

## *Asbestos Bodies: Reflections of an Expert Witness*

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*The harmful health implications of asbestos use are quite well-known. Victims and their families experience not only the health problems, but also the burden of the process of claiming compensation. Roger Allen reflects upon the situation from the point of view of being an expert witness in the associated court cases.*

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The asbestos body is a pathological term also called a *ferruginous* body which is in essence a microscopic asbestos fibre wrapped in a proteinaceous coating containing iron pigments. This coating is the result of excited macrophages or scavenger white cells doing their best to render harmless this "beast" a bit like a spider covering an unwitting fly with a gossamer web.

The word "asbestos" comes from the Greek word meaning "unquenchable" and was used in Homer mostly in a figurative sense and it also meant unslaked lime. Even in Ancient Greece the now infamous mineral was also used for making a fireproof cloth, which was called "*asbestinos*" (Pliny 19.4). These were sometimes used in funeral pyres and there is the famous story about Charlemagne some considerable time later, who impressed his guests at a wine and cheese night (or was it a fondue night?) by throwing his asbestos tablecloth into the fire with expected results from his guests and no doubt enhancing his opinion polls at the next election. I am not sure if he died of a mesothelioma. The French call it "*amiante*" from the Latin derivation of the same idea (*amiantus*).

The Devil designed this group of miraculous and very useful fibres. He divided it into two main groups, the "Serpentines" (aptly named) and "Amphiboles". These minerals which are made up predominantly of silicates (silica plus oxygen for those who found chemistry tedious at school) with a pinch of magnesium, iron, sodium and calcium a bit like eye of newt etc in the opening scene of Macbeth. They have two major properties in common - they are all thin fibres thinner than a human hair and they all can lead to legal proceedings and therefore lots of words both written and spoken. It has the ability to be transformed into all sorts of

wonderful products from the linings of ships' bulkheads and for the production of that antipodean architectural icon, the "fibro" home.

Men of industry aware of the laws of thermodynamics knew that energy cannot be created or destroyed and that the conservation of such meant the conservation of money. Cover a boiler with asbestos and the energy stays inside and therefore cannot dissipate so wastefully into the ether. This in turn can be used to drive turbines, turn propellers and via the production of electricity, Mother's Mixmaster. Alas they overlooked the law of entropy. This noble principle of life I learned in physical chemistry as a first year medical student every Friday afternoon when the clock's hands seem to slow to a crawl and sometimes go backwards. Entropy states in effect that everything is heading to chaos or a lower energy state or in other words it's all going to custard on a grand cosmological scale. This is typified in the genesis of asbestos diseases, which may lead to the ultimate in entropy - death.

The defendants include a wide range of enterprises from the maritime companies, the armed forces, asbestos mining companies, numerous building trades and a wide number of firms which used asbestos in all its varied and imaginative forms. The effects on the community were enormous and pervasive. It was also played out in the lives of the innocent, unwitting women who washed clothes of their husbands and even their children who played under mother's feet in the laundry. I have seen adults with mesothelioma who as children played in sandpits not of sand but of asbestos tailings. Even banana growers who used old hessian bags to cover their bananas were affected as these bags once had been used to carry asbestos. These firms and folk were not necessarily evil. Sadly both industry and government failed to react to all the warning bells which had been ringing in the literature from at least prior to World War Two. Inertia, complacency, incompetence and bureaucratic dead wood were often at fault. Sometimes it was just evil itself.

The paradigm of the medical specialist derives from Hippocratic ideals. It includes the pervasive desire to do the best by the patient, to work in a spirit of good will and cooperation with your medical colleagues in order to achieve a good outcome for the patient and the notion of *primum non nocere* (first do no harm).

The coinage The Expert Witness deals with has the smiling face of compassionate medicine on one side and the crown of law on the obverse. He descends from this world into one reminiscent of that described by Vergil in Book VI of the Aeneid when Aeneas visits the Underworld. This is a world of winners and losers, of confrontation, one-upmanship, rhetoric, the putting down of the opposition and the opposing argument, of brinkmanship, applied psychology, of settling the dispute at the last second on the courthouse steps, of belittling of other expert witnesses, of quizzing the expert about minutiae and sometimes medical trivia. This is not a pleasant place to spend an afternoon. There is the added stress of if and when to cancel a whole afternoon of patients at the specialist's rooms. Some patients have waited for months for an appointment while others are ill with cancer and yet others have booked airplane tickets weeks in advance and travel for hours or even days to see the specialist.

The expert witness is put in the box, swears an oath or affirmation and the sparring begins. The ulterior motive is the discovery of truth and a just outcome. In reality it is like pugilism at its worst with lead weights in the hands of raw leather as described in Book V of the Aeneid. It reminds me of the famous bronze of the veteran prizefighter, probably Greek, of about 120 BC with cauliflower ears, a broken nose and deadly *caestus* or boxing gloves of weighted rawhide. This is what barristers can become. The Expert Witness is subjected to this and punches are pulled only when the other barrister objects or the judge intervenes.

An Expert Witness may sit in the box non-stop for hours with numerous defendant barristers hammering away. He leaves the room with a dry mouth, and rung out. The difficulties in communication between doctor and barrister may be induced by different world paradigms and most barristers are not trained in scientific method but more in notions of *post hoc, propter hoc* (after this, therefore caused by this), etc. On the other hand they are not fools.

The intensity of the emotional bombardment takes its toll. It is worth noting that barristers and solicitors are not subjected to what some may feel are often "bullying" tactics. Woe betides any Expert who takes it all too personally and who takes affront if his opinion is on the losing side. The end result boils down to dollars and this is all settled long after the

learned medical specialist is back at the office seeing Mr. Brown with her latest bout of chronic obstructive airways disease.

The good plaintiff Expert Witness sees numerous patients with asbestos diseases and frequently advises the plaintiffs' lawyers that there is not much wrong and that a costly court case would likely end up lost at considerable expense to the plaintiff and lawyer. The defendant Expert Witness does not see this tip of the iceberg phenomenon but instead sees the Plaintiff Expert Witness as always coming out on the side of the plaintiff and hence may erroneously label of him as being a "bleeding heart".

Most cases settle without a court hearing. The more detailed and reputable the medical reports, the more likely the dispute will settle. This therefore results after some experience in alignment of reports from both camps and without this a court hearing is more probable. The biggest fear is that a judge may ultimately decide the outcome and therefore costs. A bird in the hand is worth two in the bush and no one wants a pig in a poke.

The courtroom is a sterile place like a labour ward, sometimes with a sliding brass bar preventing entry to the boxing ring and two way swinging low stable door to be passed like the ferry across the River Styx. The barristers and solicitors sit behind a table in this lower area and in front is a long bench where the judge or Industrial Magistrate enters after everyone stands. It all boils down to the art of navigation of the legal creeks, backwaters and perhaps worse, and the best at it wins the day.

The longer one navigates such waterways, the more one risks smelling like a creek at low tide. The lawyers may become so tainted by his jaundiced view of life that they may assume that everyone else works under the same belief system. In essence, there may be an assumption that the world is an evil place and that the Expert Witness doing a report at the request of the "opposition" is a "low-life" and corrupted for one end only ... to win at all costs; the "he who pays the piper ... principle".

Prior to the court case the lawyers go through the relevant points of interest with the Expert Witness and they hope that when he is released into the ring that he doesn't put his foot in it,

fall into any staked pits or end up in a strategic *cul de sac* (dead end). Just in case, we had better run through the lung function data and what Dr Evil for the opposition said on page 6, paragraph 19, line 3.

The judge, like Moses sits well above the mean high water mark to part waters when things get a bit turbid. The trained eye will observe a line of spume and weed on the front of the bench from previous verbal spring tides and even faded remnants of skin and hair and Egyptian chariot wheels. Judges vary in their beneficence. They usually can detect "games" and are there to intervene when someone from either side starts to throw sand or kick over the other's sandcastle. They can do this because they have years of experience in the sand pit which is revealed to all with "eyes" at low tide. They see the world through the eyes of the blindfolded lady with scales she can't see, and who stands in the quadrangle outside the District Court down the road.

Judges are in general polite and respectful to the Expert Witness and usually recognize that the inquisition to which the trusted Expert is subjected may be viewed by the cynical recipient as a matter of tactics and slow or fast heat on the turning spit than a real searching for the inner truth of the matter. Barristers look for weak spots and gaps in armour through which a dagger might kill off the so-called Expert. Best of all outcomes is to convert the Expert Witness into a poltroon - a non-expert, and a blithering buffoon who has to be taken headless out of the courtroom like a lifeless corpse from the Place de la Concorde. This is why the whole process is so taxing for the "Expert". He is on guard. "Advance" ... "Retreat" like a fencer with foil in hand, but also ever ready for "Riposte". After the case, the lawyers all kiss and make up down at the pub with a fireside chat over a pint and darts like Spitfire and Messerschmidt pilots after a jolly good scrap unlike the exhausted Expert Witness who greets his faithful dog in the front drive with a good kick.

For the Expert Witness, there is a delicate balancing act. There is a need to be a sound and busy clinician to maintain one's credibility. Medicolegal work is like rich food which will, if taken to excess, induce dropsy, gout and arteriosclerosis of the soul. The sheer mind-numbing tedium of the work, the need to answer the unanswerable, to extrapolate into the next twenty

years of a client's life, the estimation of expenses, the examination of up to twenty CT scans in any one patient, to spend weekends or Easter holidays doing reports while the rest of the family is enjoying itself all takes its toll. Too much of it reduces one's clinical expertise, which in turn reduces one's credibility as an expert. One risks becoming tough, cynical, skeptical, and more assertive and if one is not careful, damaged emotionally and at worst may end up like a lawyer. I also believe that many lawyers become damaged by the type of work they do, much to the detriment of their spiritual and physical health and also of their families.

The plaintiffs are generally retired blue-collar workers whom the Expert Witness has usually examined repeatedly for several years before they reach the courthouse. He never sees the plaintiff giving evidence as this is not allowed and therefore has no experience of what it is to go through the process of interrogation when sick, let alone dying of cancer. Occasionally the plaintiff can spend as long as several days in the witness box being cross-interrogated by defendant lawyers. Most are middle aged and elderly but some are young and some are women. Some are just after compensation without just cause but in general lawyers will not "run" such a case for fear of financial loss. There is a significant subgroup with intractable pleural pain from benign asbestos pleural disease whose life is consumed by the misery of pain without relief. Some even take their own lives.

As an Expert Witness who has done a lot of medicolegal work, I prefer caring for patients and jousting with pathology rather than lawyers. I much prefer the Hippocratic paradigm into which I fit so easily. The work can be interesting and challenging at times but the pavement is uneven and cobbled and this sits uneasy on my feet. I have done the "hard yards" of years of clinical practice and numerous court cases. Scattered in the side ditches along this modern Via Dolorosa, I see the gaunt spectres of Pathos (Suffering) and Thanatos (Death), for these are the asbestos bodies that remind me medicolegal work is worthwhile.