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SHADOWBOXING THE DEFENDANT'S DOCTOR

STANLEY M. CHESLEY*

OFTEN WE hear of certain types of "bread and butter" cases in our everyday trial practice. Many of us never see the "big" case, and are prone to forget the value of certain "bread and butter" situations which provide opportunities that never should be lost, but are lost every single day even though the plaintiff clearly has a recoverable injury. For example, almost ninety percent of all soft tissue injuries arising from trauma flow from rear-end collisions which are negligence per se situations in most states. In Ohio, for example, a violation of the assured-clear-distance statute (rear-ending)¹ is such a negligence per se, or as a matter of law,² situation.

If negligence exists, in these situations as a matter of law, why are these cases lost? The answer is simple but true. Instead of trying to fight the negligence aspect, the defendant uses *his* doctor's testimony to defeat the plaintiff's case. At one time defendants' doctors were somewhat meek. They distinguished between objective and subjective in an effort to mitigate the damages of the soft tissue. Today, they are no longer meek, but are blatant, forthright, and blunt, and will accuse the plaintiff of being a malingerer, an exaggerator, or a psycho-neurotic, and in fact, testify that there was *no injury at all*. Why have they changed? Because the law has changed.

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1. OHIO REV. CODE tit. 45, § 4511.21 (1965).

2. See, e.g., Alabama: Couch v. Donohue, 259 F.2d 325 (5th Cir. 1958); California: Coppock v. Pacific Gas & Electric Co., 137 Cal. App. 80, 30 P.2d 549 (1934); Georgia: Meyerholtz v. Conway, 108 Ga. App. 697, 134 S.E.2d 513 (1963); Iowa: Ellis v. Bruce, 217 Iowa 258, 252 N.W. 101 (1933); Kansas: Fisher v. O'Brien, 99 Kan. 621, 162 P. 317 (1917); Kentucky: Greathouse v. Mitchell, 249 S.W.2d 738 (1952); Louisiana: Muse v. East Texas Grocery, 11 So. 2d 250 (La. Ct. App. 1942); New York: Sniffen v. Huschle, 121 Misc. 58, 200 N.Y.S. 206 (1923); North Carolina: 257 N.C. 65, 125 S.E.2d 334 (1962); Ohio: Bird v. Hart, 2 Ohio St. 9, 205 N.E.2d 887 (1965); Spalding v. Waxler, 2 Ohio St.2d 1, 205 N.E.2d 890 (1965); Ventress v. Frambers, 176 Ohio St. 337, 199 N.E.2d 559 (1964).

There are many jurisdictions today in which rear-end collision, is negligence as a matter of law. Proof of *some injury* prevents the jury from finding for the defendant, because only one form of verdict is given to the jury, to-wit, a verdict for the plaintiff, which lumps together both proximate causation and legal liability. Many jurisdictions no longer require two verdicts to go to the jury in this type of case.³

The defendant's doctor is often better prepared in most instances than the plaintiff's doctor, because of his courtroom experience. He is a professional testifier—a one-shot artist who knows that he must make the most of his testimony. His testimony usually involves the results and findings of *only* one examination, which sometimes took less than half an hour, yet his court testimony is usually *forty to fifty minutes on direct examination*. On the other hand, plaintiff's physicians are oftentimes casual, uninterested, and too quick in their answers, to-wit, the following testimony:

Q: Doctor, when he came to your office the next day, on January 10, at that time was an examination conducted by you?

A: It was.

Q: What did that examination consist of?

A: The examination consisted of a history in regards to the injury, X rays and an examination of the patient. X rays of the lumbosacral spine were essentially negative.

Q: Doctor, what else did your examination consist of?

A: A complete examination with regard to the patient's injuries.

Q: At that time, on January 10, 1963, did you make any diagnosis?

A: I did. The patient had tenderness of his high lateral lumbar muscles with *mild* spasm. There was slight limitation of flexion, or forward bending, of the lumbar spine.

Q: Did you make any further finding at that time, Dr. —?

A: Well, a complete neurological examination was performed on the patient in order to rule out any definite nerve injury, and these tests were essentially negative at that time.

Q: Were they still in the same area of the back?

A: He still complained of mild back pain.

Q: Doctor, did you continue to give treatment following this occasion?

A: That is correct. When he was seen on February 14th, he complained of occasional right shoulder pain.

3. See, e.g., *Bird v. Hart*, *supra* note 2; *Kehrer v. McKittrick*, 176 Ohio St. 192, 198 N.E.2d 669 (1964); *Bidleman v. Wright*, 175 Ohio St. 405, 195 N.E.2d 904 (1964).

Q: The right shoulder?

A: That's right.

Q: There were no complaints of the left shoulder?

A: That is correct.

Q: Doctor, what treatment was given with regard to the shoulder injury?

A: Well, at that time the patient was just advised to use heat, and this was to be followed in regards to both his back and shoulder.

Q: When did you see him again, doctor?

A: The patient was followed through April of 1963, and then he did not return until October 5, 1964.

Q: What was your examination at that time, and your findings, doctor?

A: Well, he had subjective complaints of remissions after exacerbations of low back pain.

Q: Was any finding made at that time as to limitation of motion?

A: I have no note of such.

Q: Was that in the same area as his original complaints and original findings, doctor, in the lumbar area?

A: That is correct. He continues to have stiffness even at this time.

There should be no dither over subjective vs. objective symptomatology.

An ounce of prevention is worth a pound of cure. It is a good idea to go over the testimony with the plaintiff's doctor. After you have done that, give him six or seven pages of testimony from a similar case in which a defendant's doctor has testified. Such testimony should be easy to obtain because every defense doctor goes to court regularly. Get their testimony on a soft tissue injury; talk to your colleagues who have tried a recent case; show their testimony to your doctor; noting especially the thoroughness and completeness with which the defendant's doctor has testified. Compare, for example, the differences between the plaintiff's doctor's testimony as set forth hereinabove and a typical defendant's doctor's testimony as set forth below:

Q: Then, can you tell the ladies and gentlemen of the jury, doctor, about your examination and what it consisted of, and your findings, if any?

A: Examination was then carried out, and Mr. B. was found to be five feet seven inches tall, and he weighed 168 pounds stripped. He walked without a limp, and he was able to dress and undress and get on and off the examining table without trouble. There was normal alignment of the head, neck and shoulders, and full range of head and neck motion, with a pulling sensation at the extremes of motion. This neck motion was recorded at forty-five degrees flexion and forty-five degrees extension, and forty-five degrees of lateral bending both to the right and left, and sixty degrees of rotation. This is considered normal, a normal range of motion.

Q: Pardon me, doctor. You mentioned pulling. Is this subjective or objective?

A: Subjective. He stated that he felt some pulling in the back of his neck. Examination for back motion was then carried out, and again this was evaluated as being a full range of back motion without pain, and the motion was recorded as flexion, eighty-five degrees; and extension, thirty degrees; right and left lateral bending, thirty degrees; and rotation to the right and left, forty degrees. There was no scoliosis, no curvature of the spine at either the frontal or side planes. He was able to stand on the toes of each foot separately, bearing the entire weight of his body. The reflexes of the upper and lower extremities were found to be bilaterally normal. There was no pain on compression or traction of the neck. When traction or compression was carried out, there was no pain elicited in the neck area. There was a mild degree of tenderness to palpation to deep pressure over the anterior border of the left trapezius muscles. That is the muscle area in this region (indicating).

Q: Is that objective or subjective, doctor?

A: That is subjective. There was no palpable muscle spasm. Spasm, by the way, is an objective finding.

Q: Go ahead.

A: There was no sensory deficit, no deficit to sensation. Pin prick involving the scalp, upper or lower extremities, showed no deficit. There was no apparent muscle weakness of the neck muscles or muscles of the upper or lower extremities. Actually, according to the grip-measuring machine, the right was 260 units, and the left grip was 245 units. Mr. B. is right-handed, and a little difference is anticipated. He had a full range of painless motion of the shoulders. The cranial nerves were intact. These are the sight, hearing, smelling and so forth, nerves. The eyes were found to be normal. The Rinne and the Weber tests were normal. These are hearing tests to determine whether or not there is a deficit in hearing in the exterior or in the auditory canals, and in the auditory nerve, and these tests were normal. The discrimination tests were normal. This is a sensory test, one of the finer sensory tests. That was normal.

The thighs were equal, the calves were equal, and the leg lengths were equal at thirty-eight inches. The peripheral pulses were palpable, and no peripheral edema or varicosities were present. There was a full range of painless motion of the hips. Straight leg raising was eighty degrees bilaterally. The ham string muscles were tight. Back pain was not experienced on straight leg raising. The super-reflexes were bilaterally equal and normal. The Babinski signs were normal. This is another method to test the integrity of the motor system. The brain sends a message down to move the muscles, in contra-distinction to the sensory system. There was a mild degree of tenderness to palpation, with no palpable muscle spasm, in the left-lower back region. Sitting on the examining table with arms extended, he was able to flex his back to eighty degrees and reach to within seven inches of his toes with his fingers. I believe that this completed the physical examination, sir.

Often, the plaintiff's doctor leaves his X rays of the plaintiff in his office, when he takes the stand to testify, because they "don't show anything." However, even if the X rays are negative, they should nevertheless be utilized as part of plaintiff's trial strategy. These "negative" X rays are, in fact, the single most important weapon in

the plaintiff's arsenal of evidence because they take the "sting" out of the testimony of the defendant's doctor. The fact that they do not show anything is immaterial, and the thing that plaintiff's lawyers frequently forget. For years it was believed that unless the evidence is positive, it should not be used. This attitude is proper in the case of a default judgment, but in these cases the defendants are not laying down—they are fighting back affirmatively and attempting to establish their own burden of proof of no injury through the use of X rays. Don't fall for it. There is not a court room in this land that will not permit the *plaintiff's* doctor to use the shadowbox to take one of his X rays, put it in the box, and describe what it shows. The point is this: It shows no musculature; it shows no tendons; it shows no ligaments. The following is some testimony of plaintiff's doctor given prior to examination of the defendant's doctor.

Q: Doctor, did you bring those X rays with you today at my request?

A: They are here.

Q: Where are they, doctor?

A: They are in the back of the courtroom.

Q: Are these the X rays which you took of Mr. B. on January 10, 1963?

A: Yes, sir.

Q: What is the purpose of X rays, doctor?

A: The purpose of X rays is to show whether there is any *bony damage* with regard to the spine.

Q: When you say "bony," is that as *distinguished from muscles and ligaments*?

A: That is correct.

Q: What were the findings on the X rays, doctor?

A: The X rays revealed no evidence of bony disease or fracture.

Q: Doctor, this X ray which has been marked Plaintiff's Exhibit No. 1 for identification, does it show anything outside of the bony area?

A: Well it shows gas shadows. The thing we are looking for is with regard to the bones and joints.

Q: Do muscles and ligaments appear in X rays of this type?

A: Well, certain *deep* muscles, but nothing that you are specifically looking for.

Q: Well, the injuries to Mr. B., the injuries to the muscles and ligaments, would they appear in this X ray?

A: No.

Q: Is this X ray confined to the bony part?

A: This is confined to the lumbar spine, the pelvis and the hips.

Q: Is the same true of the other X ray?

A: That is correct.

Q: Doctor, would the injuries which Mr. B. suffered appear in X rays?

A: No, they would not.

You ask, "Why point out the weakness of your case?" This is not the weakness, but rather the strength—the strength to take the sting and bite out of the twenty-eight X rays which the defendant's doctor is sure to have brought with him, taken during his "careful examination," including X rays of *the nose, head, and genitals*, all of which are "significant in back injuries." Ask your doctor: "Why aren't the muscles, ligaments, and tendons on these X rays?" The answer is, "Because they don't show." It's like taking an X ray of the toe and expecting to see the nose. This parallels what the criminal lawyer has been doing for years when he asks a defendant who has formerly committed two to eight felonies, "Tell us, John, have you ever been in trouble before?" The criminal lawyer does this to take the sting out of the prosecutor, who is certain to ask him this same question on cross-examination.

To put the testimony of the plaintiff's doctor in a more favorable light in the eyes of the jurors, the plaintiff's doctor's examination of the plaintiff should be scheduled to fall on the same day as the defendant's doctor's examination. If the defendant's doctor is unavailable for that day, the examination by the defendant's doctor should be rescheduled so that the two appointments coincide. On the stand, the plaintiff's doctor should be asked to describe the examination, including testimony as to *objective* findings of spasm, limitation of flexion, and limitation of movement. Before he leaves the stand, he should be asked to pinpoint the date of examination—*e.g.*, February 12, 1967. About a half an hour after his testimony is completed, the defendant's doctor will present an entirely different story as to what was found on February 12, 1967. It is unwise to compare plaintiff's conditions on dates which are months apart, but the plaintiff's attorney has no choice if the two examinations are months apart. *Use the same day for both examinations.* The jury is better able to comprehend this comparison because there is no room for intervening factors which may have changed the plaintiff's condition from one examination to the next. Moreover, if the "treating physician" has seen the plaintiff weekly or even monthly, this regularity can add credulity to his testimony, and negate the adverse testimony of the defendant's doctor, who could not gain a complete understanding of the plaintiff's

condition through simply one examination. The facility of comparison through the use of one day for both examinations coupled with this regularity could win the plaintiff's case.

After the jury has heard the testimony of the treating physician, as well as another doctor who is eminent in orthopedics, the stage is properly set for the defendant's doctor. When the defendant starts showing his X rays, which his doctor carefully took under exacting supervision of twenty-eight nurses and lab technicians in a Mayo-type laboratory, do not object. The court will let them in anyway, since they are competent. Make notes of *three to five* of the key X rays which are similar to the X rays which the plaintiff's doctor has showed the jury. Do not try to attack all twenty-eight X rays; instead pick the two or three basic X rays, for example, the spinal column, cervical area, or lumbar area, or both, if they are both in the case. On cross-examination, put these three or four basic X rays back in the shadowbox and start *shadowboxing* the doctor. Go over them point by point with the doctor, asking him some of the following questions:

Q: Doctor, directing your attention to Exhibit No. 7 among all of these X rays, is that a picture of the lumbar area or the low back?

(Witness steps to shadow box.)

A: Yes, this is the lumbar spine (indicating).

Q: That is where, on all examinations by you, the complaints were. Is that correct, aside from the shoulder area?

A: A few complaints referred to the neck.

Q: But at all times there were complaints referable to the lumbar area or low back?

A: A few complaints of posterior thigh discomfort on straight leg raising and on knee flexion, and then there were complaints of numbness involving the right upper extremity.

Q: Maybe my question wasn't worded properly, doctor. What I am asking is, does this picture describe the lumbar, low back, area?

A: Yes.

Q: Which registered a complaint from the plaintiff when you examined him both times; is that right? It is one of the areas?

A: That's right.

Q: Doctor, what is a soft tissue injury?

A: Well, there could be any number of soft tissue injuries: Laceration, contusion, *stretch*, *strain*, rupture of muscles, rupture of tendons and ligaments, just to mention a few.

Q: So when we talk about the field of orthopedic surgery, and you have testified that you are a surgeon in this field, you are dealing not only with *bones and joints*, but you deal with ligaments, tissues and cartilage?

A: Yes. I mentioned that in a description of orthopedic surgery.

Q: Soft tissue injuries also come about from trauma and injury, don't they?

A: Yes.

Q: Like a car collision?

A: Well, that's one.

Q: That would be trauma?

A: Yes.

Q: Directing your attention to Exhibit No. 7, would you show the jury and myself the muscles and ligaments in the area of the lumbosacral region on this picture?

A: *Of course the muscles and ligaments don't show up, except the outlining shadows on here. It will show up as a shadow, but the actual muscles and ligaments as such in detail do not show upon the X-ray findings.*

Q: In other words, the only muscles that show up are the dense or very deep muscles, those very near the bone area?

A: In which there is an increased density in the muscles, yes.

Q: You have testified that Mr. B suffered from intermittent discomfort; is that right?

A: Well, this is the history that I took.

Q: That was also your conclusion when you were asked that question?

A: Yes.

Q: We are talking about intermittent discomfort in the low back area. We are talking about muscles and ligaments in that area; isn't that right?

A: Yes.

Q: Those muscles and ligaments which we are talking about are not displayed by this X ray, are they, doctor?

A: No, they are not.

Q: Nor are those ligaments and muscles that we are talking about displayed in these twenty-two X rays, are they?

A: No. But indirectly they are. I think it is only fair to qualify some of these statements.

Q: You are more than welcome to qualify any statement. Just answer my question first, and then you are more than welcome to qualify your answer.

A: Your answer to that question is *no*. Indirectly, they are.

Q: Doctor, directing your attention to Exhibits 26 and 27—I don't think we need the shadow box for this—Exhibit 26 is the right shoulder?

A: What about it?

Q: That is the one of the right shoulder?

A: Yes.

Q: Calling your attention to Exhibit No. 26, doctor, once again that doesn't show the muscles and ligaments in the shoulder area, does it?

A: No, it doesn't.

The doctor will always revert to subjective findings, stating that the X rays are the objective findings which show nothing. Get the defendant's doctor to admit seemingly minor things such as palpa-

tion. An example of such testimony, elicited in a casual fashion, is as follows:

Q: Doctor, I think that several times in your testimony you indicated that there was tenderness—and not just one place—tenderness to palpation; is that right? You did testify to that?

A: Yes.

This can then be used in summary to show objectivity of injury.

Also pin the doctor down as to the importance of subjective findings as follows:

Q: I see. I have one further question. In orthopedic surgery are subjective complaints important in your work?

A: Yes.

Ask him to point out a particular area of musculature; ask the doctor to show you the trapezius muscles on the X ray. His answer will undoubtedly be, "Well, that's not important." Then say, "Doctor, please, in order to clarify for the jury and myself, since we are not experts in medicine, show me the trapezius muscles; show me those tendons and ligaments that are wrapped around the spine." Undoubtedly if your plaintiff is older, the defendant's physician will blame everything on arthritis, or spurring of the body of the vertebrae; however, remember, trauma induces changes in the vertebrae. Ask the doctor about traumatic arthritis only if he has seen the patient eighteen months to two years after the accident. If there is no degenerative change, use this to your advantage by being flexible:

Q: Now, doctor, you have also testified—and I think your answer was that you wanted to be fair, and I know that you do—looking at the possible narrowing of the disc spaces—and I think it was in comparing that to an original X ray taken back in 1965, which I think may have been Exhibit 15—let's take a look at the one you said there was no narrowing of the disc spaces on. In other words, what you were saying, doctor, was that there was no change in the disc spaces from the first time you took X rays to the second time you took X rays; is that right? You stated that there was no difference in the narrowing of the disc spaces?

A: That is true. Of course, these two films, I couldn't make a comparison.

Q: I don't want you to make a comparison. I just want to ask you if that is your testimony.

A: Yes.

Q: The reason I ask you that, is that I would like to ask you what causes a narrowing of a disc space?

A: Well, the narrowing of a disc space can be due to nutrition, wear and tear over a long period of time, or it can be due to one *severe injury*, or it can be due to a series of minor injuries.

Q: When you are speaking of severe trauma, you are speaking of injury to the spine or the spinal area, are you not, doctor?

A: Yes.

Q: There was never any complaint registered either by Mr. B or in the history that there was damage to the bony part, or that area of the spine, was there?

A: Well, he wouldn't refer to it in those terms; he would refer to it as his neck.

Q: We are not talking about a tendon injury, are we?

A: No. This is a cartilaginous injury.

Q: There has been no discussion or complaint as to that type of injury, has there?

A: Well, I wouldn't expect the patient to be able to qualify what was actually hurt.

Q: So in diagnosing this type of injury that we have here, there is no relevance as to any narrowing of the disc spaces in this type of injury?

A: I think it has to be ruled in or ruled out. It certainly has to be considered in every case.

Q: But this type of injury has been ruled out in this case?

A: I believe so.

Q: This has no place in this particular type of soft tissue injury?

A: I don't believe so.

This may take away the sting of degenerative changes which we all hear about. Then ask the defendant's doctor if spasm will cause a straightening of the cervical spine or a change in the lordotic curve. Take one of plaintiff's X rays made when there was muscle spasm, which was exhibited by the plaintiff's doctor, and ask the defendant's doctor if it shows spasm:

Q: You may certainly qualify your answer now.

A: Well, any muscle that is involved to any degree that is injured will demonstrate muscle spasm. Muscle spasm will be demonstrated in the X rays by showing a curvature. You will have a curvature of the spine, *depending upon which muscles are in spasm.*

Q: I want to show you Exhibit No. 20, and I will ask you to put that in the shadow-box next to Exhibit No. 7, and I will ask you if that is the same part of the body taken some months after your original examination?

A: Yes, it is.

Q: Now, in comparing Exhibit No. 7 to Exhibit No. 20, doctor, is there not a curvature on Exhibit No. 20 to the right, which is not displayed in Exhibit No. 7? Would it help to superimpose them?

A: I am trying to superimpose them to get them level.

Q: There is a slight curvature there, isn't there, doctor?

A: Well, when the pelvis is superimposed, there isn't, but—

Q: There is a difference there, isn't there?

A: I would say there is a difference.

Q: I see. A curvature to the right?

A: Yes.

It is just as easy and effective to have the plaintiff's doctor and the defendant's doctor testify as to what "sprain" and "strain" of tendons and ligaments is, as to just let the words "sprain" and "strain" remain. For example:

Q: All right, you stated, doctor, that the problem which you found Mr. B. had was a strain of the muscles and ligaments of the cervical spine, and also of the lumbar spine. Is that correct?

A: Well, sprain and strain.

Q: Sprain and strain?

A: Yes, sir.

Q: Which is a *stretching* and *tearing* of the *ligaments* of the *muscles*, is that correct?

A: That is correct, yes, sir.

Remember, the one sure way to get your one-form verdict for the plaintiff is to be able to show the court that even the defendant's doctor admits that there is some injury. A few of the defendants' doctors in the more conservative communities are afraid to state that there was no injury at all at the time of the accident, especially when there is evidence of some bruises and contusions. Therefore, a good, and absolutely necessary question to ask the doctor who is a little more conservative (if there be such a person) is the following:

Q: Doctor, you are not testifying, are you, that Mr. B. was not injured in this accident of January 9, 1963?

A: Not at all.

Q: At no time in any of your testimony have you attempted to testify that he was not hurt in the accident?

A: No, not at all.

Several other points should be remembered and used to your advantage. Do not be afraid of the old bugaboo of congenital injury, but use it to your advantage. All defendants' doctors look for a congenital problem to link the alleged complaints to the pain, discomfort, and symptomology which the patient has. Therefore, when there is no congenital defect, use it to your advantage, just as you have done in the degenerative or lack of degenerative changes situation. An example of this would be:

Q: Now, doctor, in using these X rays you have described that Mr. B. had no congenital defect in the back or spine, and that includes the lumbar area, the cervical area and the dorsal area, the mid-back; was that your testimony?

A: Yes.

Q: What do you mean by "congenital condition?"

A: Well, the usual condition we are looking for is the possibility of a neural arch defect, which actually is not congenital; it develops during the first three years of life.

Q: So when we are talking about a congenital defect, that could be something that would cause pain, if there was a congenital defect?

A: It wouldn't necessarily have to cause pain.

Q: I don't think that was my question, doctor. I said that it could cause pain; is that right?

A: Well, when you say "could," there is no realm where "could" could stop.

Q: Could a congenital defect cause discomfort?

A: It is a possibility.

Q: But Mr. B. had no congenital defect?

A: I found none.

Q: So from the X rays and your examinations, he had a strong back, certainly a strong back prior to 1963.

A: According to the history, I found no evidence of complaints prior to the accident.

Some other important points should be remembered in using the defendant's doctor's X rays. Proper X rays of the cervical area should include all *seven* cervical vertebrae, to-wit: C-1 through C-7. C-1 will not be visible unless it is taken through an open mouth. Many times (whether by coincidence or not, and I do not want to make speculation, except that these nice small X rays which defendants' doctors like to use sometimes) will show only C-2 through C-6. C-7, our radiologist friends tell us, is the key area of the cervical spine, and very prone to injury and fracture. Make certain when the defendant's doctor comes in that all his pictures, and count the cervical vertebrae to be absolutely certain, include *all* seven cervical vertebrae.

Another point to be remembered is the cervical lordosis, or curvature. If it straightens, this is probably due to spasm, *but*, the failure of the straightening or a change in the lordosis does not necessarily mean that there is an absence of spasm. Oftentimes we look for spasm through X ray in only the cervical area, and forget that there is a thoracic kyphosis which is similar to the cervical lordosis, but which goes in the opposite direction and which can react to spasm. A straightening of this curve can be a definite symptomology of spasm. Don't forget the lumbar lordosis; just as there is a cervical lordosis or curvature, there is a lumbar lordosis. While not as pronounced, it is there and can be viewed by X rays. If there is a

straightening, this straightening of the normal lordosis can be a symptom of spasm in the lumbar region.

In conclusion, do not be afraid to *shadowbox* the defendant's doctor, but be prepared before you throw the first punch.