

## BOOK REVIEW

*Don Harper Mills,<sup>1</sup> M.D., J.D.*

### A Review of *Testifying in Court*

---

**REFERENCE:** Horsely J. E., *Testifying in Court*, Medical Economics Books, Oradell, NJ, 07649, 1984, 154 pp., \$22.95.

“Testifying = terrifying.”

That is the opening line in this book, and for many it is vividly true; so it is the author's premise to try to dispel that relationship by telling you how to avoid the ordeal part of testifying.

*Do Your Homework*—(1) Review your records thoroughly. You have a right to refer to them while testifying, but be familiar enough with them so you do not have to shuffle papers constantly. Trying to find something under pressure makes you nervous and it distracts the jury. (2) Know your subject matter up one side and down the other, even if you have to do a little reading before testifying. While *you* are the expert, remember that the opposing lawyer has prepared himself to the teeth and may know as much about the narrow issue in this lawsuit as you. At times he may know even more, so do not hesitate to say, “I don't know.” If you try to guess, he will nail you! (3) Above all, doing your homework demands a meeting with “your” attorney. You need to know his approach to your participation, he needs to know your limitations (if any), and you both need to figure out what the opposing attorney will try to do.

*Do Not Try to Dodge a Deposition Hearing*—A deposition (testimony before trial) is like your expert report: either, it can be so impressive as to cause the case to be settled before trial or cause your deposition testimony to be accepted in lieu of appearing in court yourself. That comment applies only if you are a non-litigant in the case. If you are a defendant, the deposition takes on a completely different flavor. But in either case, the opposing attorney wants to find the boundaries of your expertise and your opinions in this case. He wants to commit you to going down Pathway A in the deposition, so that when you testify in court, you cannot switch to Pathway B without a lot of embarrassing explanation. Therefore, it is as important to prepare as much for your deposition as you would for the trial itself.

*Leave No Doubt About Your Fee*—If the lawyer or litigant is not your friend, get it in writing and compute it, preferably, on an hourly basis, both for preparation and for testifying. Do not hesitate to disclose your arrangement if asked, but do not try to guess at the bottom line figure on the witness stand, because you have not yet added up the preparatory hours and you are not yet done testifying.

*Keep Your Records in Good Shape*—Always treat your records as if they are public docu-

<sup>1</sup>600 S. Commonwealth Ave., Los Angeles, CA 90005.

ments. Make sure they will help you reconstruct what you saw and did in this case and make sure what you say does not conflict with what you have documented. As the authors state, sloppy records will reflect unfavorably on you. Altered records will be a disaster.

*Be Prepared to Back Up Your Testimony with Exhibits and Demonstrations*— Not only do these visual means add weight to your testimony, using them will help you get over the nervousness of the unfamiliar experience.

Repeated several times in this book is the advice that an expert should look and act like an expert; not how you feel an expert should look and act, but what the jury feels. How you dress, how you walk, how you sit, how you talk and explain, how you answer burdensome questions all reflect on your expertise. If you establish your credibility, the jury will accept your opinions even if they cannot understand the full significance of them. They will trust you not to mislead them. The authors discuss quite well the many nuances to help you achieve that goal.

This book was written primarily for occasional physician testifyers. Those who frequent the court room have already learned what the authors are trying to tell. Occasional nonphysician testifyers could glean some good advice, but let me state that the book is short (133 small pages); it can be read at one sitting; and while it is indexed, it is not a text you would refer to. With these limitations, despite the fact that the book is well written and interesting, it is not worth \$22.95.

Finally, no amount of written advice will help you if your lawyer is incompetent. He should be your shepherd. He should see that you prepare properly, look properly, and act properly. He should help to calm the troubled waters, to steer you back when you deviate, to soften the sting of your misstatements. If he cannot or will not do these things, you are going to get nervous. Even top flight expert testifyers stumble. They know what needs to be done, but the lawyer does not know how; so the witness "takes over." Disaster! The expert is now the advocate; his credibility as an impartial expert is shot, and so is the lawsuit. No, if you feel you are stuck with an inept lawyer, either withdraw or see it through with dignity; then have nothing more to do with him.