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## The Physician As a Witness

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### SUMMARY

This chapter is a personal reflection on the role of the physician as an expert witness in medical malpractice litigation. It looks at both the individual experience and professional obligations of the expert from both the medical and the legal perspectives. A number of practical suggestions for courtroom preparation and deportment are presented.

**Key Words:** Expert witness; courtroom strategy; courtroom deportment; cross-examination.

### INTRODUCTION

When a physician has either the opportunity or the obligation to testify as an expert witness, the reaction often passes through a cascade of several phases.

- First, there is usually an overdose of humility: “Am I capable?” and “Can I learn enough about this matter to be of value in the courtroom?” *Humility is an asset, but it must be genuine and not an act.* Teddy Roosevelt once commented that the bravest man he had ever known was the one who followed him up San Juan Hill. Although this came from a hero, the arrogance of such a remark is apparent even, or especially, when subtle.

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- Will they take advantage of me? *They will certainly try. Be careful, but do not let your caution rob you of your effectiveness.*
- Can I avoid making an utter fool of myself? *It depends on how much of a head start you already have.*
- Why should I become involved? Is it a public responsibility or duty?
- Can I understand enough about courtroom behavior to be useful? *You must be willing to learn this carefully from the attorney who has engaged you.*
- Can I avoid impaling myself with my own imagined cleverness? *Yes, you can, so avoid all attempts at humor or fancy footwork.*
- Can I really help, at little or no risk to myself? *Everything in life has associated risks, and the courtroom is often a battleground. If this vulnerability frightens you, then think twice before you agree to testify or even to review a case.*
- Can I find any helpful information on how to be an effective expert? *Very little, because most effective experts tend to want to avoid sharing their strategies.* My wife's reaction to my writing this chapter was, "Are you going to give away all your trade secrets?" It is my hope that knowledge of a few principles will be of great assistance to those who are interested in facilitating the quest for justice. Moreover, not all of these strategies will be equally effective for everyone. Gather a lot of strategy but be careful not to try to use all of it in the same case.

## SOME PRELIMINARY ADVICE

The following is a list of basic things to remember as you prepare for litigation in a malpractice suit.

1. Remember that although this may be your first time, it is a well-understood and familiar arena to those who are involved in it weekly or monthly. You are not likely to come up with any new or clever answers that have not already been heard by the judge, opposing counsel, and some of the jury. Remember to be always courteous and kind. This will take your adversaries by surprise and is a useful arrow in your quiver. If you cannot control your feelings and be objective, then this task is not for you.
2. The Apostle Paul advised to "be subject to those in authority." In the courtroom, this includes a descending hierarchy, at the bottom of which you will find yourself. Remember that the judge is deserving of the respect of his or her office and of his or her civil authority. Never try to be "funny" with the judge. It simply will not work, and