



## The Expert Deposes, but the Court Disposes:

### The Concept of *Malingering* and the Function of a Medical Expert Witness in the Forensic Process

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#### The Concept of *Malingering* in Medicine

The term *malingering*, which derives from the French word *malingre*, meaning ailing and sickly, was introduced in 1785, in a publication titled *Dictionary of the Vulgar Tongue*. The word was originally used in a military setting, to describe persons who pretended to be sick or disabled so as to evade military or naval duty. Although the term *malingering* itself is thus of relatively recent origin, the pretence of sickness to achieve "a consciously desired end" has a long history.<sup>1</sup>

In *Samuel I* there is a description of malingering by means of which David, while fleeing from King Saul, avoided capture and probable execution at the hands of King Achish of Gath. The following passage describes the event, when David realized that he had been recognized by the courtiers of Achish:

These words worried David and he became very much afraid of King Achish of Gath. So he concealed his good sense from them; he feigned madness for their benefit. He scratched marks on the doors of the gate and let his saliva run down his beard. And Achish said to his courtiers, You see the man is raving; why bring him to me? Do I lack madmen that you have brought this fellow to rave for me? Should this fellow enter my house?<sup>2</sup>

The simulation of disease or self-mutilation as a means of evading military service was recognised by the ancient Greeks and was punishable by death. In Roman times, Galen of Pergamon, who was requested by the Emperor Marcus Aurelius to accompany the Roman army during the military expedition against

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<sup>1</sup>Mendelson, G., Mendelson, D. (1993). Legal and psychiatric aspects of malingering. *Journal of Law and Medicine*, 1, 28-34.

<sup>2</sup>Samuel I, 21:13-16. (1985) Tanakh: A New Translation of The Holy Scriptures. Philadelphia: Jewish Publication Society.

the Marcomanni tribes in winter of 168 CE, subsequently wrote a treatise titled *On Feigned Diseases and the Detection of them*, in which he described Roman conscripts who cut off their fingers to make themselves unfit for military service.<sup>3</sup>

The code of laws established by the crusader Godfrey of Bouillon for the Kingdom of Jerusalem in the 12th century provided for the medical examination of those who pleaded illness when summoned to appear before the courts. It was considered that "some not incapacitated would wish to be believed so" in order to avoid trial by battle.<sup>4</sup> In such circumstances a physician, an apothecary, and a surgeon were sent to examine the person, and if they could find "no reason why he must refrain from appearing in court" the person summoned "must go and appear."

Thus, initially malingering was a phenomenon observed and described in relation to persons who were subject to military law. Since the Middle Ages the clinical pursuit of finding ways and means for detection of malingerers has produced a vast volume of medical literature.<sup>5</sup>

The medical output on the subject has increased exponentially since the second half of the 19th century, when the allegation of malingering began to be raised in relation to civil litigation. There are doctors who are so mesmerised by the possibility that the persons who come to see them may be malingering that they become determined to *find out the truth*. Some medical practitioners, like Sir John Collie, appear to have advanced to the knighthood on the back of detection of malingerers. In 1932, having earlier written a volume titled

<sup>3</sup>Davis, D., & Weiss, J. M. A. (1974). Malingering and associated syndromes. In S. Arieti (Ed.), *American Handbook of Psychiatry* Vol. 3 (2nd ed.). New York: Basic Books, at 270-287. Laws prohibiting self-mutilation were motivated less by the concern for the individual involved than by the desire to secure a supply of able-bodied men for the military and the navy.

<sup>4</sup>Brittain, R. P. (1966). The history of legal medicine: The assizes of Jerusalem. *Medico-Legal Journal*, 34, 72-73.

<sup>5</sup>The following is a short selection of articles discussing detection of malingering which appeared in English in 1992-1993:

Rude, B., Townsend, R., & DiPette, D. (1992). Case report: simulation of severe hypertension as a means of malingering. *Am. J. Med. Sci.*, 304(4), 258-60; Horton, K., Smith, S., Barghout, N., & Connolly, D. (1992). The use of indirect memory tests to assess malingered amnesia: A study of metamemory. *J. Exp. Psychol. Gen.* 121(3), 326-51; Rogers, R., Kropp, P., Bagby, R., & Dickens, S. (1992). Faking specific disorders: A study of the Structured Interview of Reported Symptoms (SIRS). *J. Clin. Psychol.* 48(5), 643-648; Trueblood, W., & Schmidt, M. (1993). Malingering and other validity considerations in the neuropsychological evaluation of mild head injury. *J. Clin. Exp. Neuropsychol.*, 15(4), 578-590; Prigatano, G., & Amin, K. (1993). Digit Memory Test: Unequivocal cerebral dysfunction and suspected malingering. *J. Clin. Exp. Neuropsychol.*, 15(4), 537-546; Rogers, R., Ornduff, S., & Sewell, K. Feigning specific disorders: A study of the Personality Assessment Inventory (PAI). *J. Pers. Assess.*, 60(3), 554-560; Binder, L. (1993). Assessment of malingering after mild head trauma with the Portland Digit Recognition Test. *J. Clin. Exp. Neuropsychol.*, 15(2), 170-182; Smith, G., Borum, R., & Schinka, J. (1993). Rule-Out and Rule-In scales for the M test for malingering: A cross-validation. *Bull. Am. Acad. Psychiatry Law*, 21(1), 107-110; Rogers, R., Bagby, R., & Chakraborty, D. (1993). Feigning schizophrenic disorders on the MMPI-2: Detection of coached simulators. *J. Pers. Assess.*, 60(2), 215-226; Orr, S., & Pitman, R. (1993). Psychophysiologic assessment of attempts to simulate posttraumatic stress disorder. *Biol. Psychiatry*, 33(2), 127-129; Bernard, L., Houston, W., & Natoli, L. (1993). Malingering on neuropsychological memory tests: Potential objective indicators. *J. Clin. Psychol.*, 49(1), 45-53; Lanyon, R., Almer, E., & Curran, P. (1993). Use of biographical and case history data in the assessment of malingering during examination for disability. *Bull. Am. Acad. Psychiatry Law*, 21(4), 495-503.

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