

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

THE LITIGATION PROCESS

THE CALLING OF WITNESSES

Beginning with the plaintiff, each side will have the opportunity to call witnesses to support its version of the case. *Direct examination*, takes place when an attorney is examining a witness he or she has called who is aligned with his or her client or other independent witnesses the attorney calls to testify.

Once the direct examination of a witness is concluded, opposing counsel will then have the opportunity to question that witness. During this *cross-examination*, the attorney will attempt to elicit statements from the witness that are more favorable to his client or to otherwise discredit the testifying witness. Here the questioning attorney is allowed to lead the witness and to exert more control over the testimony by suggesting the “correct” answer in the way the question is asked, leading the witness’ testimony in a way not permissible on direct examination, and requiring the witness to be very specific in his or her answers.

Once cross-examination of a witness is concluded, opposing counsel will be allowed to “re-direct” the witness for the purpose of allowing that witness to clarify any unfavorable remarks made during cross-examination or to rehabilitate the witness if his or her credibility has been brought into question.

After the Plaintiff has called all of its witnesses, the Defendant will present its case following the same process.

RISK MANAGEMENT TIPS

Prepare for your testimony with your defense attorney. An inaccurate or unfortunate statement may do irreparable harm to a case.

Most physicians are natural teachers (in fact, the root of the word “doctor” comes from the Latin word “docere” meaning “to teach”) and often want to offer juries more information than is necessary. Listen closely to the question being asked of you and answer only that question. If your attorney wants you to supply more information, he or she will ask additional questions to elicit the necessary testimony.

The impression a witness makes will have an impact on the jury. Your appearance, mannerisms, patterns of speech, etc. may influence the jury and you should review these issues when preparing to testify.

When you are called to testify, keep in mind the tips you learned for your deposition testimony.

While on the witness stand, engage the jury by directing your answers to them rather than focusing exclusively on the questioning attorney.

