

Jury Bias and Psychiatric Experts: Judges' Impressions of International Medical Graduates as Expert Witnesses

WILLIAM H. REID, MD, MPH
SURESH DURGAM, MD

Two years ago, Dr. Durgam and I published results of a survey of forensic psychiatrists that asked about their impressions and experiences related to international medical graduates (IMGs) in forensic roles. The questions did not address the respondents' beliefs directly, but how they believed judges and jurors tend to respond to IMG experts. Most respondents were U.S. or Canadian graduates, although some had received their medical degrees in other countries.¹

Our most recent work, reported in this column, presented 100 judges, in three groups at three different meetings, with hypothetical descriptions of IMG psychiatric expert witnesses. We asked the judges how they believed jurors would react to testimony by those experts. We were not trying to assess judicial bias but, as in the 2004 study, to explore issues that may have a practical effect in court and/or may affect career opportunities for international medical graduates.

INTRODUCTION

Forensic psychiatry practice, especially working as an expert witness, is a career path in which, we believe, IMGs are relatively underrepresented. IMG residents and practitioners often consider forensic careers and, based on our experience, wonder whether or not their foreign-born status, non-U.S. medical school, or ethnic characteristics will interfere with their ability to work as experts.

The possibility that geographic and/or ethnic characteristics, or IMG status itself, will interfere with the effectiveness of expert witnesses in court is widely discussed, particularly among and between IMGs and their teachers and mentors. Such discussions may be uncomfortable, but they raise important practical questions about career choice and professional behavior. The issue is also relevant to attorneys, courts, and agencies who consider hiring IMG experts, since they may eventually testify before a judge or jury. Expertise, honesty, and objectivity can be estimated (and usually assumed)

beforehand, but such things as location of medical school, accent, and prominent ethnic features could also have an impact on a jury's perceptions and on the weight given to expert opinions.

Successful forensic practice rests on a three-part foundation: excellent clinical skills and experience, an understanding of the application of medical (psychiatric in this paper) knowledge to legal issues, and personal characteristics that lend themselves to effective, credible communication of one's opinions to others. Although many forensic endeavors, including contested cases such as malpractice lawsuits and personal injury cases, never reach a courtroom (that is, they are settled or otherwise resolved before trial), many do. Criminal prosecutors, plaintiffs' lawyers, and criminal and civil defense attorneys must assume that every case will go to trial, and that the expert whose opinions may shape much of that case will eventually testify before a judge and (usually) a jury.

Lawyers retain expert witnesses for very practical reasons. Civil, criminal, and family attorneys need accurate and complete information with which to assess the merits of their cases and develop strategies that will benefit their clients. If an expert's opinions support the client's case, the lawyer must be able to rely on that expert to express his or her opinions clearly and convincingly (credibly) to the people who will decide the client's fate (usually jurors, sometimes a judge). Clinical education and skill are not enough. The ability to communicate articulately and believably to laypersons, both orally and in writing, is crucial. Experts who cannot do

WILLIAM H. REID, MD, MPH, is a clinical and forensic psychiatrist in Horseshoe Bay, Texas, and a past president of the American Academy of the Psychiatry and the Law. Dr. Reid maintains a website, Psychiatry and Law Updates, at www.psychandlaw.org. This column contains general information which should not be construed as applying to any specific case or as any form of legal advice. SURESH DURGAM, MD, at the time this survey was administered, was a Research Associate at TempVA Research Group, Inc., Temple, TX. He is now an employee of Forest Research Institute, Jersey City, NJ.

**Table 1. Judges' courts (current and recent)
(n = 97)**

| | |
|--|------|
| Adult criminal | 77 |
| Adult civil | 39 |
| Juvenile | 21+* |
| Family, child custody | 34+* |
| More than one of above (specified) | 32 |
| More than one of the above (unspecified) | 17 |

***Unspecified" increased this number by an unknown amount; criminal and civil are already adjusted.*

this well, or whom others perceive as less articulate, credible, or knowledgeable, will not compete well in the arena of forensic practice.

Our survey did not address experts' education, skill, or experience. The survey vignettes assumed adequate, comparable credentials, as well as the objectivity and ethics required of good experts. Our questions had to do with the issue raised by many IMG psychiatrists as they explore forensic career choices: whether or not certain personal characteristics are likely to be perceived by jurors and judges in a negative way, and thus to limit their ability to succeed as an expert witness.

METHOD

Subjects/Respondents

One hundred Texas trial judges attending lectures on court-related mental health issues, given by one of the authors, completed questionnaires. Completion was voluntary and anonymous, with no tangible reward. The judges were from state and federal jurisdictions ranging from urban to fairly rural. Some respondent characteristics are summarized in Table 1.

Survey Instrument

The survey instrument* was a 6-page form that requested some background information and then asked both general and specific questions about the judges' thoughts and experiences concerning jury perceptions of psychiatric expert witnesses who had received their medical degrees outside the United States. Both the text and the

*A copy of the survey instrument is available from the first author.

surveyor's oral introduction made it clear that we were not seeking information about judges' biases, but about how they believed jurors would perceive certain background and personal characteristics of IMG experts. Most of the questions had Likert-like multiple-choice answers (5 choices, extremes at each end, neutral in the middle), and asked for narrative responses as well.

In part of the survey, vignettes described 11 fictitious experts and asked the same questions about each. Each hypothetical expert had completed a psychiatric residency in the United States and was assumed to be fully qualified and similar to a U.S.-born expert in every way *except* for the characteristics listed. That section was prefaced with the following instruction:

In questions 8–18 (below), please rate the hypothetical experts in terms of how the characteristics described, *in and of themselves and without regard to other qualifications*, might affect a jury's assessment of their competence and credibility.

The 11 hypothetical expert vignettes read as follows:

- A Pakistan-born expert, fairly dark-skinned, graduate of a Pakistani medical school but a U.S. psychiatry residency, who wears a conservative Western suit and speaks with a heavy Pakistani accent.
- An Ireland-born expert, light-skinned, graduate of an Irish medical school but a U.S. psychiatry residency, who wears a conservative Western suit and speaks with a heavy Irish accent.
- A Germany-born expert, light-skinned, graduate of a German medical school but a U.S. psychiatry residency, who wears a conservative suit and speaks with a moderate German accent.
- A Jamaica-born expert, black-skinned, graduate of a Caribbean medical school but a U.S. psychiatry residency, who wears a conservative suit and speaks with a moderate Jamaican accent.
- A Middle-East-born expert, olive-skinned with a dark, full beard, graduate of an Egyptian medical school but a U.S. psychiatry residency, who wears a conservative Western suit and speaks with a heavy Middle-Eastern accent.
- A Venezuela-born expert, light-skinned, graduate of a Venezuelan medical school but a U.S. psychiatry residency, who wears a conservative suit and speaks with a moderate Spanish accent.
- A South-Africa-born expert, Caucasian, graduate of a South African medical school but a U.S. psychiatry residency, who wears a conservative suit and speaks with a moderate British accent.

- An East-India-born expert, female, brown-skinned with delicate features, graduate of an Indian medical school but a U.S. psychiatry residency, who wears a *sari* and speaks with a moderate British accent.
- A Nigeria-born expert, black-skinned, graduate of a Nigerian medical school but a U.S. psychiatry residency, who wears a *dashiki* and speaks with a moderate Nigerian accent.
- A Philippines-born expert, brown skinned, who graduated from a Philippine medical school but a U.S. psychiatry residency, who wears a conservative Western suit and speaks with a moderate Tagalog (Philippine) accent.
- An Israel-born expert, fairly light-skinned, who graduated from an Israeli medical school but a U.S. psychiatry residency, who wears a conservative suit, *yarmulke*, and full beard and speaks with a moderate Israeli accent.

Each vignette had the following response format:

- very negative impact on a jury
- moderately negative impact on a jury
- no/neutral impact on a jury
- moderately positive impact on a jury
- very positive impact on a jury

What factors most affected your answer?

RESULTS

Most judges completed the entire questionnaire, but some omitted one or more questions. A few omitted large portions of the instrument. Only those who omitted all or almost all of the target questions were removed from the results. Most questions yielded about 90 usable responses.

In answering questions about the response of jurors to the general topic of IMG experts (before the vignettes that presented individual characteristics), 58.4% of judges believed that juries have a negative or very negative perception of IMGs in general (often allowing for exceptions), while only 2.2% predicted a positive overall impact (Table 2). Asked about the specific country of medical training, 84.4% believed this would be important to a jury (Table 3). Ninety-one percent (91.0%) thought that prominent ethnic features would be important to juries (Table 4), the implication apparently being primarily, but not necessarily, negative.

Responses to the 11 specific vignettes varied, but response patterns strongly suggested negative juror

Table 2. General effect of graduating from non-U.S. medical school (but U.S. residency) (n = 89)

| | n (%) |
|-----------------------------------|------------------|
| a. very negative impact on a jury | 2 (2.2) |
| b. moderately negative impact | 50 (56.2) |
| c. no/neutral impact | 35 (39.3) |
| d. moderately positive impact | 1 (1.1) |
| e. very positive impact | 1 (1.1) |
| a. + b. | 52 (58.4) |
| d. + e. | 2 (2.2) |

Table 3. Is specific medical school country (outside U.S.) important to juries? (n = 90)

| | n (%) |
|-------------------|------------------|
| a. Unimportant | 14 (15.6) |
| b. Important | 46 (51.1) |
| c. Very important | 30 (33.3) |
| b. + c. | 76 (84.4) |

Table 4. Are prominent ethnic features important to juries? (n = 89)

| | n (%) |
|-------------------|------------------|
| a. Unimportant | 4 (4.5) |
| b. Important | 54 (60.7) |
| c. Very important | 27 (30.3) |
| b. + c. | 81 (91.0) |

reactions to some backgrounds and ethnic features, and neutral or (occasionally) positive reactions to others. Heaviness of accent was the most frequently cited negative feature, followed by "foreign-appearing" attire (e.g., a *sari* or *dashiki*) and certain specific regional backgrounds (stereotypic Middle-East or Pakistani, and "third world" countries whose medical schools were perceived to be substandard). Although it was impossible to assign detailed sources of variance, the lowest ratings went to hypothetical Middle-Eastern (Egyptian), Nigerian, and Pakistani experts, followed by those from Jamaica, India, and the Philippines. One of the three lowest was described as wearing non-

Western dress (a *dashiki*) and two as having a heavy accent.

The three highest rated—Irish, German and South African—averaged close to “no effect” or “neutral effect” on predicted jury perceptions, although the ratings varied considerably. All were described in the vignettes as light skinned, in Western business attire, and clean shaven. One had a heavy (Irish) accent.

Most respondents (93.0%) believed that community characteristics (e.g., urban vs. rural, culturally diverse vs. non-diverse, well educated vs. unsophisticated) that would affect the juror pool could affect jury perceptions (Table 5).

DISCUSSION

The judges attending the conferences at which the survey was distributed appear to have been fairly representative of Texas state judges as a whole. According to the program sponsor (the Texas Center for the Judiciary [TCJ]), a very large portion of the state’s judiciary attend TCJ educational programs. We have no information about whether or not attendees at these particular mental health topical programs are representative of all sitting judges in the state or nation, nor whether the attendees who completed and returned the survey were different in some way from those who did not.

Canadian graduates were excluded from the hypothetical vignettes because of Canada’s geographic proximity to the United States, the comparatively free exchange of credentials between the two countries, and its cultural, ethnic, and linguistic similarity to the United States. Mexican graduates were excluded from the vignettes because of Mexico’s proximity to the United States and to the state in which the survey was conducted (Texas). Some of the judges’ courts were within a few miles of the Mexican border, and many were in cities with a substantial Mexican population (and thus juror pool). The Venezuelan vignette prompted comments from some respondents that jurors may view Hispanic accent, appearance, and culture preferentially in many parts of Texas. Those comments were not universal, however.

The number and length of vignettes were designed to encourage participation by a large number of the judges. We could not cover every combination and permutation of ethnic characteristics. The mixture of characteristics in each vignette is a practical description, but one cannot parse many specific sources of variability from so few examples. Thus, unless the respondent specified a particular characteristic, one cannot easily say how

Table 5. Does trial location matter? (n = 86)

| | n (%) |
|---------------------|------------------|
| a. Yes | 37 (43.0) |
| b. Sometimes | 30 (34.9) |
| c. Maybe | 13 (15.1) |
| d. Probably not | 5 (5.8) |
| e. No | 1 (1.2) |
| a. + b. | 67 (77.9) |
| a. + b. + c. | 80 (93.0) |

much of the response is based on country, accent, skin color, or something else. The patterns of responses allow some interpretation, however, if sometimes tentative, and many respondents did specify characteristics they believed were important.

There was internal discrepancy in the responses of a small number of respondents who initially answered that country of origin and medical school were not (or not very) important generally, then said that prominent individual characteristics were important. That may have indicated that individual characteristics were more important than stereotypes; such an interpretation is consistent with similar comments by several other respondents. On the other hand, it could suggest that those judges’ broad expectations that juries would be unbiased disappeared when they were faced with specific cases.

Two respondents appeared simply to have responded to all questions in rote fashion, checking exactly the same answers for each of the 11 vignettes. Their surveys were counted, but may have pulled the means slightly toward “no effect.”

Accent was the characteristic most commonly cited in a negative way. Most narrative answers from respondents that were related to accent referred to jurors’ inability to understand the expert; a heavy accent received much more negative ratings than a moderate accent. Some judges also said that a heavy accent gave the impression that the expert might not understand the lawyers’ questions, or might not be able to understand the psychiatric issues of the case. The heavy Irish brogue, seen as a liability by many respondents, was occasionally cited as endearing to some U.S. listeners. One respondent believed a pleasant Jamaican accent partially offset what that respondent described as the poor reputation of Caribbean medical schools. The British accent of the South African expert was viewed positively; that of the

East Indian female expert was rarely mentioned. The moderate Venezuelan (Hispanic) accent was viewed with little apparent negative bias; some respondents noted that it would be familiar to the large number of Hispanic jurors found in some Texas courts.

Non-Western dress was consistently viewed in a negative light, although the two most obvious examples (a *sari* and a *dashiki*) were described in the context of several other “foreign” characteristics. It is interesting that several respondents cited the Israeli expert’s dress as a negative factor, even though the only unusual item in his attire was a *yarmulke*. It is possible that three or four of the judges mistook “*yarmulke*” for a form of dress rather than the small, religiously-significant “skullcap”; non-Jewish respondents may not have recognized the spelling (the word is often pronounced as if it were spelled “yammuka”).

Several judges referred to perceptions of poor medical schools in the Caribbean and “third world countries” (a phrase often seen in the responses). A few commented that people who went to Caribbean medical schools “couldn’t get into a U.S. medical school.”

We provided only one vignette involving a female expert. In our experience, most psychiatric experts are male but, more important to this study, we did not wish to introduce a gender variable into the IMG/ethnic issue. In that respect, it might have been better to make all hypothetical experts male. Only a few respondents referred to expert gender in the narrative portion of their responses, generally listing female gender, attire (a *sari*), and non-Western appearance as having a potentially negative influence on a jury.

Although skin color was mentioned in each vignette (two “black,” some others “dark,” “brown,” “olive,” “light,” or “Caucasian”), very few respondents referred to skin color per se in their narratives. Several mentioned that experts’ credibility might suffer from appearing “different” from the professionals that jurors are accustomed to seeing in their communities.

Many judges mentioned terrorist or radical stereotypes when rating the Middle-Eastern (Egyptian), Pakistani, and even Israeli vignettes. The Israeli expert was not generally viewed with the same apparent Middle-Eastern bias as was the Egyptian.

The results suggested that Caucasian experts, especially those with familiar or stereotypically pleasing accents, were viewed with less, and sometimes no, neg-

ative bias. Germany was sometimes cited as medically sophisticated, offsetting a moderate German accent.

A few respondents said that the Israeli expert would be respected because jurors view Jews as very knowledgeable. A few more wrote that juries would be biased against the Israeli because of his foreign appearance, confusion with more negative Middle-Eastern stereotypes, his beard or, in a couple of instances, his faith. One commented that experts should not be allowed to wear indicators of their religions.

Beards appeared to produce negative bias, and were mentioned by several respondents; however, they were mentioned only in the Egyptian and Israeli vignettes. It is difficult to say whether or not a beard might have made a difference for experts from other backgrounds.

The judges frequently commented that mitigating factors might overcome stereotypes. Several respondents stated that individual differences in experts’ appearance, demeanor, and communication skills were more important to jurors than geographic or ethnic background. Two said that jurors rarely pay attention to mere ethnic stereotypes.

Most respondents (93.0%) believed that trial location could be an important factor affecting juror response to ethnic and geographic differences. Urban venues were often cited as decreasing potential for bias, as were culturally diverse communities and high educational level of jurors. Some respondents said that there would be less bias in the northeast or far western part of the United States. Conversely, several of those who made narrative comments believed smaller, less diverse communities would be associated with more juror bias, as would the deep southern part of the United States.

THE LAST WORD

The survey results presented here suggest that it is relevant for attorneys to consider geographic and ethnic characteristics when retaining psychiatric experts who may have to testify before a jury. The results may also be useful to IMGs who are considering careers that include being expert witnesses.

References

1. Reid WH, Durgam SK. International medical graduates as forensic experts. *J Psychiatr Pract* 2004;10:130–3.