

COMMENTS ON THE PRESENT STATUS OF MEDICAL EXPERT TESTIMONY IN THE PHILIPPINES

Lecture given in the Assembly Hall of the University of the Philippines by Honorable Sixto de los Angeles, Chairman of the Committee on Health of the Philippine Assembly, President of the Anti-Tuberculosis Society, and Member of the Board of Regents, on March 5, 1915.

Ladies and Gentlemen:

On being honored by an invitation to give this lecture in this great institution, I did not hesitate in accepting it, possessed as I was, from the very beginning, by a great enthusiasm when I was informed of the subject on which I was to speak and when I was told that my audience would be composed mostly of Seniors in Medicine and in Law, the two professions for which I cherish special devotion.

To be frank, I did not realize either the magnitude of the subject or the difficulties which I would encounter in developing it. I did not take into consideration the fact that it was a matter to which heretofore I have not devoted much time. Neither did I, through carelessness, perceive that I am required to dwell upon problems which, aside from the fact that they have not yet been sufficiently implanted in our country, are considered everywhere as the hardest to master, as they are so closely and inseparably bound up with the progress of civilization and the ever-widening field of science.

I was then only prompted by a blind impulse to avail myself of this splendid opportunity of addressing myself to those who will soon cease to be students and who are destined to re-inforce the distinguished group of men of learning who now struggle courageously in the interest of health and justice in our country. I was unconsciously impelled only by the thought that I could tell you something serious and important in connection with our reconstructive activities. In short, I was then only under the influence of a series of ideas which created in me a strong conviction that upon your ability, which is under more favorable conditions and has had the benefit of better preparation, will depend the establishment of more harmonious and perfect relations between the science of medicine and the science of law in our country.

Thus, you cannot expect me to make even a fair account of the important discoveries which lend value to the study of medical jurisprudence. It is, moreover, such a vast and complicated subject that it should be treated of

in a book rather than in a lecture; and above all, because my object on this pleasant occasion is not to teach you what you have already fully learned from your instructors and from the different texts which you have undoubtedly read.

I shall, therefore, only make *a few remarks on the present status of the medical expert testimony in our country*, pointing out especially its defects and inconveniencies in practice. I shall begin by specifying the principal causes which give it a peculiar character in its relation to our administration of justice, namely:

1. The change of sovereignty which naturally implies change in the organization of the judiciary, in the basic principles of the law, and in the significance of the intervention of medical experts in the administration of justice.

2. The insufficient as well as faulty distribution of physicians, which gives rise to the fact that in most of our municipalities there are no competent doctors.

3. The deficiency of means and the inadequacy of methods in the investigation of cases where knowledge of medical jurisprudence is needful, in proportion to the demands of our administration of justice, and

4. The absence of proper legislation tending to promote and insure the handling and application of medical jurisprudence.

Apropos of the implantation of American sovereignty in the Philippines, one of the first legislative measures passed was the repeal of the laws and orders establishing the "Departamento Médico Legal." Such a reform was not due to any cause of local character, but to a high principle emanating from the very Constitution of the United States, which is indeed a serious obstacle preventing the promulgation of any law which creates an organization of medical expert witnesses. According to said principle, it is a sacred privilege of every citizen that he should be clothed with necessary safeguards so that in no case shall his individual rights be unjustly sacrificed for the sake of State interests, and therefore it is unconstitutional to forbid any of the parties to an action to make use of such expert witnesses as he may see fit.

There are many cases in medical jurisprudence which bring out not only the grave difficulties which are regretted in the United States regarding the rules which govern the service of medical experts, but also the failure of the medical profession in their fights, started a long time ago, for the establishment of a more suitable and adequate plan to correct such deficiencies. In this connection, I may cite a case which arose as a result of the action taken by the "Monroe County Medical Society" regarding the formation of a list of experts who should give their opinion in cases of insanity,

according to a law passed by the State of Michigan. The Honorable Joseph Moore, Chief Justice of the Supreme Court of that State, in his opinion in the case of *People v. Dickerson*, 164 Michigan 148, held that a new trial should be ordered, basing his decision on the following precedents:

Section 3 of Act No. 175, Pub. Acts, 1905, providing for the appointment of expert witnesses by the court in cases of homicide, is unconstitutional, since the act of appointment is in no sense a judicial act, is carried out without the notice of respondent or the prosecuting attorney, since the names of the witnesses are not indorsed on the information, and the accused is prevented from knowing the names of witnesses who will testify against him, and since the experts receive a certificate of candor, ability and truthfulness not given to any other witnesses in the case.

The expert witnesses provided for by this section testify under a sanction which gives to their testimony practically the same weight as if it were delivered by the court itself and if that testimony being against the accused were either willfully false or ignorantly mistaken its baneful results would be appalling. To give the testimony of a witness or witnesses this extraordinary certificate of candor, ability and truthfulness, while the other testimony in the case must be judged by the jury by ordinary standards, is to subvert the very foundation of justice. *People vs. Vanderhoof*, 71 Mich., 158.

The charge of the court virtually put the evidence of these doctors and professors upon a higher plane than the other testimony, which was manifestly wrong. *People vs. Seaman*, 107 Mich., 348.

An expert witness is to be judged from the same standpoint as any other witness. *People vs. Holmes*, 111 Mich., 364.

Laying aside the controversies which the case has for some time been stirring in the United States, and limiting ourselves to an examination of the same question from the purely local standpoint, the first thing that comes to our mind is the idea which is born of the realization of our present condition as regards our medico-legal problems arising in the administration of justice.

This question, which in the United States affects the procedure for the establishment of new support and stronger guaranty for expert testimony in medical matters, partakes of a more serious and more far-reaching importance in the Philippines. We are not under the same conditions, we have not at our command the same means and possibilities, and in consequence, we should not have the same degree of opposition and allow the same problem to remain unsettled which is so seriously affected by the spirit of the constitution which obtains in both countries.

Continuing in the investigation of the same matter, the real problem we are called upon to solve is, in my opinion, whether or not we are sufficiently equipped as an organized community so as to have at our disposal

a system of medico-legal expert evidence capable of complying with all the requirements necessary for the good administration of justice; for besides being a fact founded on constant observation, it is also a biological law that the working efficiency of an organism depends upon the degree of the sufficiency and perfection of its component parts.

To this end, there is nothing in my judgment so necessary as to define in a categorical manner whether our country is in a condition to adopt a system which necessarily presupposes a sufficient and adequate distribution of professional physicians properly trained and equipped so as to insure the upright administration of justice, besides other facilities inherent in the function of medico-legal experts; requisites which are indispensable and should therefore be at hand in order to respond to the ends and the magnitude of the sacred interests intrusted to them. With this end in view, I am going to continue this lecture.

We very well know that at present in the majority of our towns, only quack or poorly prepared doctors (*cirujanos ministrantes*) are available, and in most cases diseases and accidents are only treated by such persons. This is the reason why when they are called to the stand as expert witnesses, instead of enlightening the questions at issue, they almost always serve to breed confusion in the proper administration of justice.

Attention is invited to the fact that in the whole Philippine Archipelago there actually exists only one graduate physician for every 11,500 inhabitants; and if from this calculation the city of Manila were excluded, the proportion would be one doctor to every 17,500 inhabitants.

We are also aware of the fact that even for professional doctors the cases in medical jurisprudence are not easy to handle, for their solution is not arrived at merely by the physician's ordinary and habitual mode of reasoning, but constitutes one of the greatest difficulties to be met in the practice of medicine. Nor must we lose sight of the fact that in order to be an expert medical witness, it is not sufficient to have an extensive scientific erudition, or to be conversant with the routine of ordinary medical and clinical treatment, or even to have all this knowledge but be without the means and the opportunity to develop it. A medical expert should look for and observe the evidences of crime or offense, and these can only be shown by certain and definite means, and during occasions which depend upon the law of time; circumstances which, unfortunately, do not or cannot prevail for a long time under present conditions and under the way our health service is organized.

We should also bear in mind that the judges who are only required to possess the most elementary knowledge of the complicated physical changes in human nature, should not and could not assume themselves

the prerogatives which exclusively appertain to the medical expert in all cases where the appreciation of medico-legal facts is involved. The courts are not required to decide upon theories, opinions, and methods, for this is within the sphere of legal medicine.

Finally, if to all these, we add the circumstance that medical expert evidence, besides being indispensable, constitutes the most necessarily and the most widely applied of all expert evidence in the administration of justice, we cannot but conclude and admit without discussion that the question relating to this service is actually the weakest side of our judicial system.

Let me cite to you a case which will serve to demonstrate more clearly than any of my explanations the gravity of the problem which now confronts us.

I was present and took part in the trial of a criminal case of consummated poisoning before the Court of First Instance of Rizal, sometime in 1903. The occurrence took place in the town of Navotas, of the same province. The victim was a newly born child who died after two days of suffering as a consequence of an unknown sickness. The family accused the "mediquillo," who was a man in his sixties and completely blind, attributing the cause of the death to the medicine which he applied. The testimony of the witnesses showed that the herbs used were those which are usually applied in the country to similar cases. It was alleged by the prosecution that after the administration of two or three teaspoonfuls of the mixture, the child had continuous convulsions, and after a few hours died. The justice of the peace ordered the president of the municipal board of health, who had no other professional title than that of "elrujano ministrante," to perform an autopsy on the dead body. This official certified that he had observed extreme *rigor mortis* or cadaveric stiffness and many violaceous marks on the back, and affirmed from the simple inspection of the cadaver, and with no little boldness, that indeed the cause of the death was poisoning. With only these proceedings and in spite of the nugatory value of the expert testimony given, the old "mediquillo" had to suffer temporary detention. After many months had passed from the death and burial of the child, in the very trial of the cause before the Court of First Instance, the provincial fiscal asked for my expert testimony in my capacity as district health officer, and I had to give testimony in order to render information as to the degree of credence to be given to the expert evidence adduced in the preliminary investigation. With these facts, it was naturally difficult, if not impossible, to find means to decipher many things which were left unknown.

Did any ailment exist which, giving rise to convulsions, as those which

were observed in the child, should have necessarily produced death? Could the quantity and quality of the substances administered as medicine have caused the appearance of the symptoms and given rise to death? It not being possible to accept the evidence furnished by the medico-legal certification made by the "cirujano ministrante," what other medico-legal proofs could be availed of in this case?

These were the questions which had to be answered in the above cited case and in many other similar ones occurring daily in the Philippines. I should say, however, that I testified before the court that the child could have died from a common and known disease, taking into consideration the symptoms adduced in the evidence, and that medical science did not have any means by which to demonstrate the guilt or innocence of the accused in view of the impossibility to have an ocular inspection of the child's remains at that time and of ascertaining the real quantity and quality of the substances applied in the treatment of the child. The Judge acquitted the accused in this case.

The case just related, as you have seen, refers to the intervention of a "cirujano ministrante" who could not have done any better than confess that he was not capable of serving as an expert on that occasion. Here is another case of recent occurrence which refers to a real doctor in active professional practice but who was not prepared nor provided with means to comply with the requirements of the task which he was called upon to perform. This was a case of serious physical injuries, where the complaining witness, a young man about 26 years of age, alleged that one of his arms was rendered useless as a result of maltreatment committed upon him by the accused. As the occurrence took place in a town where there was nobody qualified to certify to the injuries, and as the interested parties were poor and unable to pay for the services of a doctor, who had to come from a distant town, the case reached the Court of First Instance many days afterwards without the assistance of any expert certification. The judge personally examined the injured person, and from the little knowledge that he had of the matter, he could only note that the complainant had his forearm strained, a circumstance which, according to his testimony, prevented him from working and earning his living in the normal way. The judge himself tried to pull the strained part trying to straighten it out, but he could only note a painful resistance, made more pitiful by the sighs which escaped from the injured man. This result so affected the judge that he became inwardly convinced of the seriousness of the injury. Before rendering his decision, however, it occurred to him to ask for the testimony of the health officer of the district who happened to be in the municipality where the court was holding session. The doctor, after a simple manual

examination, confirmed the opinion of the judge, who in turn finally decided to render a sentence of conviction. The accused, being poor, did not appeal and suffered the corresponding penalty with resignation. A few months later, the Judge learned that the injured man was employed in carrying heavy loads, and that he had the free use of both arms. The conscience of the judge obliged him to seek for another interview with the injured man, and after another examination he found out that the forearm was as strained and caused as much pain when extended as on his first examination. This time, however, impelled by his professional zeal, he applied to the Constabulary hospital in a place somewhat far distant from the *población* and taking the complaining witness along with him, personally asked the opinion of the physician in charge. This doctor after an examination, similar to that made by the first one, confessed that he entertained some doubts, and asked the judge to permit him to use chloroform. Once anesthetized, the man spontaneously straightened out both arms, and so it was proved that the injury or disability complained of was simply factitious, and for this reason the judge, moved by his conscience, petitioned for the pardon of the prisoner.

Lastly, I am going to cite a case where a doctor also intervened, but on account of the defect in the proceedings resorted to by the authorities, and the lack of means at the disposal of the doctor, the expert evidence did not respond to the necessities of the administration of justice.

This was a case of murder, committed in the town of Atimonan, province of Tayabas, only about three years ago, the victim being a member of the Constabulary. The doctor was called by an officer of the Constabulary to examine the corpse brought from the mountains, a distance of about an hour's walk from the town. It was wrapped up in a mat, on opening which, it was found that the body of the victim was in a state of generalized cadaveric stiffness, that it showed various wounds from a sharp instrument, most of which were necessarily mortal, and that all were on the front part in a transversal direction, with the stains from streams of blood running in the same direction. The deepest wound was on the naso-frontal region horizontally cutting both eyeballs, including the upper eyelids, and its depth reaching the base of the cerebrum on the same line with the source of the nose. This was all that could be observed by the doctor, who could not do any better, for besides his not being a Government physician, he did not have on that occasion the necessary instruments with which to perform the autopsy which he was also asked to do.

Proper proceedings were instituted in the Court of First Instance and the doctor was summoned to testify. The defense insisted on showing that there was resistance and a struggle previous to the death, with the favorable

circumstance that the prosecution did not have any witness, besides the expert, to testify to the contrary. The prosecution, on the other hand, claimed that the victim was sleeping when he received the wounds found on his body, and that judging from their character they were the cause of the death.

Being examined as to the position of the victim when he was attacked, the medical expert testified that the circumstance of all the wounds being in a transversal direction and precisely on the front part, coupled with the further circumstance that all blood stains on both sides ran in the same transversal direction, was sufficient proof that the victim was lying on his back when the attack was made. As to the question whether the victim was asleep or awake, the expert said that on account of the destruction of the eyeballs, he could not form a final opinion because the mere fact of having the upper eyelids intersected was not of any importance to expert opinion, it being well known that before an imminent danger, our instinct always obliges us to close the eyelids.

The expert witness could not give exact answers to various questions, such as the following: whether the victim could have executed certain acts after the attack and before death occurred; whether, taking into consideration the height of the ground where the victim was found, the aggressor could have been in such a position as to inflict the wounds while the victim was seated; whether the transversal stains from currents of blood could not have occurred after the victim fell on his back, notwithstanding the fact that he was seated when he received the wounds; how many hours passed between the attack and the time of the death, and between the time of the death and the time of the examination of the cadaver; whether the death occurred before receiving the wounds, and whether the injured parts were bent or extended when the attack was made.

From the foregoing statements we can deduce that the expert testimony should have been required to demonstrate how the death occurred or how it might have occurred, as might be judged from the medical verifications and from the indications that could be gathered from the investigation made. However, a slight reflection upon all the circumstances which attended the development of the case, is enough to make us affirm that in this particular case, the science of legal medicine did not have any means with which to fulfill its mission.

Let us not pass upon the propriety or impropriety of leaving entirely in the hands of an officer of the Constabulary the authority to control the use of medical expert evidence, but simply let us proceed to the fact of the cadaver having been brought to the town wrapped up in a mat. (It should be noted that no reference was made in the examination to the state

and condition of the clothes of the victim.) How could an expert in this case have verified all the questions, necessary and useful, in order to get at the truth of the occurrence?

It is necessary to have in mind that medical intervention in such cases should consist, first, in the examination of the cadaver, the act which is termed the "preliminary inspection of the cadaver" or "inquest" (*levantamiento del cadaver*), which can only be made in the place of the happening. It is only when there are reasons to suspect that the death could have been the result of a crime, that justice demands the making of the autopsy, and this should only be effected in adequate places (morgues) and by authorized and competent persons. The act known as the "preliminary inspection of the cadaver" were of the utmost importance in the case mentioned above, because the necessary basis of all the proceedings was the expert evidence which could have rendered most valuable information to the administration of justice, as for example: the position of the corpse; the disorder in the clothing; the rents in the clothing; the condition of the place where the body was found; the blood stains in neighboring objects, and other valuable details which could only be acquired on first investigation, which, as is already understood, should be made the most complete and perfect possible, as it is not susceptible of being repeated, for once the order of things is altered, their meaning would be entirely different.

Not to cite any more precedents which happened in our courts, for besides being innumerable and in the majority of cases already known, they would occupy much of our time, I shall now limit myself to making brief observations on other medico-legal questions, which, because of their frequency, extent, delicacy, and importance, should not be passed unnoticed in this study.

A medical expert is not limited to solving only the grave questions which relate to civil capacity, civil interdiction, guardianship, nullity of marriage, validity of contracts and that of wills. His sphere of action is still more delicate in cases falling within the domain of criminal law, especially in regard to the responsibility of the insane.

The indefinite line of demarcation between sanity and insanity, and the various interpretations of the distinct states of mental disorder indiscriminately called insanity, disease of the mind, mental derangement, mental alienation or unsoundness, really constitutes one of the principal causes giving rise to the high prominence of legal medicine; but it is also true that psychopathy increases to a great extent the difficulties of medical expert evidence.

It is true that the Judge has ample power to decide as to the exempting circumstances based on the disorders of the mind, but it is none the less

true that the determination of the degree and positiveness of the *dementia* at the time of the preparation of the criminal act or the irresistible force which impelled the commission of the crime are requisites which are expressly specified in the Penal Code as circumstances which exempt from criminal responsibility. Leaving such a task in the hands of the Judge or of those physicians insufficiently prepared for the same, either because medical experts do not exist or because we can not have them, is equivalent to a willful disregard of the sacred ends of the same Code; for it should not be forgotten that just as it cannot be right to punish acts, however much they are to be reproached, when they are palpable expressions of a morbid disorder of the mental faculties, so also for the protection of society, it is required that a more careful and delicate analysis in the appreciation of such acts be made, and this could only and should only be done by professional psychologists, or more properly speaking, specialists in mental derangement.

According to the statistics of the Bureau of Health of the Philippines, there are in the whole Archipelago at least 3,000 persons dangerously insane, besides a number, not less, of cases of peaceful insanity, which must include the immense variety of idiocy, imbecility, and other mental derangements difficult to describe.

The unceasing progress made by the medical science in having at last brought down from their archaic pedestals the many prejudices which not long ago were unjustly burdening the great principles of pathology, has in its turn brought about the present high appreciation of the administration of justice by universal conscience as being the best guaranty of the rights of the citizen and the strongest safeguard of the welfare of the community.

We are now very far from that epoch when all men of sound mind were considered as competent as the most experienced doctors. At present no one would concede any merit to the affirmations of Troplong. In one of his commentaries, in which he so ridicules medical expert testimony, this chief magistrate said:

“Legal medicine has for some time pretended to impose its oracles on jurisprudence. I have to confess that all that I have seen and heard from certain physicians during my judicial career, surpasses all that is credible: by listening to them, there is no man which can not pass for a monomaniac. If Pascual had not died, he would have figured among the crazy; I know more than one doctor who takes him for one who is hallucinated. Socrates was lucky for having been born so early; at least he died with the reputation of being the wisest of men; if he were living now, perhaps there would be more than one eminent medical writer who would judge him as crazy as his familiar devil. At any rate, everything must be said: How many consultations have we not

attended which remind us, point by point, of the scenes depicted by our divine *Morière*? A nervous movement of the face, a familiar *tic*, a certain mode of expression, a gesture, in all, the most simple and natural things are included in the diagnosis and prognosis as the frequent giggling of M. de Pourceaugnac, and still it is pretended that we, the judges, who have in our hands the liberty and civil capacity of persons should let grave questions affecting the honor of families, the succession to property and the rights most highly valued by man, depend on such frivolous symptoms. I understand that legal medicine has not contributed any significant progress upon the doctrines taught by jurisprudence, and this should not be modified by it."

Engendered in those times when scientific ideas had hardly passed the bounds of empiricism and superstition, such a satire, as a faithful reflection of those opinions which had not even dreamt of the prodigies of bacteriology and modern experiments, naturally found place in the most serious minds of the first magistrates, and its influence has unfortunately served to retard the reforms in the codes and to detain the course of progress. But happily, just as the darkness of the night recedes to the radiance of the coming dawn, so also that period of errors and vascillations has given way to the more luminous impositions of the principles of modern science. This is why other jurists, not less eminent, as A. Chauveau and Faustin Helie, were not long in coming forth to the bench to affirm with more majesty and energy that—

"All the varieties of the mental diseases or phrenopathies, under whatever denomination they are studied in science, under whatever classification they are included, embody in themselves the efficacy and significance of the excuse, discharge, and justification of the accused, once their influence in the perpetration of the act could be presumed." Professor Osler in one of his addresses, in 1911, said:

"What a revolution in our generation! Anatomy, physiology, and pathology, with their subdivisions of histology, embryology, physiological chemistry, and pharmacology, are new in laboratories controlled by specialists, whose ideals and work differ in no respect from those of their colleagues in the departments of physics, chemistry and biology; and in many places large separate institutes are devoted to these subjects."

Brunelle thinks that legal medicine is—

"The systematic collection of all physical and medical knowledge which may guide the different decrees made by judges in the application and composition of the laws."

Ferrer and Garcés also claim that—

"Legal medicine is the sum total of medical and other auxilliary knowledge, necessary to enlighten or resolve some of the questions comprised in civil, criminal, administrative and canonical jurisprudence." According to Hoffman:

"Legal medicine is that which enlightens the questions in the administration of justice, civil and criminal, which can only be solved in the light of medical knowledge."

Vibert, a celebrated French author on legal medicine, not to mention other more modern writers, considers the opinions such as those expounded by Troplong to be inimical to courts acknowledging the medical science, and, qualifying such persons as obstinate magistrates, in demonstrating with convincing facts and reasons that similar assertions are nothing more than lamentable errors, in his turn asks the following categorical questions:

"Is any judge or juror capable of diagnosing epilepsy in its less evident and more hideous forms, the general paralysis in its beginnings? Does he have the adequate training to analyze and discern the relations between the criminal act and the disease from which the accused is suffering?"

If the facts already related should permit us to see into the deplorable anomalies and deficiencies which occur almost every day, and which we are obliged to tolerate, in the administration of justice in our country, a more profound investigation into the real scene of our ordinary collective life, a more careful study of certain facts affecting the reality of things around us, will demonstrate to us the magnitude of the problem, and all the enormity of our grave medico-legal questions, which cry for a necessary solution.

Untrained midwives (*hilot*) who murder creatures on the wholesale and who to a certain extent contribute to make unhappy the mysterious secret of conjugal life, thus destroying the primordial elements of the aggrandizement of the country; quack doctors and medicasters who make of the certificates of death and of the statistics of mortality and of crimes a mere form without any positive or practical value; slight injuries which become transformed into physical uselessness of a cumbersome or permanent nature; physical sufferings which, from being mere accidents to be ruled by the sole force of one's own nature, revolt and give rise to grave complications, which besides destroying the future of a whole family, end with death; mental diseases which are mistaken for sharpness of ingenuity; hysterical persons raised to real prophets credited with supernatural powers, with the faculty of foretelling one's future, and of curing all diseases by miracle; and lastly, many other facts, not less sad and lamentable, which we have to tolerate, being obliged by the circumstances, and above all because as yet the longed-for day when the influence of scientific treatment should become more potent and extensive, has not come. Such are in a few words the eloquent facts which picture clearly the deplorable truths.

In view of said inconveniences and anomalies, upon what secure and

positive basis of medical expert evidence, shall we place the good and efficient administration of justice? How are we to define the attempts against life and health, the questions relating to sexual instincts and reproduction, and the clues to a crime? How can we match the zeal and diligence of our judicial officials with this vast field of errors inherent in our system of procedure in medico-legal questions? Can it and should it be left to the government to insure the efficient administration of justice, when it, in its turn, tolerates the proceedings and the state of things already described to exist indefinitely?

These considerations constitute the synthesis of the whole problem which I have proposed to expound on this occasion, without doing anything but hinting at the difficult situation, so that you may take note, leaving it to your time and your own initiative to find its ultimate solution. I think I am within proper bounds to call your attention to so grave and prejudicial anomalies which serve as a blot to the independence of our Judicial Power, which is considered by natives and foreigners as one of the grandest exponents of the political and social progress of our country.

I believe that we cannot but trace a plan required by our actual life which is seriously affected by the lack of organization of our system of medical expert evidence, we cannot leave uncertain the fate of the Filipino citizen to the possible vexations which may follow the unearthing of the offense and the discovery of the real offenders; we should not indefinitely cling to a system which, besides being improper, is contrary to the security of our progress and welfare; we cannot and must not tolerate, for the sake of justice that its administration is left so unprovided with and so isolated from medico-legal guaranties; lastly, we cannot protect the constitution by putting it above the no less sacred interests of the citizen.

I am afraid you will take as unjust and exaggerated the criticism I have made on the extent and nature of the deficiencies of our means with respect to medico-legal questions which arise in the midst of our communities. I am also afraid that some would take me for an extreme pessimist, to the extent of undervaluing the merits and capacity of our race. I understand, however, that deficiencies and defects cannot be cured without first bringing them to light and studying their origin and nature in order to select the proper remedy.

The physiology of our community, the same as that of any other, enlivened by the light of progress and civilization, has really given evident manifestations of its activity showing the sufficiency and integrity of its own materials and organs. But this is no impediment to a confession of the fact that we are still behind in some of our important functions, inasmuch as the development and perfection of human activity in all its parts

cannot be effected simultaneously, and since the spirit of resignation, indifference to, or disavowal of one's own defects fatally leads to decrepitude and death.

Civilization and progress tend to completeness as well as perfection. The temporary deficiency in certain elements of life or the preference for a certain order in the manner of satisfying its necessities are solely dependent upon chance, the age of the peoples, and of circumstantial exigencies.

It should be understood that the real usefulness of legal medicine does not depend alone on the dazzling progress of the sciences of which it avails itself, nor upon the adoption of certain treatments practiced with more or less success in other countries; it should without doubt, be composed and arranged according to the conditions and the character of the country in which it is to be applied.

It remains for us, therefore, to find the solution of the problem, basing it upon our own means and methods, and in this connection, it cannot be denied that the most fundamental task is to awaken our conscience to the realities around us in order to imbue our convictions with the grave responsibilities which rest upon lawyers and doctors in particular, and upon the public in general, for bringing about an adequate and efficient administration of justice.

We should not, therefore, forget to increase the efficiency of our doctors by inculcating in a more appropriate manner the study of the sciences required in the giving of medical expert evidence, and to convince the lawyers that for the better performance of their duty as indispensable assistants in the administration of justice, they should impose upon themselves, at least at present, the learning of such matters as will supply the deficiency in the practice of legal medicine. In other words, we should try among other things, to have legal medicine, which in other countries is already taking an active and important part in the solution of the greatest questions relative to the preparation of the Penal, Civil, Sanitary, Professional, and Labor Codes, attain in the Philippines at least a middle rank in the conscience of our community.

Fortunately for the country, similar aspirations find sufficient support on the part of the Government and of other institutions in securing an active and unceasing medico-educational war, which to all intents and purposes cannot but tend to shorten the duration of the existence of the obstacles and inconveniences of the kind that we are now analyzing.

When the problem is approached with a view to establishing the best way to remedy existing difficulties relative to expert medical testimony in the Philippines, it cannot be conceived why we should not adopt some

method, even though provisional, to secure the service of a more adequate system of medical expert evidence. While we are rejoicing in the hope of enjoying in better days to come the effects of some legislative enactment more effective than we have at present, while we are resting our confidence on the power of science which is beginning to take root in our soil, so luxuriant, robust and promising, at the same time harmonizing as far as possible the principles of the Constitution with the rights of every citizen and without overlooking the circumstances and the conditions which characterize our community, I take the liberty to outline the following plan:

1. It should be provided that it shall be one of the duties of medical officers of the Public Health Service of the Philippines to act as medical experts in all cases where their services are required. It should be noted that Act No. 307 compels the Presidents of Provincial Boards of Health, who are now the District Health Officers, to serve only when they are so required by the Provincial Fiscal to investigate the causes of sudden deaths which have not been satisfactorily explained and when there is some suspicion that such causes are the result of the acts or omissions of other persons, or of any unlawful act, and to order autopsies when the Fiscal deems it necessary.

2. Every judicial district should be furnished with instruments and other necessary equipment, to be placed at the disposal of any physician acting as an expert. Without such equipment, the medical personnel however efficient, will not be able to hold autopsies, identify weapons used in the perpetration of crimes, make examinations, etc.

3. An effort should be made to establish hospitals in each province. Owing to the fact that in criminal cases the number of days within which wounds are to be cured must be fixed and that science must determine it through modern methods of treatment and cure, it is natural that if the patient is not placed in a hospital, the calculation would be too arbitrary. Hospitals, moreover, constitute the most suitable place for the holding of autopsies, inasmuch as they are provided with laboratory facilities.

4. Medical associations should be asked, wherever they exist, to give the courts a list of the most competent experts on medical jurisprudence. Said list should be at the disposal of the court, of the lawyers and of the public in general, so that they may be given an opportunity to choose. Such a measure is convenient because physicians are in a better position than others to make the choice. Then, no one would doubt the fact that by such a method all parties interested would have the same privilege to designate their expert witness. This list of competent experts would likewise be used should the case be taken up to a higher court.

5. A schedule of fees should be fixed, as part of the costs, for medical experts. This fact is important, if we consider that one of the most serious prejudices in regard to the medical profession is that physicians give their opinion according to the compensation they receive.

6. It should be provided that notwithstanding these measures, every party to an action shall be absolutely free to choose any other medical expert. This provision is to uphold the right of the parties to use any witness he wants, in harmony with the spirit of the constitution.

Before ending, I cannot but raise a question which, besides affecting the harmony which should always exist in the sister professions of law and medicine, is giving rise, not infrequently, to making popular sentiment underrate greatly the value of expert medical testimony. It is being observed, with sufficient frequency, that in many cases disagreeable differences arise, not only among the lawyers and doctors, but what is worse, among the doctors themselves.

Scientific experts do not realize that with their unjust pretensions of infallibility and their strict adherence to technical terminology, they only make themselves the object of ridicule, and what is more, they only cause their testimony to lose the real merit and importance which it should have.

It is also to be lamented that, in treating of the same question, the experts of the different parties, should answer the same interrogatories in entirely opposite directions, each considering himself as a defender of his side, and not realizing his real mission of enlightening and bringing out the truth.

The lawyers on their part, being protected by the illimitable power which the law concedes to them in having their questions, however, hard, answered, forget that the interests of truth should not be confounded with licentious proceedings, up to the point of imposing on the dignity of the medical witness. The doctor should not only be given certain considerations for his professional personality, but should also be given some liberty in developing his affirmations. The lawyers, lastly, do not realize the division of labor, when treating of medico-legal questions, sometimes going as far as imposing their desires and whatever knowledge they have upon the expert testimony of the real medical expert.

Dr. Taylor mentions a case of medico-legal expert evidence in which the lawyer, using a certain authority, succeeded in giving a different light to medical facts, presenting them under a particular and different point of view. It was an action against a railway company, asking for indemnity for certain physical injuries; it was proved by the plaintiff that he had pneumonia a short time after the accident, and the lawyer of the company

wanted to show that the lung trouble did not arise from traumatism. Cross-examining the medical expert, he asked: "Can lung trouble be produced by commotion?" "I do not think it is possible." The lawyer: "What? Do you mean to say that you do not believe in a fact affirmed by an authority as great as Professor Taylor? Have you read the work of Dr. Taylor on *Legal Medicine*?" The witness: "Yes, Sir." The lawyer: "Have you read the last edition?" The witness: "No." The lawyer: "I have it here (looks into a book), here is cited a case where pneumonia has been caused by a collision." The witness is confused. Later it was discovered, in verifying the citation, that the case in question was one in which a rib was fractured and it injured the lungs. The cause of the lung trouble was thus sufficiently explained, having been proved that it was the result of a physical injury, and not of an commotion.

To conclude, it only remains for me to extend my heartiest greetings to those who very soon will receive their diplomas, which constitute the best evidence of the possession of knowledge concerning medical jurisprudence. I am not called upon to emphasize the important rôle of the cultivators of this branch of human learning in the solution of the grave problems which we are now facing, in view of the future political and social events which affect the country. The magnitude of your tasks carries with it great responsibilities, and in this connection I shall limit myself to voicing a wish, which comes from a knowledge of the needs of the country, that you continue in your arduous but beneficial work of going deeper in your studies on the important subjects embraced by medical jurisprudence, so that they may afterwards grow and bear fruit, thus remedying the deficiencies which we now regret. The community is proud of its University, of the *Alma Mater* which looks after our progress and improvement; of this inexhaustible fountain of knowledge destined to increase our faith, our virtue and our glory. Be, therefore, her worthy sons; be a credit to the profession to which you will very soon belong, and see to it that your merits upbuild the more rapidly the foundation of Filipino nationality.