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TAKEN FROM PAGE 640.

BY DOCTOR BRAUN:

Miss Donlon, Mr. Waters, Members of the Symposium:
It is my misfortune not to be able to attend the earlier sessions of this meeting and from everything I have heard, this has certainly been outstanding and very successful. Doctor Vorwald and his associates should be congratulated.

The caliber of the papers earlier this morning makes me feel a little inadequate from the standpoint of adding anything to them.

However, during my tenure as medical director of a large corporation, I several times had the opportunity to watch my medical colleagues spend some very uneasy moments as medical witnesses, expert witnesses, in controverted

INDUSTRIAL HYGIENE FOUNDATION OF AMERICA, INC.

MELLON INSTITUTE, 4400 FIFTH AVENUE

PITTSBURGH 13, PA.

September 3, 1952

Dr. Arthur J. Vorwald
Director
The Saranac Laboratory
Saranac Lake, New York

Dear Art:

In accordance with your request, I am enclosing a copy of the paper which I will present on September 26.

I hope that your preparations for the Symposium are proceeding according to your wishes and I know that the Symposium will be a huge success.

Best personal regards.

Yours very truly,

Daniel C. Braun, M. D.
Medical Director

DCB:fns

Enclosure

compensation hearings. I knew they were esteemed in their professions, high caliber, capable. They allowed themselves to say things and do things which were embarrassing not only to themselves but to others. Most of this embarrassment arose, I would say, through failure on the part of the physician to observe certain fundamentals.

A basic consideration in the presentation of medical evidence is that the real purpose of the hearing is to bring about a just and equitable adjudication of the claim. If a medical witness never loses sight of this concept, he will not permit his position to become one of zealous partisanship. Such is not the proper function of the expert medical witness.

He has a clear duty to testify when called and to present the medical facts as clearly and concisely as possible in order to aid the report and proper intrepretation of these facts. It should be obvious that this function is of the utmost importance in establishing whether the claimant has been disabled as a result of an accident or occupational disease and the nature and extent of such disability.

The performance of this duty requires of the medical witness the same high level integrity as does the every day practice of his profession. If we present supposed adequate training and experience on the part of a physician, there remain two main requisites for proper medical testimony:

First, his adequate preparation of the case.

However well trained in the profession and in his speciality the witness is, the witness is not necessarily an expert in the case at hand. I have never quite understood how or why so many doctors assume that they can dash into court and testify extemporaneously. It seems to me that for his own sake and in justice to the claimant, the doctor should be willing to prepare his testimony with the same careful attention to detail with which the lawyer prepares his case.

Now, admittedly, this horrible example which we were using, generally has with him the hospital records which he nervously leafs through while mumbling his testimony into his lap. This, in itself, detracts from anything he may have to say.

Really adequate preparation of medical testimony requires that a physician keep complete records on the case from the beginning. All cases of personal injuryor illness arising in the course of occupation are of the type which F. W. Callen has desdribed as high medico-legal potential. In such cases, he lists the following components of a full medical records A record of the physicial status of the person before the specific event of the accident or the exposure; an accurate description of the event and a record of subsequent changes in the individual. I am sure that, by

this, he includes adequate and frequent X-rays.

The importance of X-rays at the time of the accident and during the progress of the case needs to be stressed. Certainly, with such records, the medical witness should not be in the embarrassing position of relying on his memory or contradicting his own statements with respect to the record.

Helpful as the medical records may be, they constitute only a portion of the preparation of his testimony. Hypothetical questions are frequently put to the expert witness and he should give adequate thought beforehand, to the possibilities of such questions and the answers based on a reasonable chain of causation. In this connection, it would be well for the physician who may be called as a witness to consider the case from the broad viewpoint instead of confining his thinking to the location, fixation of a fracture, he should regard the person who sustains the fracture as a complete individual, the effect of the fracture on his future physical and emotional status, and a possible connection with pre-existing or co-existing pathological conditions.

One of the obstacles to good testimony and, therefore, to a just disposition of the case is the frequency with which witnesses are caught off guard by a question which they did not anticipate, because their thinking was

too narrowly circumscribed. For example, consider a situation in which a man dies while working in an atmosphere known to contain some concentration of carbon monoxide. Autopsy shows beyond question, that death was due to coronary occlusion. The medical expert testifys that coronary artery disease was the approximate cause of death and that death was inevitable because of the pathological condition.

Various questions are then asked him concerning the conditions which exist in the coronary arteries, which led to coronary occlusion. He discusses the changes in the arterial set-up, and suddenly he is asked whether a man with this set of conditions wouldn't be more likely to have a heart attack if he was working in a carbon monoxide and a portion of his hemoglobin were saturated and hence not available for transportation of oxygen. Possibly because he is not acquainted himself, with the effect of various concentrations of carbon monoxide in the blood or because he failed to determine the level of carbon monoxide in the blood in this particular case or because he failed to inquire into the concentration of carbon monoxide in the environment, he finds himself in a weakened position and is gradually forced to admit that carbon monoxide may have aggravated the man's condition.

This exact situation may seem to be exaggerated, but it is not. It illustrates the necessity of acquainting

oneself with allof the information available.

It may be necessary that in the preparation of a given case, a physician will view all of the latest literature in order to apprise himself of the newest dedisions.

A second requisite for good medical testimony involves the conduct of the witness and this, too, may be improved by virtue of proper prepation. He must not only be scrupulously honest in his testimony, but his deportment must be such as to impress the referee and the jury that he is honest. He should, of course, conduct himself in a gentlemanly manner on the stand and refrain from flip and glib remarks, any flippancy and argumentation. To allow himself to become bombastic or pompous quickly indicates to the court that he is not sure of his ground and just as quickly leads to retaliation in kind by the opposing attorney.

Any witness, to improve the quality of the medical testimony and add to his own composure, if he will remember to take time to be sure that he understands the question directed to him and the implications of his answers before formulating his reply.

In the matter of actual testimony, it is important to face the referee or the jury and to enunciate clearly and distinctly. One of the most common criticisms and probably the most justified,of medical witnesses, is their tendency

to testify in the jargon of medical textbooks. A compensation referee or commissioner, in evaluating medical testimony, should be aided by the use of simple medical language whenever the occasion calls. While it is certainly unwise to make dogmatic statements, especially in hypothetical matters such as those dealing with aggravation, aggravation of pre-existing conditions, one of the things most deplored by lawyers is the lack of a definite expression on the part of a medical witness when such might be expected of him.

If he is, in fact, an expert, he should be prepared to state his opinion and not resort to vague terms such as probable or possible. The same vagueness also frequently appears in support of a witness' estimate of percentage of disability. The estimate of disability should be based upon some reasonable standard, though I will admit opinions differ very widely in respect tothose standards.

In most opinions of this kind, the X-ray films play a very important part. The witness should familiarize himself with the rules regarding their admission in evidence in the particular jurisdiction. Films have to be properly identified. Their interpretation should be regarded as a privileged communication. The medical witness should remember the limitations of the X-ray, should be frank to say so if the findings are equivocal. He should properly correlate the X-ray in the clinical findings without attempting

to over-emphasize the X-ray or, on the other hand, to make it conform to the clinical aspects of the case.

In the matter of chest X-rays, it is important to remember that, to be of value, they should be made under certain specified conditions of technique, length of exposure, for example, should not exceed a tenth of a second and the films reading distance should not be more than four feet.

I do not wish to leave the impression that most doctors are poor witnesses or that all differences arise because of their shortcomings. The evidence in such cases is bound to be controversial and it is expecting a great deal to ask that the physician alone remain entirely objective.

There are other reforms which could be made, which could contribute greatly to the obtaining of good medical testimony in controverted cases. For one thing, there is the need for more training in the medical-legal disciplines in our medical schools. Legislation should give greater consideration to the value of neutral medical examiners or medical boards such as the Longshoremen's Act provides.

Doctor McGee has very ably dealt with this subject this morning. Mr. Waters has consistently pointed out the value of such impartial testimony and about twenty states now provide such boards. The pernicious practice of one side or the other, employing a physician who is willing to

testify for the highest bidder, can be minimized by the medical society and the bar association concerned, working together in the manner of the Minnesota Plan.

This joint effort of the Minnesota judicial council and the State Medical Association, results in a review of testimony given by medical witnesses, If such review is requested by the judge or a physician or an attorney representing either side. The review is done by a committee of physicians who are aided by three specialists in the particular field involved. It has resulted in a more careful and more honest testimony on the part of medical witnesses.

Another great need is for standard criteria on which to base disability compensation.

In closing, I believe that the most important single record for the presentation of medical evidense is the scrupulous honesty of the witness. This, I think, can be illustrated by an amusing story which is told by Doctor Henry Rowland, then Professor of Physics at Johns-Hopkins University. During his suit against the public utilities company, he was asked by the celebrated Joseph H. Choate, in cross-examination, who was the greatest living physicist. Doctor Rowland, unhesitatingly replied "I am". Afterwards, when asked by President Gilman Hopkins why he gave that answer, he smilingly replied that it was a little embarrassing, but after all, he was under oath. (Applause)

BY MISS DONLON:

Thank you very much, Doctor Braun. Thank you too, for lightening the, sometimes I think, density of our academic thinking, with that nice little story.

We now are going to have, not merely the two gentlemen whose names you see on the program for this morning's session, who both speak to the extent that they do not speak impartially, and I'm sure they all do, speak more directly from the viewpoint of employers, and Doctor Vorwald, after the program had been set up, realized that it would be very helpful to have, among the viewpoints presented this morning also, the viewpoint of those who speak in behalf of the claimants, and I shall introduce the gentleman who will speak on that viewpoint a little later.

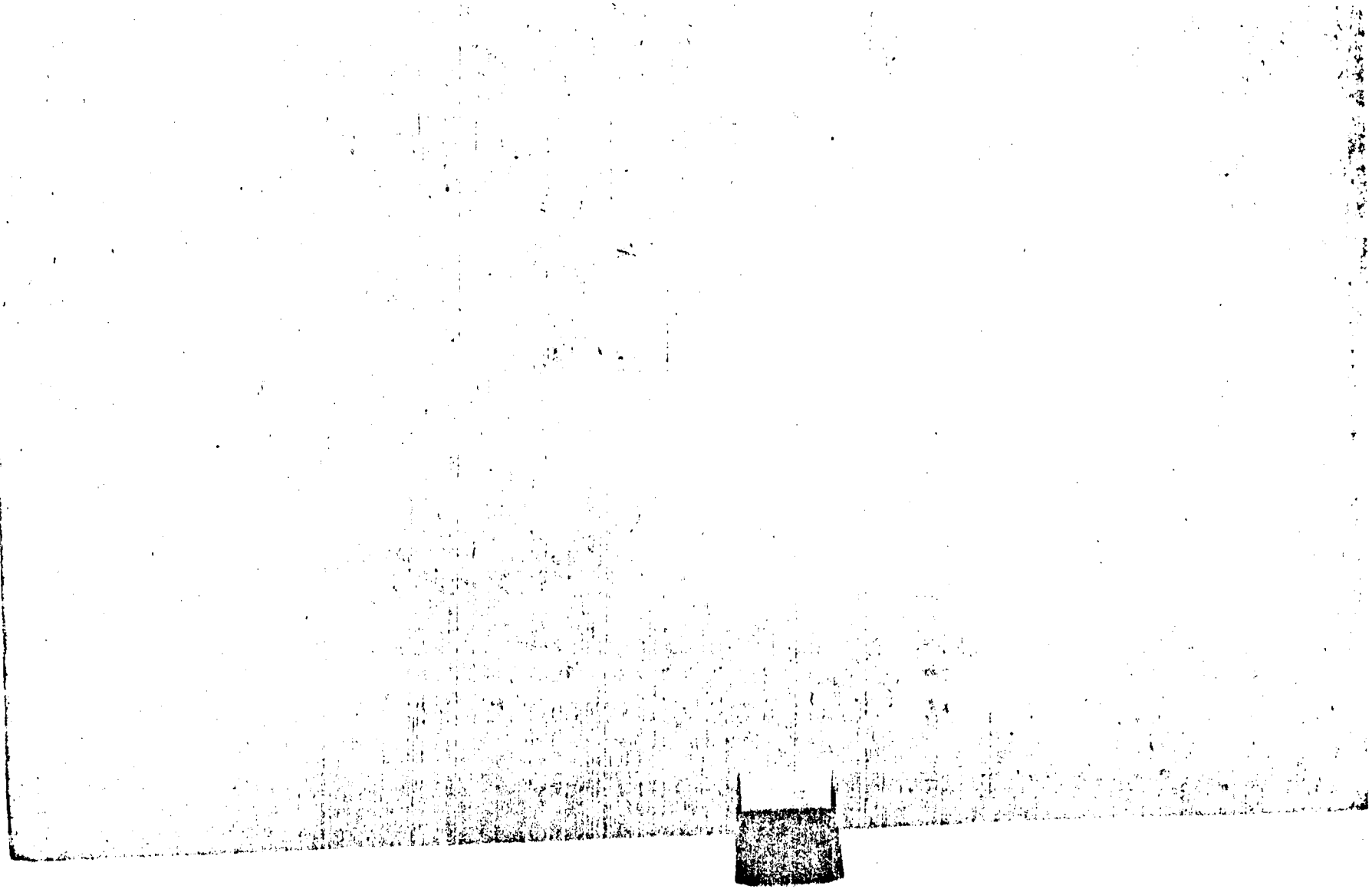
Right now, you're going to have the Manager, I think his title is, of the Department of Workmen's Compensation for Bethlehem Steel Company, and before he moved to that position, a practicing lawyer, who has had a great deal of experience in this field. Mr. Frank Barnako of Bethlehem Steel Company. Frank.

BY MR. BARNAKO:

(Mr. Barnako read a prepared paper which is on file at the Saranac Laboratory).

BY MISS DONLON:

Thank you very much, Mr. Barnako, and again, on



Bethlehem Steel Company
(INCORPORATED)
Bethlehem, Pa.

ERVATION & SAFETY DEPARTMENT
F. R. BARNAKO
MANAGER

September 22,
1952

Dear Dr. Vorwald:

Attached hereto is final draft of my paper, "The Presentation of Medical Evidence in Controverted Compensation Cases", which I will present at the Saranac Symposium September 26, 1952. I have four additional copies of the paper which I will bring along with me on Thursday. Looking forward to seeing you then.

Very truly yours,

F. K. Barnako

Frank R. Barnako

Dr. Arthur J. Vorwald
Director, The Trudeau Foundation
and The Saranac Laboratory
P. O. Box 551
Saranac Lake, New York

adc
attach.

TAKEN FROM PAGE 649.

BY MISS DONLON:

Thank you very much, Mr. Barnako, and again, on

behalf of my colleagues from administration, I want to applaud your closing remarks. We welcome that attitude and thank you for it.

Now, we all recognize, I'm sure that no expression of the viewpoints of compensation for pulmonary or any other workmen's compensation claims, for that matter, would be complete without an expression of the viewpoint of the disabled workers, the claimants in workmen's compensation cases, and that it seems is particularly true with regard to the presentation of medical evidence in a controverted compensation case, and so Doctor Vorwald has invited to be here today, and he is here today, the gentleman from Buffalo who represents now, District No. 3, the United Steelworkers of America in Buffalo, in their workmen's compensation work.

However, he had a long experience before that working for carriers, so he has quite literally seen both sides of the workmen's compensation claim. I presume - I present him to you to discuss the viewpoint in behalf of the claimants. Mr. J. H. Tiernan of Buffalo.

BY MR. TIERNAN:

Miss Donlon and Ladies and Gentlemen: I felt rather lonesome when I arrived. All my friends that were here at the symposium usually sit in the other side of the table, but I was interested in hearing my friend from Bethlehem state that he attempted to be impartial. I do not