EDITORIAL

Building Bridges To Bridging Gaps : Disseminating knowledge of Forensic Medicine and Sciences to Lawyers, Judges and the General Public.

There are a very few notions that many of us agree, unarguably. The fact that our society is ñhighly traditional and bureaucraticò is one such entity. It is not the aim of this essay to contend why our society is traditional and bureaucratic in an analytic perspective, but, empirically it is pertinent to examine and investigate how this traditional structure has affected engendering ñgapsò between medico-legal métiers. I am not attempting to endorse Derrida in de-structuring the entire construction here, but to elucidate some ill-effects it has delivered and to postulate propositions to proceed in bridging some extant vital gaps and voids.

Distinct divisions and segregations are common features in our society. These social phenomena are reflected in our institutions and between professions. Although an argument can be made in favor of such a segregation in the name of maintaining the integrity, sovereignty and residual power of the profession, it becomes futile and null, when the common goal of several professions are the same. The administration of justice in the best possible way is the common goal of many professions: the legal profession, forensic experts and the judiciary. They ought to work in a team in achieving this common goal. Unfortunately this does not seem to operate as it ought to be. Neither in our culture, nor in our educational system exists a value for team spirit!.

The lawyers learn in a separate traditional legal environment while the scientists imbibe in a notably scientific environment. These two traditions thus entail inherent pedagogic, epistemological and pragmatic differences. However, in the court room issues arise where both these traditions interrelate or rather intersect. For example in establishing rape, the scientific evidence of penetration of a penis, patterns of injuries identified, timing of such injuries and DNA evidence are relevant facts. Therefore it is imperative that the legal fraternity understands the human anatomy of the vulva-vaginal and other regions, types of basic injuries and their interpretations, principles of examination of a sexually abused victim, physiological, psychological, and pathological aspects of sexual intercourse, human psychology , reproduction, DNA science , other laboratory tests pertaining to elucidate semen/hair in the alleged victimôs genitals etc in order to best avail evidence and to appreciate scientific adduce. In contrary, the scientific community requires to understand and appreciate the legal philosophy behind rape, legal appreciation of ñwillò, ñconsentò ñ forceò ,òmensriaò, ñrelevant factsò, ñfacts in issueò, evidence law, circumstantial / direct evidence, sentencing and incriminating approaches, remedial approaches, judicial reasoning, different legal systems etc. in order to comprehend and fully conduce the notion of rape.

Perhaps it may not be so relevant to the forensic scientific community to apprehend such a detailed law as they would not be in judgment of incriminating or discriminating a suspect. However, it is significantly pertinent that the legal community, the judges, public prosecutors, defense lawyers and police understands the scientific basis of a forensic opinion provided to courts, as it will not only empower the court to scrutinize and evaluate the quality of the evidence but also it provides a deeper

comprehension towards synthesis of a comprehensive, acceptable decision, rather than merely accepting an opinion of a scientist for granted. Many scientific expert witnesses feel that not many relevant questions are asked in a court room due to this prevailing gap between the professions. In many instances in court room, no questions are asked by the defense from the scientific witness. When itôs the turn of the defense lawyer to cross examine the medical /scientific witness, the counsel would rise and proceed ñno questionsò. This means two things. Either cross examining the scientific witness deteriorates his case or he is unable to make a defense using the scientific testimony. It is noted that defenses developed using scientific evidence are scarce. Instead they try to develop arguments contradicting some procedural or trivial matters when expert evidence could have been contradicted conceptually otherwise.

Apparently due to these two diagonally different approaches in learning and deducing, the scientist and the lawyer show remarkable differences in their cognitive process and analogy. I, personally having had both these rigorous trainings can diagnose these different mental processes instantaneously.

It is observed that the medical/scientific witness assumes to be a prosecuting witness. Although the expert witness is summoned by the prosecution it does not mean that the expert favors or required to favor prosecution. The obligation of the scientific expert witness is to provide unbiased, true and scientifically acceptable opinions and facts to court. However by discerning pragmatic aspects in the court room such as the expert visiting the state counselsô chambers for a discussion just before the trial could inculcate an attitude in the lay mind of the accused that the medical/scientific witness is opining against him.

It has also been observed that many medical/scientific witnesses provide evidence in court room as if they were ñeye witnessesò: as if they were there at the time of incident! Not realizing that they provide an opinion based on some facts identified/ provided to him: that the reality could have been varying, there by reducing the precision of the opinion.

Bridging these gaps will minimize such issues in the court room. Not only it will uphold justice and rule of law but also improve quality and relevance in administration of justice.

It is important to note how other legal systems operate: to learn and share good practices. In many instance in the US, defense experts are utilized in the court room. In Sri Lanka, it is not culturally accepted among the professionals and in the court room. However these are areas for improvement in our system. Further, there are a fraternity of lawyers in developed countries called forensic lawyers: a subspecialty much sorted after who have training in both fields.

In Sri Lanka, as an initial step Prof. Ravindra Fernando and his Forensic Medicine Department at Colombo University, introduced a university approved Forensic Medicine and Science Diploma program for lawyers. This was a milestone in bridging the gap. Then, in 2008, I could introduce a similar diploma program in Forensic Medicine and Science to lawyers and judges with the help of my colleagues in the department at Peradeniya University. These two university approved recognized courses provide a thorough learning outcome for the legal community belonging to judiciary, prosecution and defense.

It is reasonably assumed that these programs developed with the aim of improving quality of evidential value and medico-legal procedure will positively impact the system. However it is worth looking at whether there has been an improvement in the judicial reasoning, evidential critique, evaluation of facts etc in

real sense, since the inception of these courses.

It is a known fact that crime rates are increasing exponentially. Also it is observed that the conviction rates in criminal matters are decreasing. What does this dichotomy relate? Is there any relationship between the legal community upgrading forensic medicine and science knowledge, with this decreasing conviction rates and court room procedural delays? Or these are mutually exclusive independent events depended on other variables?

On the other hand forensic sciences are now a public domain. The principles, strategies, images, investigations and others are readily accessible to public. It is my view that we need to engage public in combating crime and in investigating crimes. Disseminating forensic and criminal justice knowledge to public will enhance public capacity and would be skillful to routine problem solving, rather than destroying valuable evidence. For example, when they are educated as to the reasons why it is not suitable to delay when there is a suspicion of a sexual abuse of a child and what procedures would be done and what are the reasons for such procedure, perhaps the public will comply much more faster and to a greater depth. Also, the journalists and media personnel will have an opportunity to understand the scientific basis of crime investigations and forensic methodology so that they do not need to philosophize or fiction drama out of a true crime. On the other hand the jury, potential members of jury, police, coroners and Inquirers to sudden deaths, Gramma Niladaris, sociologists, politicians, criminologists and all others who are interested would have an opportunity to learn forensic sciences if they are interested.

One shouldnôt panic or fear, these approaches would not license public to practice forensic disciplines as the criterions and requirements for practicing such professions are accepted and already in place. These would be designed in such basic pedagogical way that the general public will have an opportunity to understand basic aspects of forensic scientific disciplines. I can remember the Senate of University of Peradeniya, requested me to formulate a course (at the time of discussion of the diploma course in forensic medicine and science for lawyers and judges) where interested parties could follow: not limiting the course to certain professions: Valuing dictums ñmore open than usualò and ñfreedom and freeing of educationò.

However, educationally, curriculum of each course has to be designed in a particular way to address its own needs and demands. Therefore it is timely that universities think about generating forensic courses at different levels so that interested parties could follow. This will not only fill existing gaps further but also indirectly and invariably improve justice administration, forensic investigations, expert evidence and public cooperation.

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