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## Book Review

John J. Hudson

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*Reviewed by John J. Hudson\**

WITNESS SERIES, *four volumes: You, The Witness*, 101 pp. (1962); *You, The Expert Witness*, 169 pp. (1962); and *You, The Medical Witness*, 219 pp. (1961) by Harold A. Liebenson; and *Disability Evaluation in Personal Injury Cases*, by Harold A. Liebenson and Leo F. Miller. Published by Callaghan and Company, Mundelein, Illinois.

The WITNESS SERIES is intended to "better acquaint witnesses with their responsibilities and functions, and to familiarize attorneys with the scope of the testimony that might reasonably be expected from a particular type of witness." There are presently four volumes in this series and each of the four volumes is considered separately below.

### **You, The Witness**

This book is written expressly for the layman. It endeavors to acquaint him with court room procedures and jargon and his responsibilities and functions as a witness. The first chapter of the book is primarily a glossary of legal terms. A second chapter explains "What is a Law Suit" and provides examples of a complaint, an answer, and an indictment and information. Chapter III discusses "What Should a Witness Expect in Court." This chapter, after an introductory paragraph telling the reader that he shouldn't be frightened to appear in court, then proceeds to explain why his testimony may be necessary in a lawsuit and proposes and answers such questions as whether he can be compelled to attend and possible compensation for pecuniary loss suffered by reason of his appearance. Chapter IV discusses the demeanor of the witness in testifying in court and ends with a check list of rules for his conduct. Final chapters V and VI contain a detailed discussion of what the witness should expect on direct and cross-examination, and Chapter VI ends with a check list of rules for the witness' behavior during cross-examination.

Frankly, the book, as short as it is, contains too much material to expect the casual witness to read it all. A discussion of what the witness can expect in court and of his behavior during

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direct and cross-examination is all that he really needs. This particular portion of the book would be of more benefit to the legal profession if it were reduced to pamphlet form, so that it could be inexpensively purchased in quantity and a copy distributed to each witness for his leisurely perusal.

The book makes easy reading for the layman and, in its present form, could be given to a party to litigation in order to provide him with some insight as to what is involved in a lawsuit. However, for the latter purpose, the book should be expanded to answer more of the questions which laymen as parties continually ask of their attorneys. Perhaps another book, entitled, "You, The Party," should be added to the WITNESS SERIES.

### **You, The Expert Witness**

This book follows somewhat the same outline as the book "You, The Witness" and contains most of the materials in it. In addition, it contains an explanation of "What is an Expert Witness" and a discussion of opinion evidence and hypothetical questions, with examples that should be easily understood by a layman. One of its outstanding features is the manner in which it explains that the opinion of the expert witness need only be based on reasonable certainty and not on the more stringent and exacting requirements of other fields. This and other explanations are made by using a personalized approach. For example, in regard to the requirements of reasonable certainty, the author points out that the law says in effect:

Mr. Witness, we know it is difficult for you to determine with scientific exactness what might happen to a particular situation 5 or 10 years from now so we do not expect this from you. All we want you to do is to assist us and give us your opinion on the subject. Instead of the scientific certainty test used by scientists we make it an easier one. All we ask is that you give your opinion based upon a reasonable degree of certainty. Therefore, we are not asking you to be so stringent in your thinking, all we want you to do is help us so that we can decide this case according to the law.

Another value of this book is its rather complete discussion of reports rendered by experts. These reports and the discussion in the book as a whole are, however, directed primarily at personal injury cases, and, therefore, the book is less informative in other fields, for example, patent matters. A further drawback

is the author's tendency to make inaccurate statements as to what a witness may testify. However, this would appear to be a minor fault, as the principal purpose of the book is to acquaint the expert witness with what is expected of him. This it does quite well.

### **You, The Medical Witness**

This is undoubtedly the best book in the series. Except for the glossary of legal terms being in front rather than at the back (where it more logically belongs), this book is far better organized than the two preceding ones. It begins with a discussion of what a doctor should expect when he is a witness. From there it follows much the same outline as "You, The Expert Witness," with the discussion and examples of hypothetical and opinion questions, direct examination, and cross-examination pertaining wholly to medical experts. It contains an explanation and examples of good and bad medical reports which effectively inform on the requirements of a good report.

This book excellently fulfills its purpose of helping the inexperienced medical witness to understand what to expect on the stand, and how to prepare for it. It is concisely written and only requires a minimum of time to be read. Attorneys faced with the task of instructing an inexperienced medical witness should find this book a welcome aid and should make a permanent place for it on their bookshelves.

### **Disability Evaluation in Personal Injury Cases**

One of the biggest hurdles in personal injury cases is determining the monetary loss of the injured party. The evaluation must be based on a realistic appraisal of the extent of the injury. In the past there has been much difference of opinion between the medical and legal professions as to the proper manner of evaluating a disability.

The authors, one a practicing trial lawyer and the other a practicing physician and surgeon, collaborate to provide medical and legal guide lines for evaluating disabilities. The medical and legal disability evaluation is separated into three major groups, namely, (1) period of active treatment; (2) rehabilitation period for physical restoration, and (3) residual deformity or condition which incapacitates a person. Residual deformity is rather extensively covered and comprises a major portion of the book.

The book aims to present a medical and legal approach to disability evaluation without concentrating on a particular injury. Therefore, it is not an exhaustive treatise but it acquaints both physician and lawyer with the various parts of the human body where disabilities may occur, and helps to evaluate the extent of an injury for compensation purposes.

One entire chapter outlines a check list to be followed by the examining physician. The outline is accompanied by illustrations and charts which pictorially explain the ranges of motion of the various movable members of the body.

The last chapter is devoted to a hypothetical medical case as an example of a medical-legal problem. It includes models of an appropriate medical report, and a hypothetical trial transcript of the examination of the attending doctor by lawyers for the injured and the opposing side.

This book could be of great help to the practicing lawyer just starting personal injury work. He will obtain a general idea of the medical aspects of his case and what he may expect in the way of a report and testimony from his medical expert. For a more detailed analysis of a particular injury, however, he will have to consult a more extensive treatise.