

## General Discussion

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**REFERENCE:** Isaac, G. and Sognaes, R. F., "General Discussion of Effective Expert Testimony Symposium," *Journal of Forensic Sciences*. JFSCA, Vol. 28, No. 2, April 1983, pp. 537-539.

**SYNOPSIS:** (by Moderator) The opening of discussion (by Godfrey Isaac, Esq.) stressed the advantage of practical court experience in the application of behavioral art and sciences to forensic science cases. Among factors emphasized were (a) the need for "being oneself," that is, expressing the individual personality rather than trying to adjust to an assumed form of wardrobe, speech, and so forth; (b) one's psychological preparation, "being ready," the homework done well; and (c) adopt an individual style, "being in touch," do your own thing. At the same time other panel members (Drs. Tom Miller and Ken Sereno) countered that effective communication is not an inherent natural behavior, that is, people are not born effective speakers. Hence, it pays off to take training in order to be a "better witness," that is, a more effective self. Participants from the audience commented that they had enjoyed these "unique presentations" (Dr. Gerald Vale), had learned a lot, and were "very much impressed" (Dr. Emanuel Tanay).

**KEYWORDS:** symposium, jurisprudence, witnesses

I had varied feelings as the speakers presented their papers. I did draw certain conclusions. Having spent 30 years trying lawsuits has left me at a distinct practical advantage. It is important to draw generalizations and bring attention to what is being done in the legal field because many of you are in different fields.

The speakers are obviously very good scientists. We in law who try lawsuits are really in an art not a science. Persuasion, dealing with witnesses, and knowing what to do is something that we pick up over the years as if we were flying "by the seat of the pants." We do have to know what is going on. Your studies are important, but I think there are two or three things that are extremely important.

*Firstly:* you do not have to watch your wardrobe quite that closely. What you wear is important, but it must be a fair representation of *your personality*. Take into account where you are going to be, but never forget that you are individuals, you are human, you are learned, you are educated; but above all you have to be *you*. There is nothing in my opinion more important in witnesses than being themselves. Once we begin to ask the computer what to wear, how to look, what to do about dialects, and subjects such as that, I think we are in trouble.

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<sup>1</sup>Gave opening speech of discussion. Law Offices of Isaac & Marks, Beverly Hills, CA. Chairman of American Academy of Forensic Sciences; Jurisprudence Section.

<sup>2</sup>Moderator of discussion; Professor and Dean Emeritus of Dentistry, University of California, Los Angeles, School of Dentistry, Center for Health Sciences, Los Angeles. Chairman of American Academy of Forensic Sciences; Symposium Program.

The most effective psychiatric witness that I ever had in my 30 years of practice had a strong Viennese accent—probably the best witness I have ever seen in a court of law. That does not mean that studies on how people react to various types of behavior are necessarily wrong. Yet we are living in the real world, where there is not a lot we can do about some aspects of our appearance and our accents. If someone seeking your expert testimony tries to make you into someone you are not, you ought to say: “Wait a minute; I will prepare my case, I will take into consideration these factors, but I have got to be *me*.” There is no rule that we have got to be alike.

*Secondly:* I think preparation is important. But I am not going to dwell on the kind of preparation you have heard about before. Instead I will stress the *psychological preparation* that we do on ourselves, for ourselves, or with others. This is as important as the subject matter preparation that has been discussed previously. If we are not mentally ready to get on that stand and testify, strange things happen. Let me give an illustration:

I recall an actor here in Hollywood who hadn't worked for 15 years and finally got a telephone call from a New York producer friend who said: “I know you have been drinking, I know you have been fluffing your lines, I know you do not have the memory you used to have, but if you promise me to learn your lines, I will put you in a new play on Broadway. . . . We will give you a one-liner to start with, namely this: “Hark, I hear the cannons roar!” . . . Now I want you to take Amtrak across the country and just practice your line. through Nevada, through Missouri, and into Grand Central Station, just repeating: “Hark, I hear the cannons roar!” In New York he is met with a limousine; they take him to the play, they put him in costume, they give him a spear. He walks out on the stage, there is a thunderous explosion, and he says, “What the hell was that!”

In brief then, you really have to be ready. Do not worry about that dirty lawyer coming after you, worry about whether *you are ready* to get on the stand, and do not be surprised at loud noises!

*Thirdly:* I think the facts that you are professionals, that you know your subject, that you are in tune with yourself are just as important as some of the other factors discussed today. And I do not mean to demean them, only to say that we humans are individuals and if we remain individuals, we can express ourselves in a fulfilling way. There are lawyers and witnesses across the country doing things that absolutely violate every single rule of every one of our experts. Yet somehow or other, they are winning right and left. Now that does not mean that there are not some people who are violating the rules and losing; but some people have a style of their own and they are able to communicate. Being in touch with ourselves as well as with others, this is what counts in court.

#### **Panel Member Comment**

One of the implications of the statement “*be yourself*,” is that the person you are now is maximally effective at this particular point in time. It implies that effective communication is an inherent natural behavior. It is not. Communication and effective communication is a *learned behavior*. People are not born effective speakers. They learn to become effective speakers, and if you happen to be effective with a particular style, that is wonderful. But if you take this advice to mean that if you are unclear in the way you pronounce your words, if your voice lacks variability in pitch, if your vocal quality is too high or too low or lacks some sense of richness, and that you nevertheless should not have any kind of training, I think I would disagree. There are many people who are expert witnesses in a variety of subjects and yet are taking training in these areas. Therefore they are making themselves *better witnesses*, still being themselves, but a *more effective self*. In other words, I think we have to temper the statement “be yourself” with the fact that the way you are may not be exactly the way you could be if you were to be fully effective.

### First Participant Comment

Comments were made by various panel members about relating certain aspects of the expert's behavior to characteristics of the jury. In my own experience, we in the legal profession, are not very good at doing that. If you *try* to do it, the odds are very high that you are going to be wrong. Even though the research is valid, it only applies if you happen to assess the jury accurately. If you assess the jury wrongly, you are making two mistakes: first, you are being inappropriate for the jury and second you are also being inappropriate for yourself, and that is much worse than if you just came to talk and went home.

### Second Participant Comment

It should be understood that the general comments about what works, and what does not may vary from case to case. They do not suggest that in any given situation you should be wearing a maroon tie, a blue suit, or anything else. What Godfrey Isaac is saying is that if you put the wrong trappings on the right kind of a witness, you are going to hurt your witness rather than help him. That is where there is an art involved in this process. Nobody that really seriously studies communications will tell you that these notions are laws or even quasi-lawlike arrangements that can apply in any given situation. It takes a very astute mind to judge adequately a specific occasion.

I had a unique experience last year. I was on jury duty twice. California now has a rotating ten-day cycle and a Ph.D. is no longer barred from service on juries. We are now finding out even the Governor also has to serve; but once you get onto the panel you can be picked for jury duty and I was picked for two juries. The big *X* factor in the jury process from the inside is this: once a jury goes into deliberations all of the great scheming and planning can go out the window. A good lawyer can figure out perhaps half to three quarters of the jury by intuition, experience, and "feel."

But sometimes what goes on in that jury room will absolutely astound you. I saw lawyers strike off jurors that would have been superb jurors for their particular case, and yet, at the same time leave jurors in, hoping to help their case, while it turned out that those jurors torpedoed that particular side of the litigation. When a jury gets into deliberation, all bets are off in terms of any of this. What is working is actually working at a very subconscious level, in terms of preparation and the like. However, the fundamental principle is that if you can get the information you are trying to obtain—personal or nonpersonal—in a clear and uncomplicated way, and if you are not appearing to be something that you are *not*, then you have the best chance of achieving your objectives. But deliberation is a variable that can scotch the best laid plans.

### Other Audience Comments

Forensic odontologists in the audience made reference to the value of videotapes in the dental field, notable for bite mark comparisons in relation to the dentition of suspects in crimes of passion, that is, child abuse and sex assaults (Dr. Norman Sperber et al).

A representative of forensic medicine, who had charge of breakfast seminars on "Being an Expert Witness" just before the symposium (Dr. Emanuel Tanay), concluded the general discussion with a deserved compliment to the panel: "My esteem for the sciences of communication has increased tremendously during this panel discussion."

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