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Viewpoint of the Traumatic Surgeon

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VIEWPOINT OF THE TRAUMATIC SURGEON

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In the interests of justice, anyone can be compelled to attend court to testify to facts within his knowledge. A doctor may be issued a subpoena to testify as to facts, and he may be adjudged in contempt of court should he refuse to obey the summons. Such a witness is classified as a regular witness in contrast to the expert witness.

Expert testimony consists of delivering opinions which are based on a specialist's knowledge and experience and which the court needs in order to understand properly the merits of the case. Workmens' Compensation laws and the constantly enlarging field of insurance are especially productive of the need for expert medical testimony, particularly concerning traumatic cases. We are morally obligated to attend court and testify for the patient whom we have treated for injuries on which the court action is based. Our services can also be solicited by the plaintiffs or their counsel for the purpose of examining a patient, rendering a written opinion, and being prepared to testify during the trial.

A very large proportion of the members of the medical profession avoid, if possible, giving expert testimony, one reason being that it entails a cross-examination which sometimes seems to question the honesty of the witness and subjects him to the insinuation and sarcasm of the opposing counsel. The doctor should keep in mind that he has the superior knowledge and that his is the role of an instructor in the court.

The sole aim of the medical witness should be directed toward maintaining a clear issue to expedite in every practical ways the ends of justice in our courts whose dockets are always overcrowded. That function should rule out all bias and tendency to partisanship. The task of freeing medical testimony from all improper factors and influences is ours. If, on the witness stand, a doctor violates the

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standards of his profession, some other doctor is sure to know of it. On the latter rests the initial responsibility for activating the professional attention deserved by the misconduct.

In court and on the witness stand, you will have the feeling that the lawyer on your side is your friend and that the lawyer on the opposing side is not. Actually this idea is not justified. Most opposing lawyers are equally interested in a good performance on your part and will tend to admire a modest and courteous attitude.

In answer to questions, tend to address the jury and the judge rather than only the interrogating lawyer. Keep your voice up and speak clearly enough that you may be understood and that the court stenographer may record what you say. It is considered most important to tell the truth, the whole truth and nothing but the truth. It is a mistake to volunteer information thinking that it will help the case along. Do not attempt to help the counsel on either side except to answer as briefly as is reasonable the questions which are propounded. Try to be attentive to all questions. Try not to give the impression that you know it all, and above all, be very frank. If the lawyer propounds a question, the answer to which you do not know, do not hesitate to state that you do not know the answer. The court recognizes that no witness is completely informed on all subjects, and such a response to a question is not considered detrimental. If the opposing counsel appears to be deliberately irritating, it is most important not to lose your temper and to take your time so that you will not contradict previous testimony.

The question of remuneration for expert testimony might be briefly discussed. Famous opinions have been handed down that a doctor's special knowledge is his property and that a court may not take his property from him without remuneration. In the case of a regular witness, a nominal witness fee is paid to compensate him for his loss of time from work. In the case of the expert witness, the doctor should charge for his time in court. A useful

procedure is to inform the lawyer in writing before you examine a patient that you demand that the lawyer assume responsibility for payment of charges for examination, x-rays if taken, and rendering a written opinion. In addition, if the case comes to court, you would, before trial, obtain a guarantee from the lawyer that your fee for testifying in court will be paid. As a matter of fact, doctors have been subpoenaed, have been compelled to attend court, and have been compelled to give expert testimony without remuneration being arranged. This is the exception rather than the rule and as a procedure will not bear close legal scrutiny.

It is important to remember during the examination of the patient for the purpose of legal procedures not to prescribe for the patient or even give opinions to the patient as to his diagnosis, treatment, or prognosis. This is the province of the doctor who is treating the patient.

The expert witness should take to court with him the report of his examination of the claimant, and he should expect to read that report to the court, interpreting medical terms as he goes along. It is most important to remember that neither the judge nor the jury understand what a trochanter[1] is or what a diastasis[2] is. If you use such terms in court, it will be resented by the court and jury since it exposes their medical ignorance. As you talk, think ahead and substitute lay terms insofar as possible for medical terms.

Appraisal of injuries and their immediate and future disability-potentialties is a complicated and important subject. It requires extensive knowledge of all diagnostic procedures necessary to evaluate the exact nature of the injuries and the probable consequences of natural healing and degenerative changes over the remaining life of the patient. The expert must approach the case study with a completely open mind, determined to assemble all facts necessary for the establishment of correct diagnosis and

[1] "Either of two processes below the neck of the femur" (thighbone). DORLAND, THE AMERICAN ILLUSTRATED MEDICAL DICTIONARY (1951).

[2] "Any simple separation of parts normally joined together . . ." BLAKISTON'S NEW GOULD MEDICAL DICTIONARY (1949).

complete comprehension of all matters relevant to the situation. Too often prejudicial factors resulting from biased basic attitudes, limited experience, preliminary prejudicial conferences with lawyers or adjusters, and hostile or ingratiating patient attitude consciously or unconsciously channel the conclusions which he reaches. This is particularly true where the objective findings are in contrast with the subjective complaints and frequently accounts for the wide disagreement between otherwise honest and sincere experts. The history which the patient gives and his demonstrations of function must be subjected to close scrutiny. Inconsistencies and unusual findings must be noted and appraised carefully and an effort must be made to find their cause and classify them. The most common form of inaccuracy on the part of the patient is exaggeration. This seems to become progressively greater as the case advances and the history is repeated to successive examining physicians. Misstatements entirely unsupported by fact are frequently made to establish an unfounded allegation. Headaches, dizziness, etc. are not uncommonly ascribed to cerebral concussions which never occurred. Momentary unconsciousness immediately after an automobile or other violent accident is referred to as a possible concussional reaction when as a matter of fact, the patient only fainted and had no physical trauma direct or indirect to the skull or its contents. Many "back cases" of long standing and frequent recurrences offer themselves as fresh and primary injuries, and the physicians then wonder why they cannot be cured in the customary and usual length of time. The pitfalls in this field are legion. The physical examination must be sufficiently inclusive, not only to elicit and record all specific effects of the injury itself, but should include an appraisal of the general physical condition of the patient. Accurate observations of the form and function are important and wherever possible, exact measurements should be made.

In a low back examination, the question of the presence or absence of muscle spasm has often come into issue. True

spasm beyond control of the patient is a significant finding, but all too often voluntary muscle contraction in response to the patient's will, or, reaction to faulty body mechanics and posture is causing spasm, and thus given undue importance. Measurement of symmetrical parts of the body can be made a valuable feature of the physical examination. In the case of long standing disability in a knee, some degree of atrophy of the thigh muscles on the involved side would be a reasonable expectation, and if such evidence were lacking, there would be a substantial basis of doubt, particularly where no other supporting evidence of disability could be identified. By the same token, callouses on the hands, uneven wear of shoes, localized atrophy, correlation of active and passive limitation of joint motion, x-ray changes which obviously antedate the duration of complaints are important data in estimating the claimant's status. Painful joints, if superficial, usually exhibit some degree of increased heat or redness or swelling. Nature often achieves wonderful cures after the physician has exhausted his resources and the claim has been adjusted or adjudicated. On the contrary, many situations such as joint and disc injuries deteriorate progressively, often leading to serious disability which was not considered or anticipated at the time of initial observation of the case. It is the expert's duty and responsibility to understand, explain and weigh these potentials.

While injuries of the extremities are most readily susceptible to classification and scheduling, those of the spinal column and head cannot so easily be catalogued. These latter injuries therefore fall into the group which are known as nonschedule injuries, and permanent disability appraisal in these cases is based upon "the proportionate extent of the impairment of the injured's earning capacity in the employment in which he was working at the time of the injury, and other suitable employments."

At the conclusion of a competent examination, the expert should be able to set up a mosaic of evidence which either proves quite clearly that a real injury has occurred

or he can show that the complete absence of such evidence or its utter inconsistency presumes that no significant abnormality is present. Given exactly the same facts, even conscientious experts can and will disagree with regard to their significance and potentialities, so that the mere disagreement between experts does not imply dishonesty or incompetence on the part of one or both of them.