Introduction and Guest Background

you All right, welcome back everyone to emergency minutes. Another episode today is episode number 30. Hard to believe we've had 30 episodes over the last three years.

If you've been here for all 30 know that I appreciate you much love to you. Don't forget to like, comment, share, subscribe, all those things to help us get this message up off the ground.

For those of you that have already done so or have left us reviews on Apple and Spotify, truly appreciate you. We are now visual on YouTube as you are aware, and we are audio still wherever you find your podcast.

Now today's guest is very interesting, Dr. Scott Jones. He comes with us today on Emergency Minute as a lawyer who also is an emergency medicine physician currently in his residency.

So we are super excited to talk about him and see what do doctors and healthcare professionals need to know about some of these criminal cases, what to say on the stand, what not to say, what's the difference between an expert witness, a fact witness, witness, et cetera.

So I could not be more excited to introduce today's guest. Dr. Scott Jones is a former paramedic. He is a Marine Corps intelligence officer. a former state prosecutor an adjunct law school prof at the University of Virginia.

So without further ado, Dr. Scott Jones, welcome to the show. Thank you. Thank you very much. All right. Well, it's great to have you. You have quite the unique and fascinating path to get to where you are today.

Can you kind of walk us through that a little bit? Tell me a little bit about your past, how you ended up in law enforcement and everything else, and then ended up as the emergency medicine resident that you're at right now.

So a joke, I can't hold down a job. And it's not a path that I would recommend. to others, certainly if you have responsibilities beyond a Labrador Retriever.

So I went to the University of Michigan for undergrad. I worked as a paramedic for three years. After that, and applied to medical school then, I got in here at the University of Virginia.

But I was a very burned out paramedic. That job can be kind of rough. People behave in their homes in ways that they would never think about behaving in public, even when The public has come into their home.

Um, so I turned down the acceptance and the short kind of floundered for a bit, to be honest. Um, and then joined the Marine Corps and went to Marine Corps officer candidate school.

They, so that was 2003. Um, they selected me for intelligence after I was commissioned, um, deployed to Iraq twice, came back, went to law school at the university of Virginia.

Uh, my first job out, I was a state prosecutor in Charlotte, North Carolina. And then, um, 93 applications later, I finally got hired by the department of justice and the attorney's office.

Yeah. 93. 93 every state prosecutor in the country wants to be a federal prosecutor because they pay a living wage and the judges are smarter and the crimes are more significant.

Uh, sentences are bigger. Um, so 93 applications got hired in San Diego. Worked there for three years, mostly doing Mexican border crime, which gets kind of old because it's the same drug importation case over and over and over again.

So I transferred to Spokane, Washington. I had started doing kind of concentrating on child sex crime in San Diego.

Continued that in Spokane, although I did some homicide stuff too, as well as a bunch of drugs and guns.

Quit my job intending to run for sheriff of Cootin County, Idaho. Uh, you know, I was in my mid forties and childless. Why not? Um, that didn't work out.

Uh, so I dropped out of the primary, uh, which is the only election that matters in Idaho is the primary, um, with probably 10 months to go before the primary election.

And there had always been this kind of alternate universe of my mind because I, I went to law school at the same university. I'd previously been accepted to medical school lab.

So there was always this kind of. like bizarro Superman, what if I had done that? Like, what would my life be like? So I came back from my 10-year law school reunion and stopped off at the med school admissions office to ask what I would need to do to reapply.

And honest to God, I thought they were going to tell me something like, are you kidding? It's been 20 years. You need to read everything. And I don't know if I would have been real excited to sign up for, what is it now, five semesters of undergrad chemistry.

but what they said was you need to retake the MCAT. And I was like, Oh man, I wish you hadn't told me that. Cause like, that's doable. Right. Like, so I said, just pure pain.

Yeah. Just, and I had to go back to like, in all seriousness, like electron shells, right? Like two S one, one, you know, like all that stuff. So I studied for the MCAT for a year, like it was my job.

And then, they let me back in. Uh, so I went to med school here and now I'm an emergency medicine intern here. So that is, uh, that is quite the path.

Uh, I guess they say, you know, everyone has their own path, but you really took that to heart and really took your own path for sure. Um, so that's, uh, that's extraordinary.

So today, you know, one of the reasons why I wanted to have you on this show is this is a, this is a very unique, uh, conversation and I'm, I'm very honored to have it because, I don't know the first thing about this, to be honest, and I think this is one of those things where physicians and healthcare professionals in general kind of get a little spooked.

Not much scares physicians, but this is kind of like one of those things. We're gonna talk today a little bit about what physicians need to know about testifying.

So tell me a little bit about your experience in this world and why this is an important topic for physicians to kind of tune in here today. So in addition to child sex crime, I specialize in violent crime.

And in both of those realms, physician testimony matters a lot to the quality of the case. And as we're gonna get into later, I came to truly think that it affected the health of the patient that was the subject of the criminal matter, the victim, right?

The patient that was the victim. And then since I've been in medicine, You're absolutely right. I mean, physicians are more scared of testifying than other folks.

You know, plumbers, bus drivers, you know, normal witnesses. No one likes it. But physicians more than anyone else, even compared to other professionals, really seem nervous about it.

Why Physician Testimony Matters

And my hypothesis for that, and there's no data to support this, right? It's just kind of my thinking, is that The law is

similar to medicine in that it's a black box to anyone who doesn't do it professionally.

It's basically run by a bunch of highly trained, smart people. Doctors know that medicine is also a black box run by a bunch of highly trained people.

They know how intimidating it can be to patients and patients' families. And I think they respond in the same way to the law. um, in ways that other people don't because they're not, they don't live inside of a black box.

So, um, I've given a version of this talk to a couple of different grand rounds, a couple of different departments during grand rounds here at UVA. Um, and, and my motivation really is, as we're going to talk about, um, if a physician testifies well, it really can reduce the trauma to the victim of their own testimony through the magic of this thing called the hearsay exception, excuse me, the medical treatment exception to hearsay that we'll get into later.

You can actually do quite a bit to reduce the harm to your patient of the criminal case. So I think testimony, I try to encourage physicians to view testimony as a clinical skill, just like putting in a central line or whatever, because it is.

And in the criminal context, we're going to be focusing on the criminal context today, not the malpractice context, because I have zero malpractice experience.

But in the criminal context, you're going to court, whether you like it or not. It's not something that you choose to go into to make extra money on the side.

It's part of your job because you will take care of assault victims, physical assaults or sexual assaults. Okay. Well, yeah, that's certainly can be daunting.

I luckily have never been in this situation, which is kind of hard to believe after 21 years that I've never really been pulled into court. I did have a very, very minimal experience once as a expert witness that I had to do a deposition, which was fairly intimidating.

And then one time I was very briefly named in a medical malpractice case, but it was with like 20 physicians and I had nothing to do with anything, but that's, you know, unfortunately how it worked.

But I had to do the deposition there and that was, that was very eyeopening. But yeah, to your point, you know, today's talk, we're going to focus more on the criminal aspect.

And I believe that you've put some slides together to go over, which is, which is great. So I am very grateful for you for our listeners out there. Don't worry.

If you're watching this on YouTube, great. You can kind of follow along with the slides. If you're listening on Spotify or Apple or anything like that, don't worry.

The conversation is going to be the exact same and we're not going to be having anything on the slides that we won't be able to discuss. So thanks for putting this together.

I really appreciate it. Yeah, of course. So, um, this is a modification of a presentation I've given to Grand Rounds. Like I said, my contact information is listed there.

If anyone has any questions, um, or academic emergency medicine jobs available in 2028, please let me know. I suspect there will be no problem finding a job.

Yeah. Or if you're looking to hire a combined law professor and EM academic dude, let me know. There you go. Okay. So for the viewers, what's on the screen now is an average federal courthouse, or excuse me, not courthouse, courtroom.

And for the listeners, it kind of looks like what you would expect it to look like. And it's representative of not just federal courtrooms, but state courtrooms.

So these places are, they're designed to be intimidating, right? So dark paneling on the walls, a seal of the United States that's a yard across on the wall behind the guy in black robes who sits up on a high bench.

With the witness stand on one side of him, the jury box is on the same side as the witness stand. And then what's important for later on in our discussion is the fact that this picture has four tables.

There's normally just two tables, one for the prosecution and one for the defense. The prosecution typically sits near the jury because we're the good guys.

And the defense attorney and the defendant sit on the other side of the courtroom. And then potentially there could be people in the audience. There never are.

No one comes to court unless they want to. But imagine yourself, if you were testifying in the witness chair, there would be 12 to 14, depending on alternates, jurors that you've never seen before, sitting probably 15 feet to your left and the defendant sitting probably 15 feet to your diagonal right.

in this designed to be intimidating room. So before we go any further, just imagine yourself sitting there. If you can see the screen, great. But if you can't, hopefully I've described it enough to give you a sense of what it might be like to sit in that chair.

And then we're going to come back to that later. So here's what we're going to go over. Um, today there are two ways in which you as a physician might be called to testify and you could do one of these two things, um, either of these two things during one court appearance or both.

So you may be called to testify either as a fact witness, and we're going to talk about what that means and what you'll be doing in that, in that case, or as an expert witness.

Um, and we're gonna go through what it takes to be an expert witness. If you are a physician, 100% you will qualify as an expert witness unless you're prescribing crazy things on the side that don't…

If you have a medical license but you are not practicing according to generally accepted principles, you might not be, but as long as you're practicing medicine appropriately, you will be.

And then the third part of the presentation is the part that I really care about convincing you that the quality of your testimony will matter to your patient's health and that you should therefore view it as a clinical skill like any other.

Then I built in time for questions. So John, if you have any at the end or actually even during, I think this works out better as a conversation. Sure.

Yeah, no problem. Presentation. So. anyone, um, any, any, any person, any human person. Um, and I say that because every couple of years, somebody tries to put like a dog on the stand or a parrot, um, something like that.

And the judge has to say like, no, no, we're not doing that. Um, anyone can testify to anything if they have personal knowledge of the thing. So this is what you would imagine it to be.

Um, you know, Dr. Smith, where were you at 8.30 AM on Monday, September 17th? I was at the corner of West and Maine. What, if anything, did you see of interest?

I saw a red Honda collide into a blue Ford F-150, right? That's fact witness. You're just saying what you saw smelled, heard, felt, right? Right. Kind of normal witness testimony.

The things that you, as a physician, might be asked to testify about as a fact witness are anything, any component

of your testimony that's not opinion.

So let's say for this kind of this entire presentation that the domestic violence victim, gunshot victim, or severe sexual assault victim gets rolled into your trauma bay.

Your fact witness testimony would consist of, you know, I saw a 23, what appeared to be a post adolescent young adult female. She had wounds to her, you know, wherever the wounds were, she was alert and oriented times two times, right?

Like that's all fact testimony. Um, and it's the kind of thing that the jury needs to hear to understand. the kind of the basis of the case, if that makes sense.

Right. Expert witnesses are people who get, essentially they get to opine. So if you have knowledge, skill, experience, training or education that the normal person doesn't have, you are allowed and the judge recognizes you as such a person.

then you are allowed to give opinion testimony when other people could not. As long as the rule is on the screen for the federal rules on the screen for the people who are watching, it essentially is you can testify in the form of an opinion if it will be helpful to the jury in their determination of the facts.

And there's these three other requirements that are basically just science. you have to be, your testimony has to be based on sufficient facts or data, a product of reliable principles and methods, and then you have to apply those principles and methods to the facts of the case, which is, that's science.

So as long as you're doing your job the way that we all should be doing our job, no problem testifying in the form of an opinion. Now, I started out by saying that every doctor Is an expert that is because we have.

Training and education and experience and in a formal sense, right?

Fact Witness vs Expert Witness

We all have MDs DOs. You know, this would apply to MPs and RNs as well within their. Kind of the spectrum of their practice or the range of their practice, but you don't have to have formal anything.

So, as an example, when I was in San Diego. I told you before we started that I got tired in San Diego of prosecuting. Or maybe when we got started, I got tired in San Diego of prosecuting the same.

Border crossing drug importation case. It is common in those cases for the drugs to be hidden. In a vehicle, and then the vehicle gets caught, the courier gets caught through 1 of these.

Land port of entries. In places like San Ysidro, and sometimes they just toss it'll be like a lot of drugs, right? It'll be 50 kilograms. 80 kilograms 100 kilograms of meth heroin.

Coke now it's fentanyl and sometimes I'll just toss it in the trunk or they do things like put it inside of. Cans of what's labeled as tomato paste or whatever.

But sometimes they will put it in these very highly engineered kind of secret compartments in the frame, in the dashboard, in the car seats. Sometimes the really sophisticated ones, like you turn the radio on and you hit the heater to 82 degrees and like something pops out of the dashboard and like opens up and there's the drugs.

Yeah, like really highly engineered things. So it is true. This is all working up to something I promise. It is true that in San Diego, San Diegans frequently take their cars to Mexico for car repairs because they are 12% the expense of getting a car repair in the United States if you just drive to Tijuana.

So the defense is almost always The evil mechanic did it right so the defendant will tell the arresting officers that. I

took my car down to this place in Tijuana.

I dropped it off at noon. I picked it up at four or five, drove it across the border. The dogs barked at me and like, I don't know why you guys pulled me over.

Like I'm just, you know, an innocent San Diegan. So we had this guy, essentially a retainer who had no, like, I think he topped out at high school, right?

Like no formal degree, no, he may have had some certifications, but no, you know, advanced degree at all. But he had spent, 30 years working in as a car mechanic and as an auto body guy and in fabricating like go karts and other things.

So we would qualify him as an expert in car construction. And then he would testify that like, Oh, that compartment would have taken a fully equipped body shop, 85 man hours in order to make.

And then I, or my colleagues. could stand up and in our closing argument say, well, how reasonable is the defendant's story that they dropped the car off for five hours if it would have taken 85 man hours to make this compartment, right?

They either had like 16 people working on it or the story is just not true. So expert witnesses can be very helpful to the prosecution. How many of those compartments do you have in your car now currently?

I would be full of rum, but that's all another violation. The nice thing about testifying as an expert is that you're allowed to testify based on things that you didn't personally see, which is kind of weird.

If you took care of that shooting victim in your trauma bay, and then you are later asked to opine as to the condition of the victim or the prognosis of the victim, you're allowed to base that prognosis, your opinion of the prognosis, not just on what you saw in the trauma bay, but What you see in their chart from, you know, was what happened later after you were, you were done taking care of the patient.

And you're allowed to say, you know, I looked up this emergency medicine thing and this emergency medicine reference, you know, how much blood can you lose over what period of time or, you know, whatever.

Um, and I based my opinion on this reference material. No problem. The reason why we need you as an expert at all is because many state and federal laws, criminal assault statutes, increase the severity of the punishment or the crime itself requires the jury to believe, to find things like serious or substantial bodily injury, and those are always defined in the statute with words like life-threatening, loss of function of an organ, permanent disfigurement, all of which require an expert to say, most of which, most of the time, That requires an expert to explain to the jury why it is that the gunshot wound through the right upper quadrant was bad for the liver and permanently diminished the function of that organ or the spleen, whatever.

Right. Makes sense. Yeah. Sometimes you don't need it, right? If something has been amputated, you don't need an expert to say like, yeah, it's not grown back, right?

Human beings are not starfish. But most of the time you do need an expert. The best example of this that I can think of is we had a, my trial partner and I had a attempted murder, domestic violence, really bad stabbing case.

Woman had been stabbed 11 times. A bunch of them were on the hands. But some were, you know, both sides of the torso. The scene when the cop got there was just a charnel house.

She was flown to off of it. It was federal because it was on a Native American reservation. And she was flown to the trauma center in Spokane, Washington.

And our witness was the trauma surgeon that took care of her. And he was able to, we charged the guy with attempted murder and with assault resulting in serious bodily injury.

So he was able to say, you know, a five inch knife wound that penetrated here, went through this, went through this other thing. She absolutely would have died.

She would have bled out if she didn't get to the trauma bay in time. She's never growing that thing back, that kind of stuff. It was actually kind of an interesting thing because he looked like he was about 13 years old.

So when my child partner and I prepared him, we were very worried that he was not going to have the kind of gravitas and the credibility, the gravitas lens in front of the jury.

But we started asking him these questions when he was on the stand. And it was like he just switched entirely into, you know, professional trauma surgeon expert.

It was great. It was just absolutely great. He did a great job. And that guy is now doing like 11 years in federal prison. Yeah, yeah. So we need you and I hope to convince you during the course of this that your patients need you too.

So I kind of went over what you're likely to talk about as a fact witness. Oh, let's talk about, let's go back to this. Let's go over it. the cross examination you might get as an expert witness.

Because people tend to be terrified of cross examination more than they are of direct examination. With good reason, the point of cross examination is to get the jury to doubt your credibility.

So there will be, for any expert, two phases of your testimony. The first phase will consist of going through your qualifications to establish that you are an expert.

And then the second phase will consist of your actual testimony. And the defense attorney will get to cross-examine you kind of during both of those phases.

So the first phase will consist of him questioning, he or she, questioning your expertise in any way that he or she can think of. That will consist of pointing out, you know, if you're not an academic physician, well, you've never published anything, right?

you're not a member of this particular society. If there's anything on your license history, they will come out then. If you've ever been suspended or whatever, it will come out then.

It's really not going to be pleasant. But you're going to be qualified as an expert anyway. It's kind of a process that defense attorney goes through both to satisfy their client that they're doing something.

And if the judge allows the jury to hear that part of your testimony, it will be, it's called impeaching. They've already started to impeach your credibility before you even get to what you saw, what you did, and what your opinions are.

And then when you do your cross-examination the second phase where you talk about what you did, what you saw, and what your findings are, you'll get kind of the same treatment from the defense attorney.

So I understand why people aren't real aren't real wild to be called as a witness. So in order to explain what kind of the first phase of the testimony is going to be like, I thought it might be helpful to qualify you, sir, as an expert witness.

All right. That sounds good. All right. So let's pretend that you're on the stand. You got some peanut for this criminal matter. Let's assume it's the case I just described.

Mass violence, lots of stabbing. Dr. Parente, can you tell us, did you go to college? Yes, I did. Where and what did you study? John Carroll University in Cleveland, Ohio.

And I studied biology. Okay. And how many years was that course or that course of study? Four years of college.

What did you do after graduating from undergraduate?

I went into medical school. Okay. Where? Ohio university college of osteopathic medicine. Oh, um, how, I guess I should've had Dio. I was going to point that out, but that's all right.

Preparing for Cross-Examination

I've been called far worse. I've been called far worse. Um, how many years is medical school? Four years typically. And can you describe generally the curriculum?

Yeah, we had a systems-based curriculum that was pretty unique at the time, but that was many years ago, where we learned all about the respiratory system, including pharmacology, anatomy, physiology, pathology, and then the next month would be cardiology, et cetera.

Okay. Were there years, a year or years of classroom teaching before you started seeing patients? Yes. And was that one year at your medical school or two?

Two years. Okay. And how many hours a week combined class and study did you spend as a medical student during those first two years? I can't recall. It was a lot.

You think it was at least 40 hours a week? Yes. Okay. What did the second two years of medical school consist of? Combination of clinical training, as well as some didactic training as well.

Okay. And what types of medicine did you rotate through during those last two years? Typical rotations, surgery, internal medicine, emergency medicine, pediatrics, psychiatry.

Okay. And then electives as well? Yes. Okay. And during the second two years of medicine, of medical school, can you even ballpark for us how many hours a week you worked and studied?

Ballpark 60. Okay. 60 plus. And if you can even ballpark for us, well, actually before I get to that question, the second two years of medical school, were you seeing patients and participating in their care?

Yes. Can you describe what your role was in doing so? Served as a medical student, which means I was still able to do histories and physical physical exams on these patients, but I was always under the leadership of whether it be a resident physician or an attending physician as well.

Okay. And can you even ballpark for us how many patients you took care of as a medical student? Uh, I'm sure it's in the thousands, but I can't give you a specific number.

Okay. And the medical conditions that they had would range. Um, well, is it fair to say that the medical conditions they, they had would be kind of in the specialties that you described rotating through earlier?

Yeah, typically, you know, we'd see the things that whatever we were on that rotation, obviously, OB GYN was going to be a lot different than, you know, psychiatry, emergency medicine, or gen search.

So. Okay. And what did you do after medical school? I enrolled into the residency program at Akron City Hospital in Akron, Ohio. In what specialty? Emergency medicine.

And can you describe the what a residency in emergency medicine consists of, or excuse me, yours specifically. Yeah. So you are a physician that's licensed to practice medicine in the emergency department, but the vast majority of what you are doing is being overseen by an attending physician.

So you're still taking care of patients, but you have someone overseeing everything that you're doing. During residency, did you rotate, did you spend months on other services, not emergency medicine?

Yes. Can you just kind of tell us what those were? Yeah, we did a little bit of CCU, ICU, did a lot of trauma, ophthalmology, did internal medicine. So just various rotations that would be sort of applicable to emergency medicine.

Okay. And you said ICU and CCUs, can you just tell us what those abbreviations stand for? intensive care unit and cardiac, uh, cardiac care unit as well for the heart patients.

Okay. And how many hours a week did you work during residency? 80. Cause that's what we are only allowed to work. We could not work anymore. Okay. Um, and how many patients, if you can even ballpark for us, did you see in residency?

Are we talking hundreds, thousands, tens of thousands? Yeah. Thousands every year. Okay. Um, did you graduate from that residency program? Yes, I did.

Um, did you take the board exams at the end of your residency? Yes. And can you describe what those are like for us? Very grueling, multiple hour, uh, tests.

Uh, first was the, the written portion, uh, that we had to pass. And then several months later, I had to pass a oral, uh, board exam as well. And what were the topics covered in those exams?

Anything that pertains to emergency medicine, which is just about anything. Okay. And I kind of skipped over the step exams that you may have taken during your training.

Did you take step one, step two, and step three of the medical licensing exams? So yeah, we at the Ohio University, since we were in osteopathic school, we did Comlex.

We did one, two, and three. Okay. And did you pass your boards after completing residency? Yes, I did. And what have you been doing? What year was that?

Just so we'd know where we are chronologically. 2007. And what did you do after passing your boards in 2007? I've been working clinically in the emergency department at a community hospital.

Okay. How many, again, how many patients are we now into the 10,000s if you've been practicing since 2007? Yeah, I'd probably estimate 5,000 patients a year.

Okay. Have you published anything in the journals related to emergency medicine or medicine generally? I think I have one publication with a resident that I did years ago.

Okay, that brings up residents. Do you train residents? Once in a while we get a resident, but it's usually a resident and family medicine, so it's just more of an elective rotation for them.

Okay, and how many Of the tens of thousands of patients that you've treated, how many have been, if you could even estimate, been stabbing victims? Probably hard to say over a 21-year career, but probably just a handful per year.

Okay. How about domestic violence? Unfortunately, we've said a lot more frequently. I would say probably several hundred per year. Okay. Do you teach at conferences or any other area?

Any other thing? I taught, I have medical students almost every day and then I do lecture. I used to lecture quite a bit over at Firelands for one of the Ohio university sites where they have all the medicine medical students gather.

And then I would give lectures. Okay, Your Honor, the government moves to qualify John Parente D. O. as an expert witness in the field of emergency medicine.

Boom, and then the question would be, the question that the judge would be deciding is, did I, as the attorney, just

establish that you have the knowledge, skill, training, or education that other people don't in emergency medicine?

And the reason why I started from undergraduate and worked my way all the way through is to make it absolutely clear that you do, right? Like, if anyone listening to this doesn't think that you have those things after listening to what we just did, I'd be surprised.

Oh, by the way, if I have you there on this hypothetical domestic violence case, I am going to do that, what we just did, at the beginning of your testimony.

Um, like you just sat down, this will be the very first thing that I will want to go through. Even before I asked you where were you on, you know, at three, whatever date she rolled through, um, a good judge is not going to let me do it.

Um, you can probably guess, we might be able to guess why I'm going to, I'm going to do it then and not get all the fact testimony out of the way. Um, and then qualify you as an expert and then ask for your expert, your expert opinion.

And it's because. Based on the exchange that we just had, in the jury's mind, you've got a big D for doctor on your chest, right? Like you're a superhero.

And that expertise, this is why a good judge isn't going to let me do it. I got to explain that if you're a lawyer, you know how pitchers paint the corners of the strike zone?

That's kind of what I'm doing here, right? But I want the jury to be so impressed with you that they attach that respect and that impression to all of your testimony, not just the, yeah, she was going to die part, which is why, frankly, a good judge isn't going to let me do it.

So that's testifying as an expert witness. Here's the part. Give me actually, let's just pause for a second. Do you have any questions about anything that we've gone over so far?

No, I just the only thing I've ever when I was in these situations previously was, you know, don't don't give more information than what is asked. So yeah, yeah, yeah.

I feel like a jerk when I'm answering the questions because you're like, oh, did you, you know, did you go to medical school? Yes, that's exactly the right way to do it.

The lawyer. If it's a criminal case, well, the reason why every state prosecutor wants to be a federal prosecutor is because state prosecutors are just crushed with the number of cases that they have.

So they do not have time in all but the most serious crimes to really take the time to prepare the witnesses the way that federal prosecutors do. So if you were really appearing in federal court, we would meet at least once, probably multiple times to go over your testimony.

If I thought that you were at all nervous or if you hadn't testified before, I might ask one of my colleagues to pretend to be a defense attorney so that we could practice the cross-examination.

And one of the things that I did with all of my witnesses, not just the experts, is make sure that they understand that it was my job to get the story out of them, not their job to kind of push the story out, if that makes sense.

Because I have these elements of a crime that I have to prove and I know what they are and the witness doesn't. So if you say more than the question asks for, you're kind of opening doors that I might not want the jury to go down.

Um, or just might be kind of totally irrelevant and thereby, you know, potentially confuse the jury. Um, a good, a good direct examination should really sound like a conversation.

Um, and cause it kind of is right. It's kind of like, Hey, what'd you see? Like, what did you, Oh, I saw that. Oh, really? What, what happened next? Um, what did you think about that?

Right. It really, it should be kind of a, uh, not a casual conversation, but kind of a formal conversation, moderately formal conversation, just with 12 people, 12 strangers watching, a judge listening to it.

I understand why it's intimidating, but if you're listening to this, I hope that everything that we've gone through so far has kind of reduced that anxiety a little bit.

So now we're at the part of… our conversation that I kind of care about the most. So I truly think that the quality of your testimony will affect your patient's health.

I came to think that that was true after a case I had, and I will name the guy because he's in federal prison, and these are all, you know, court of stat, these are all facts on the record.

Um, I had a guy named Eric Perez and Eric Perez was in the habit of contacting every. So let me, well, first Eric Perez, before any of this happened, he was a.

He was a gangbanger. I think he was a Norteño, but it doesn't really matter. He had two prior first degree assault convictions that involved shooting at people.

He shot at somebody once when there was a baby in the room, not that far away from where he was shooting. He had dealt drugs. He had fought the cops. He was really not a good guy.

And he was in the habit of contacting every 12 to 14 year old girl of Hispanic origin on Facebook that he could find in and around Yakima, Washington.

And he would ask them for either sex or naked pictures themselves. And he succeeded far more frequently than you might imagine. Yeah, and he sent one of them to have commercial sex with his stepbrother, just an evil guy.

So anyway, we found out about this behavior because he went after two sisters and the older sister was 14. She didn't mind that she was communicating with this adult because she was fully grown up.

But she objected to him contacting her 12 year old sister. So we ended up getting this guy on a total of, I think we had six victims, 12 to 14 charges.

And my initial plea offered to him through his defense attorney, his first defense attorney, he had two, they were both friends of mine. My first plea offer, I will censor what it was exactly, but it was go F yourself.

That was my actual plea offer because you're going to do at least 15 years because that's the mandatory minimum for one of the things I charged you with.

Your guideline sentence range is life. which means you're never going to get out of prison, I'm okay with that, right? And then I started to realize like, eh, that's not really going to work because then I got to put all those little girls on the stand and ask them questions that are going to make them relive their trauma, right?

Like describe the sex act you had, right? Is this photo your genitalia, right? Like just terrible things. I entered into a plea agreement, the government entered into a plea agreement that allowed the judge to sentence him between 15 and 25 years, whatever the judge thought was appropriate.

And as an aside, the brother had been prosecuted before, excuse me, I prosecuted the brother too. He had been sentenced before. And his defense attorney, the judge was a guy named Salvador Mendoza Jr.

Um, and I had just done a five week murder for trial or excuse me, murder for hire trial in front of judge Mendoza. So like he knew me pretty well. Um, the brother's defense attorney was a guy who looked like me, um, or you, um, and he decided to tell judge Salvador Mendoza Jr.

Um, that it was that he should sentence his client to less time because you know, your honor, it's, it's commonplace in the Mexican American community for adult men to have sex with underage women.

And like the judge's head just about exploded, right? Like he, this was like, could not say something stupider. So by the time it came to sentence Perez, he was just all revved up.

So he ripped me up one side and down the other for limiting him to 25 years. And then said, before giving him every day of the 25 years that I had asked for, that the only reason he was accepting the plea agreement was because otherwise the government would have to put those little girls up on the stand.

And I was like, I know your honor, like, why do you think I did, right? But in preparing for that sentencing, I came across the ACE studies, which are a series of studies in pediatric journals in which the authors pretty conclusively establish that childhood trauma shortens life.

So they had a bunch of different things that they qualified as trauma that were substantially less traumatic than the victims in the case that I just described.

So things like not having enough food in the refrigerator, parent in jail, domestic violence in the house, parent missing, like all of those things. If you have six of those things, your life is likely to be shortened by 20 years.

And it's, yeah. And it's, it's what's nuts about it. Isn't just the length of that with frankly, like I know it, like those are traumatic things, but that's not anywhere near what we're talking about.

Right. And it's not just the length of the shortened life or the, the amount to which the life is shortened. It's. It's not all cause mortality goes up.

It's not just what you would think. It's not drug abuse and it's not just drug abuse and suicide. Like cancer rates go up and heart disease rates go up.

It just crazy. Like there's gotta be some other thing going on there. So I put those studies in my sentencing memorandum for Perez to convince the judge that, you know, he's actually worse than a murderer because you're our six victims.

20 years of peace, he stole 120 years of lifetime. That's worse than a murder. And the reason why I showed the photo and described the average federal courthouse and asked the listeners and viewers to try to place themselves on the witness stand is because You're a fully trained adult professional, and I bet you might have a little bit of anxiety at the thought of doing that.

Imagine being the 12-year-old, right? Or in a different case, another child. Because of a thing called the confrontation clause, the defendant gets to sit at the defense table.

That's why I went over how close it was to the witness stand. It's 15 feet away. maybe 20, 15 to 20 feet away. So they're the victim is, and they're the guy that did it is, right?

Like it's gotta be. And then as a prosecutor, I have to ask, relive your trauma please, right? Like tell me everything that happened. I mean, in that room, it's gotta be just horrific.

So that is why, I really do think, and I really want to do this study, but the data doesn't exist retrospectively like it did for the A studies. So you'd have to collect it prospectively because of the things that I did, the things I did before medical school.

Like I'm 50, you know, I don't have 30 years to do this study. I mean, you'd have to get access to the patients. Like, I don't know that it can be done, but I'm convinced that their own testimony is going to hurt.

that I was re-traumatizing their patients and that I was effectively shortening their lives. For the viewers on whatever viewing platform you're watching, I just popped the confrontation clause on the stand.

There are theoretical exceptions for child testimony where the child can testify by a closed circuit, but the requirements to do so are such that I've never seen it done.

It's just theoretically but not practically possible. So yeah, so there for viewers, there's the courtroom again. Okay, so here is how your testimony I think is gonna affect your patient's health.

There is this beautiful thing called the medical exception to hearsay, which allows you, if you do a good job, to largely testify instead of your patient.

and therefore reduce, I still have to put the patient on the stand because of the confrontation clause. But if you do a good enough job, the patient's direct exam can consist of what is your name, no further questions, defense attorney or witness.

And we just skip all of the reliving of the trauma. The rule, the hearsay rule is this thing that for Second year law students is kind of like the amino acid metabolism is to medical, second year medical students in that it's really complicated.

And then there's a bunch of exceptions. One of the, and it generally stands for the proposition that things that are said out of court cannot be repeated in court by someone else normally.

If the intent is to prove that the statement was truthful. So if you hear me say, um, let's say I'm your brother and we're at a baseball game and you hear me say, uh, I saw Smith murder Jones yesterday.

You cannot testify that your brother told you that because I would be putting you on the stand for the purposes of establishing that Smith shot Jones.

There is an exception. Does that make sense? That's kind of, I did that poorly. But so that's the hearsay rule. There is an exception for doctors and nurses and paramedics, PAs, NPs, anyone who is capable of providing medical diagnosis and treatment.

The exception is essentially allows statements made by someone in the course of medical treatment or obtaining medical treatment to be repeated in court by someone else, which means as long as you do the kinds of things that you're going to do as a doctor, which means that as you're doing your HPI, You are going to hear from the patient.

You're going to ask the patient what happened, right? Like, of course you are. That's what an HPI is. The patient is going to tell you their story. If you, I strongly encourage you to document everything the patient told you, including quotes when you can for a couple of reasons.

One, If it goes to trial, by the time it goes to trial, it's gonna be a year and a half or two years later, and you're just not gonna remember, without documentation, you're just not gonna remember to the required level of certainty.

And two, the details really do matter, because they can include things like mom's boyfriend did it, right? Like if you're interviewing the 12-year-old, or let's go back to the hypothetical domestic violence case, She rolls into her trauma bay.

You ask what happened and she says, you know, my boyfriend, John Smith, stabbed me 11 times. I could put you on the stand and have you tell the jury that she told you that.

And then I don't have to ask her that question. I see. So our good testimony then sort of alleviates her from having

to relive some of that trauma. Exactly.

And I don't want my witnesses to view convicting the guy as their job, because it's not, right? Like you're just there to tell the truth, say what you saw, give your opinions on stuff.

Documentation and Common Criminal Cases

But if, going back to the domestic violence case, if the prosecution successfully convicts that guy and he goes away for however long, you helped remove an imminent serious threat to your patient's health from their environment.

So just like you would, you know, pediatricians counsel gun-owning parents all the time to lock their guns up or just get them out of the house, right?

Like they do that because it is part of a physician's job to remove significant imminent threats to our patient's health whenever we can. That's what you're doing here, right?

And I include that because a lot of the relationship between law enforcement and physicians is not always ideal. And I'm not suggesting that you need to be a friend of law enforcement.

I'm suggesting that you should try to do what's right for your patient in reducing threats to their health. So that's kind of my spiel. What questions do you have, John?

And do you want to take the screen back so we look at each other. Yeah, that's fine. We can take that. I don't really have any questions. I think you touched on the last thing I wanted to talk about, which was the importance of the documentation.

That's something that's kind of drilled into our head from day one of medical school. So I don't think that's… Some of the longest charts I read are involving cases like this where there is some violence or basically just any concern for litigation.

So you, you know, um, tend to sort of put a little bit more fluff and beef into those so that you do remember. Cause I, it is challenging when you go back and you look at a case from two years ago and you're like, I do not remember this at all.

And then usually you can go down, down to the paragraph with the medical decision making and I'm like, Oh, I remember this guy and you know, and kind of helps.

So, you know, it's your point that the documentation, but um, Yeah. And I said at the very beginning of this that we weren't going to talk about malpractice because I'm not qualified and I'm not.

But your point is correct. If you think there's any chance of any kind of litigation, I'm on vacation for a week now, but my very last shift, I had a patient who may have had simultaneous cauda equina and stercoral colitis, strangely, like too unrelated, but serious things.

And she made it very hard to treat her. She yelled at all the nurses. She abused all the nurses. And the important thing, which ER nurses get abused all the time, when they refused to work with you as a patient, like you crossed the line, you know?

This woman was refusing, well, choosing, not refusing. We don't run jails, right? We run hospitals and emergency rooms. But she declined to go to the MRI that she was transferred to my facility to get.

putting her own health at risk, right? So I did like, my MDM section for that case was like a page and a half of like, here's the thing that happened.

I gave her about this risk, I told her about that risk, I told her about this other thing. Yeah, so anytime you get the like, ooh, this might end up in court someday, just please do yourself a favor and just dock.

Because the reason to do it, it's not just that you're not gonna remember, it's, A good defense attorney or, or in that case, it wouldn't be a defense attorney to be malpractice attorney.

If you don't, if I didn't document all of that. And then let's say something, you know, permanent paralysis. that ends up in litigation. If I show up to court two years from now and I go through, she refused the MRI, I told her about the risks, I told her death from potentially her colon dying.

The attorney is, he or she would not be doing their job if they didn't suggest it. I had made those things up after I found out I was getting sued. So if you document it at the time when you don't know that you're being sued, there's no reason to question the veracity of what you put in your note.

So yeah, document the bejesus out of things. Yeah. I think we probably do a good job of that, I would hope, just because I think we're also hyper vigilant on some of these cases.

With your experience, what do you think would be, especially in the emergency room, the most common situations where this would come into play? I had written down child abuse, AKA obviously non accidental trauma assault, specifically domestic violence.

And then I also guessed like DUI cases. I don't know if that, um, but I guess like in your experience, like, what do you think are the most common cases that you would see in something like this?

But we're turning to something criminal, um, anything where anything assaultive of any type. Um, and I would include in that, um, Things that you might not think of as assaults that kind of are so.

As an example, I recently heard of 1 of my colleagues took care of a 10 year old who had a blood alcohol content in the 300. And like, they don't do that themselves.

You know what I mean? Like, they find a bottle of Jack Daniels and they vomit way before they get to 300. So, so somebody was this is all me thinking, right?

I don't, I don't know for sure, but like, I'd be willing to bet some adult was. Forcing that kid to drink that much alcohol. You know, any, anything where you're, it's not just a, like, obviously a gallbladder is not going to be a criminal case.

But, you know, if, like, patient gets, you know, dementia patient gets wheeled in from a nursing home and. They're bed bound and they have a femur fracture, right?

Like, how exactly did that happen? Right? Like. So elder abuse stuff people. I hate the term, but I use it all the time. Good victim, which is this concept that there are things that make people defenseless or more at risk.

There are some kids that the sex offenders that I prosecuted could, you know, it's like they could smell that they had trouble at home. But for anyone, anyone vulnerable and if you're vulnerable patients, I would encourage you to consider whether they might actually be a victim.

And if you think that they might be. Yeah, that's you got to consider at least consider the possibility that there's a subpoena in your future. Yeah, definitely.

Cause some crazy stuff there with a crazy talk. I do. I did want to mention really quickly though. I think one of the concerns that we have now, you know, especially after that nurse in South Carolina last year, I don't know if you followed that story or not, that she had given the wrong medication.

Yeah. I'm not sure why that, that case went forward. Um, Because I could tell you, that's something that's very on

the forefront of a lot of the nurses I work with, where it's one thing to be charged with malpractice.

You're going to have an attorney that's going to defend you. You're going to be able to go through the charts. And God forbid, you lose that case. Theoretically, you should still have your job, your license, et cetera.

But with, obviously, criminal cases, especially with that nurse last year that had that it was a criminal case where the patient died. You know, I, a lot of the nurses I work with now are very fearful of, of things because they're like, Oh, this could turn into a criminal situation instead of just, you know, medical malpractice.

Yeah. And you know, I do, I do too. I don't know what EMR you use, but, um, Epic is it's tabbed based like a web browser. So you get, you know, each patient is a tab and I have, um, I put in orders on the wrong patient because I was on the wrong tab.

And thank God, like, with the exception of an abdominal X-ray that the wrong patient got. I've recognized that before. Well, I did half the death paperwork on the wrong guy.

So I had to go in and hit click for the organ donor network. So I had to go apologize. You might be getting some weird phone calls. Yeah, it's really easy to do and that just makes it scary.

And prosecution should not be a political, the decision to prosecute, the decision to charge, should not be political at all. But state prosecutors in all but one, two, three states, I think, are elected.

And even My, my former employer, the department of justice, which used to take pride in being an apolitical organization is getting pressured. Um, I mean, there's somebody just resigned because they refused to prosecute people that the president wanted prosecuted.

I mean, this is, yeah, I mean, there, there is political influence. So. Yeah, it seems kind of inescapable, uh, at this point, unfortunately, whether it's, uh, intentional or not.

Um, We seem to not be able to escape that. Um, I like to try to, uh, end the show on something more positive whenever there's, uh, this like really intense, deep, um, you know, sort of topic that we covered here today, but I do appreciate you obviously covering it.

Closing Thoughts and Contact Info

So I wanted to ask you just, uh, I bring happiness. I bring happiness and joy wherever I go. And I talk about. Yeah, we could do an entire podcast on some of the other things that you've seen, especially from a, um, you know, child victim standpoint.

Um, but so maybe that's something we'll have to do in the future, but for the time being, let's talk about a few positive things. Um, you know, uh, what's your favorite food, uh, and what's your favorite vacation spot so that people, uh, can see the good side of things too in this.

Uh, I'm an opportunivore, um, and that I will, I enjoy everything. Um, I will, though. I have a rule. Know everything at work. I have some beef jerky or something, but my no eating at work rule is partly because I get so much of my life satisfaction as a resident out of food because I don't have time for a bunch of other things.

So I don't want to eat one bite at a time between patients. I want to sit down. So I don't eat at work. And then I'm sorry, what was your other question?

Favorite vacation spot. I've been to Big Sky, Montana, skiing twice, two separate five-day trips, and at the end of the second five days, I was still finding new runs.

That place is great. I scheduled my second vacation week this year in January so I could do that, and then discovered that skiing has gotten ridiculously expensive.

I don't know if I'm going to be able to do that. Anyway, that's it. Well, yeah, definitely appreciate you coming on the show here today for the 30th episode of Emergency Minute.

Hard to believe I've been doing this for three years with that many episodes. We can link some of your contact information in the podcast notes. And where can people follow you or find you?

I think you put it in the presentation as well. Yeah, I put my email on there and I will send you I've been if people think that the Life story part was interesting.

I was on a veterans podcast that didn't talk about medicine at all, but it's basically worked through the details of the story I told you. And it gets pretty dark at the end, but if any listener is interested in kind of what the world of prosecuting child sex crimes is like and other things, the podcast is called Tracer Burnout.

You can just Google Tracer Burnout, my name, you can find it. And then, like I said earlier, if anyone listening thinks they're going to have an academic emergency medicine job in three years, and or one of the programs I interviewed with for residency was very excited about making me the guy that not just their department or even that hospital, but their entire health system would call when they got a subpoena to kind of go through what we just did and Kind of be their attorney if you're interested in that, or you're a law school and want a new professor.

Like, let me know. I'd be happy to talk to you. Yeah, I think you have such a unique background and niche that I think it'd be very easy for you to monetize that in any way or many ways, um, in order to, you know, bring some of that expertise into the medical field.

Cause I feel like that's something that we really don't get a lot of in any of our training, whether it be medical school or even residency or even to be quite honest, just clinically working now.

So, yeah, I got, you'd be surprised at like, so we got white coats that no one ever wears, right? But you start your residency and they'll give you three white coats and they wouldn't put JD on it.

Oh, really? Yeah. And they were like, well, it doesn't have anything to do with your job. And I was like, it does. And like that guy's got a PhD in English and his, his coat says only PhD, right?

Like, help a brother out. Like, come on. I gotta take him to the tailor and get him. Well, good. Well, send me a link to that podcast. Uh, cause I'd love to put that in the, in the shows and help promote that.

I'd like to listen to it as well myself. And, um, yeah, I really appreciate your time. And, uh, for the listeners out there, if you guys liked the show today, I found it interesting.

Please don't forget to like, comment, uh, share, subscribe. And if you want to get real wild, go ahead and leave us a review on Apple, Spotify, or YouTube.

Definitely appreciate it as we try to get this message out there, helping both patients and healthcare professionals. navigate the muddied waters that are healthcare.

So thank you, Dr. Jones. I appreciate it. I appreciate the time for coming on the show. And as something I always like to do on every show is a peace, love and happiness to everyone out there.

Cheers. Cheers guys.