what are they are going to do to him?" As you might imagine, I was somewhat surprised by this response, and so I said to him, "Anthony, I don't think that there's any punishment that they can exact from him that is greater than the one you've already exacted." He fixed his gaze on me and said, "Well, that's not good."

Until then, no one had made me aware that Anthony might have mental health issues. Once I left the conference room, I got a look at the report that had been prepared on Anthony. The report said that Anthony had an anti-social personality defect. So, I'm looking at this report, and I'm saying to myself, "And what the heck does that mean?" Was he, or was he not going to be able to stand trial? The report basically said, "Oh, yeah, he can stand trial, he's just got this problem." My immediate reaction was, "OK. Well, that wasn't real useful." And it wasn't. During the balance of my career as a practitioner before the bench, as well as during the course of the almost twenty-two years I've now spent on the bench, I have seen many reports that have pretty much dealt with the same kind of issues that I saw in Anthony's report. Like Anthony's report did, those subsequent reports gave me the basis for an anti-social personality disorder diagnosis that left me, as an advocate or a judge, not really a whole lot better off than I was before I read the report. As a result, those reports, in my view, have not particularly forwarded the decision-making process. A trial judge is charged with making a determination as to what's needed to, first and foremost, keep the community safe, and secondly, to try to assist the subject of the report who stands before the court charged with a crime. The things that I am looking for, therefore, as a trial judge, are things that are clearer within the reporting process, those things that direct me to the tools that I need to use to address the situation in front of me. I am not, as we sit here, fully convinced that there is a whole lot that the professionals in this area can do to get me to that point, given the complexity of the human mind. But, you know, what I do

need is something that is going to put me in the position to feel as though I'm able to move forward, at least in some direction. A lot of the syndromes that have been outlined during this session are not necessarily things that we see in a courtroom on a regular basis. But, the few that we do see—things like Post Traumatic Stress Syndrome (PTSD) and Battered Women Syndrome, are presented to us in such a way, by battling experts, that we in the courts end up feeling as though we've entered the Tower of Babel. Once inside the Tower, we lawyers and judges frequently find ourselves wondering whether or not one or more of these experts have been compromised by the people who hired them to testify, since it's hard to look at one set of facts and see such divergent opinions and determinations drawn from the opposing sides from those facts. This is particularly true when applying the same theoretical criteria to those facts and where the only apparent difference is the desired outcome each side was able to find an expert to support. In many instances as a trial judge, I've come to the conclusion that at the end of such presentations there is no clear measure for me to use to discern the truth. I'm still left to my own devices to make sense of the competing presentations and to couple my determination with the other facts presented in the case in order to make a judgment as to whether or not a person is guilty or not guilty. And, of course, what that says in essence is that the individual in front of me who is the subject of the reports has not been particularly well served by reports coming from both sides that have the effect of canceling each other out. There are many times where experts on the witness stand begin to make their presentations and those presentations sound a whole lot like two of the parents in the animated Peanut stories that you've probably seen on TV. They open their mouths to speak and all that comes out is, "Wah, wah, wah, wah, wah." What I'm hearing and what I understand are two entirely different things, and I don't have the technical ability to understand the nature of the issue. You hear it, and you try to weigh it based upon what you have been able to pick up. But, if you have not been as well-schooled on a particular aspect of the forensic discipline, even as we have been today by the previous speaker's excellent presentation, the reports of many experts leave you feeling ill-equipped to make a decision. Such expert presenta-

tions, in a very real way, do not facilitate but rather, complicate the cognitive skills of the fact-finder that are absolutely essential when searching for truth.

Additionally, we frequently have problems receiving reports in what I consider to be a timely fashion. There are many occasions when all that the court needs is a cursory examination and determination of whether an individual has problems that would seem to be related to their ability to process information and to feed it back. All we really want to know is whether their mental health is impaired. Referring those people that we suspect have such problems to the psychiatric clinic that serves our court in Cleveland may result in a delay of a couple of weeks, or it may be six weeks, or it may be, on some occasions, even longer before I get a report in my hand that confirms or refutes what I thought I saw in the courtroom. If my initial assessment was incorrect (maybe the person is just so eccentric that the way they present would strike the average person as strange), then for that person to be incarcerated for an extended period of time, as far as I'm concerned, constitutes a violation of their civil rights visited upon them by the very institution that is supposed to safeguard those rights. So, for courts and judges, expedition, as far as the reports that we get from forensic professionals, is essential. We in the justice system look appreciatively at those who are providing us with these services, giving us the things that we need, providing us with something that will make us feel better about the decisions we are called upon to make concerning the fate of ill individuals that we would otherwise not be able to make. But, if we don't get the types of information that you've heard about today in a timely fashion that allows us to make such decisions, then, again, as far as I'm concerned, we're in a position where the cause of justice, particularly for those suffering from significant mental illness, is not well served. Thank you.