

Foreword

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FOREWORD

JON R. WALTZ*

IN THE Preface to our recently published treatise on the law as it applies to physicians,¹ Professor Fred E. Inbau and I remarked on the fact that “lawyers, at least those who do not constantly deal with medical issues in their legal practice, know very little about the medical profession and its problems [and] physicians frequently comprehend too little about the law and how it affects them in the practice of their profession.”² We spoke of “an information gap that has persisted . . . for much too long”³ between the two great professions of law and medicine. The editors of the *DePaul Law Review*, building on the enormous success of their first Medico-Legal Symposium, published in the summer of 1969, are again doing their part to narrow this gap.

I am afraid that lawyers, who ought to be among the world’s best communicators but rarely are, must accept a good bit of the blame for the medical profession’s confusion about and antipathy toward the legal profession. People, including lawyers, joke—or curse—about the physician’s sometimes cryptic diagnoses and his unreadable prescriptions, but the doctor’s cryptography is as nothing when compared with the lawyer’s written and oral hieroglyphics. We lawyers ought to pause long enough to ponder that fact.

Like the people encountered by Gulliver during his travels, law-

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1. WALTZ & INBAU, *MEDICAL JURISPRUDENCE* (1971), reviewed elsewhere in this issue.

2. *Id.* at vii.

3. *Id.*

yers have "A peculiar Cant and Jargon of their own." It is a very special language. Moreover, never having developed a bedside manner, we lawyers have gradually lost sight of the circumstance that almost no one is equipped to translate our jargon; we sometimes seem capable of talking only to each other.

Now enters the inquiring physician, perhaps concerned about his first courtroom appearance as an expert witness or, worse yet, as the party-defendant. He asks the lawyer about the lawsuit. What he gets in response, too often, is a flurry of references to such legal esoterica as the *voir dire*, veniremen, venue, separation of witnesses, impeachment on an inconsistent "dep," and judgment n.o.v. The lawyer assumes comprehension, although he has performed in the manner of Stephen Crane's famous "man with a tongue of wood"; the doctor shakes his head and prays.⁴

It need not be this way. Lawyers can communicate with doctors, if only they will try, and physicians can speak plain English to lawyers. Part of the proof of this proposition reposes in the pages that follow. This second DePaul symposium contains a mix of contributions by both legal and medical experts. They are talking to each other and to others. And—wonder of wonders!—almost without exception they are doing so with clarity and good sense, although I confess to a distinct impression that the doctors have got the better of the lawyers when it comes to the reasoned articulation of complicated matters.

To take just one example in support of that last observation, it seems to me that Dr. Jack M. Goldstein's *Orientation to Medical Aspects of Low Back Pain*⁵ is a model of effective communication from his profession to mine. On the other hand, attorney Aaron J. Broder's unexplained and to me inexplicable advice to cross-examiners that "in every case the collateral attack on [a physician-witness'] credibility is warranted and should be made"⁶ is the sort of unqualified generalization that induces physicians to view trial lawyers with undisguised dismay. Sir Edward Clarke, a consummate trial law-

4. I think it was Arthur Balfour who is supposed to have shut up a critic in the House of Commons by shouting in exasperation, "I know that! I am talking English, not law." I am suggesting that doctors know how Balfour felt.

5. Found within this issue, at 59.

6. Found within this issue, at 121.

yer, long ago supplied the counter-generalization: "It is a very useful general rule that you should not cross-examine when you cannot contradict."⁷ I suspect that Mr. Broder's dictum provides a clue as to why many cross-examinations of doctors are suicidal rather than homicidal. (Of course, my disagreement with Mr. Broder may be nothing more than a current demonstration of the perspicacity of Sholom Aleichem, who said, "Lawyers are just like physicians: what one says, the other contradicts.")

It is inevitable that physicians and lawyers will disagree with each other from time to time but it is by no means preordained that they will never be able to exchange information and ideas. For providing a forum for helpful interprofessional communication, the editors of this journal deserve both praise and continuing support.

7. See E. CLARKE, *THE STORY OF MY LIFE* 144 (1923).