

# **Arabesque and the Practice of Law ©**

**By**

**Murray Grossan ©**

**When I was in law school I didn't realize that there was more to being a lawyer than just passing the bar. I used to scorn the debaters and mock trial show offs who would prance and crow and make dramatic turns, scowl and smile, put on DRAMA. Then I went into practice and guess what? Turns out, I have an advantage in court, thanks to my older sister.**

**My sister, a year older than me, wanted ballet lessons, so my mother enrolled me too! She figured that as long as she was driving miles and killing an afternoon, she might as well keep me busy too. For two terrible years I took Ballet lessons till I was eleven. Fortunately my sister tired of ballet then. Little did I know that those "sissy "years would pay off handsomely.**

**Typical case; I was defending US Steel against a hearing loss lawsuit. The applicant had worked as a garbage collector outside and was never exposed to noise indoors. Yet, one of the lawyer doctors had written a report that claimed that the noise inside the mill had caused this person's hearing loss. My expert said the applicant had a scarred ear drum and undoubtedly had had ear infections previously. Still, I had to be careful; the jury members were mostly working people who would not be sympathetic to any GIANT corporation. It was one expert vs the other. However as I scanned the report, I caught a mistyped word. Where the doctor had undoubtedly dictated, "He has a 30 decibel pure tone hearing loss, the typist- presumably one from Mumbai, had typed "a 30 decibel peer tone hearing**

loss.” Time to practice my steps. I saw that the plaintiff’s expert, call him Dr. Roy was in the courtroom. I called my expert, call him Dr Smith. After establishing his excellent credentials, I asked him to look at Dr. Roy’s report. “Dr Smith, what does peer tone hearing loss mean?”

A shout came out from Dr Roy, “I can explain...!”

With mouth agape, my body turned, hands raised in defense, as though to protect my Dr Smith from assault, and in as shocked a voice as I could muster, I croaked, ” Your HONOR!” His honor was quick to ask Dr Roy to be seated and to await his turn. Shocked to the very bottom of my soul at this interruption, I apologized profusely to Dr Smith. Then, with my best pirouette, apologized to the jury. Then with my best stance, I once again showed Dr Smith the “peer” report and asked the meaning of peer tone hearing. This time Dr. Roy again jumped up and shouted, “It’s a mistake!”

Again, my best pirouette to defend my good doctor from this assault.

“I see, it’s a mistake. A mistake in the report? To Dr Smith I explained there was a mistake in the report. Repeated to the jury with almost a full arabesque. Once the “mistake” was implanted in the jury, of course my expert’s explanation was agreed to.

The best jockeys will hold the horse back, to come from behind for spectacular finish, and win. Such was the case of Miss Grady.

Miss Grady had entered a fine hospital and been given anesthesia by one of the anesthesia specialists. As sometimes happens in the best of hands, Miss Grady sustained a laceration that required treatment. The hospital and insurer had

already offered an adequate settlement, but this had been refused. She wanted more.

Miss Grady had presented as evidence reams of articles and chat room conversations where she had bewailed her symptoms and had received sympathy and advice from facebook friends. Judging from the number of pages of “evidence” she had compiled, I wonder when she had time to eat. I noted that despite her distress, she had only seen a throat specialist a month before trial, upon referral by her attorney, in order to get a report. That specialist, of good reputation, had dutifully reported on Miss Grady’s complaints and that these had followed the throat laceration. On his office notes, practically illegible, I made out, “patient refused flexible laryngoscopy. “

My expert explained to me that this is a thin flexible tube that is like a telescope. It is easily passed through the nose and towards the voice box- the larynx. That way the doctor can see the entire throat easily and accurately. He can also take pictures and video. He offered to loan me the laryngoscope for trial.

At trial, Miss Grady bemoaned her pain and suffering, how her life was ruined, etc. Her lawyer quoted from some of the reams of downloaded advice. After two grueling hours, the judge turned to me to begin my questions. I arose, tall, and said that I had no questions. The judge, jury, and other attorneys were surprised, very surprised. Indeed, the judge made sure he had heard correctly and asked again for my questions, and heard again, “No, your honor, no further questions.”

His honor was debating whether to break for lunch at 11:15 and decided that the jury had suffered enough those past two hours and took the lunch break.

When they returned, the jury looked like they were ready for their afternoon naps. I knew I had to make this good. I called their medical witness to the stand; call him Dr. Roberts.

“Dr. Roberts, isn’t it true that you are held in the highest regards by your medical community? That many doctors refer patients to you for consultation?”

Now relaxed, Dr. Roberts readily admitted, “Yes.”

“And I understand that doctors in your own specialty refer their own family and friends to you too? I believe you have performed surgery on their families?”

Now suspicious, but what else could he say? He replied, “Yes.”

“And yet when this woman came to you with those complaints she REFUSED to allow you to use your excellent skill and experience to make her well. “

I didn’t walk to my desk, I glided. I swooped up the two foot long tube laryngoscope and presented it to the good doctor.

“Is this the instrument you wished to examine Miss Grady with?”

“Yes.”

“How often would you estimate that you use this examining tool in your practice?”

“About 10 to 15 times a week.”

“Do other doctors in your field use this too?”

“Oh yes, it is used by all the doctors in my field. “

Now was my turn to show this long black snake like thing to the jury in a favorable light.

Like the best British butler presenting the chief course, I floated to the jury, presented the thin spaghetti of a tube to each juror, urging them to feel the soft body. As I glided from one juror to another, they reluctantly touched the soft rubber; when they did, I maneuvered the supple soft surface so that it massaged their hesitant fingers.

Finally, I replaced the instrument in its sponge lined case, another pirouette, and earnestly faced each juror, and said, “Here you have a fine doctor, held in the highest regard by all his associates and fellow specialists, and yet Miss Grady REFUSED to allow him to clear her of her complaints. Instead of seeking genuine help from a leading doctor, she,” snort and scowl, “seeks advice from strangers on the internet!” At this moment I picked up the ream of internet downloads that had been presented as evidence, and let it drop with a very loud thud on the exposed wooden table.

“Ladies and gentlemen of the jury, when you are suffering, and you are seeing the top doctor who treats that condition, do you REFUSE to allow him to help you?” My swan dive dropped head and hands clearly telegraphed, of course not!

My clients were very pleased when the jury awarded Miss Grady one third of what the insurance company had offered in the beginning.

One of my idols was Raoul Magaña. Without doing ballet he could charm and instruct a jury in a wondrous manner. With medical experts he would start by naming the five layers of the skin, and ask if that was the correct list, and in the correct order. Puzzled, they would nod or mumble an answer. None dared to try to

correct him. Whatever area of injury was the topic, he would ask the expert to please correct him about his layman's understanding of the nerves, arteries and veins to that area. Then he would speak of the muscles and their function with utmost familiarity. Early in my practice, I tried to do the same, but the experts kept correcting my mispronunciation's.

Still, Magaña's model of total preparation has held me in good stead. I have built up a network of hospital librarians and experts. When I scan the biographies of opposing experts I look for "errors." One expert listed membership in a prestigious hospital. A letter I wrote to that hospital quickly brought the reply that "Dr Smith" was not now nor had he ever been a member of that hospital staff. Instead of immediately disqualifying his report, I waited for trial. Meanwhile I practiced my ballet steps.

**"Dr Smith, Is this a copy of your curriculum vitae?"**

**"Yes," was his casual answer.**

**"Are there any corrections or updates you need to make?"**

**"No."**

**"Please read the part I have highlighted."**

**Now his pink skin began to show an unhealthy redness.**

**"Staff member at \_\_\_\_\_ Hospital."**

**Now with my best pirouette, I retrieved the letter from the hospital, placed it into his now sweaty hand, and asked him to read the letter from said hospital. He did, almost inaudibly, with the judge reminding him to speak up for the court reporter. When he finished he stated:**

**“My secretary must have made a mistake.”**

**Now I did a two step turn to the jury and gave my impassioned “save the world” speech.**

**“A MISTAKE! Like when people pretend to be police officers, or criminals assume a victim’s identity, and run up credit card debt that ruins someone’s credit, or when someone pretends to be a doctor and harms the patient?”**

**Of course Dr Smith was disqualified, and his report was deleted from the evidence.**

**However my ballet steps are not always fortuitous. The other day my opposing counsel asked a question that I immediately objected to. You have heard the expression “he leaped to his feet to object.” But in my case my leap, my Grande Jete, took me several feet high and I landed nearly face to face to the judge. He was so startled; poor man couldn’t figure out if I was actually going to attack him like in those Vampire movies, that he quickly muttered objection sustained, more for the purpose of saving himself. My worthy opponent was startled to a most embarrassing degree. He said, “No further questions your Honor. “Then he quickly excused himself for a run to the men’s room. Effective or not, I must remember that “he leaped from the chair,” does not mean a ballet leap.**

**I get to practice my ballet often these days. Experts report being president of Neur Ortho Trauma Society, of which they are the only members. Or, experts will claim to be diplomats of Ortho Nova Orthopedics, turns out there is no known record of such a society. The judges know me and look forward to my pirouette as I explain to the jury about the phony credentials of the “expert.”**

Of course, the old rules still apply. Ballet or no ballet, good preparation is best for serving your client. Also, my days may be numbered. Another new attorney has come to town. Seems she was a working ballerina before turning to law. Although I am 5'10" and she is a well-proportioned 5'6", the other day somehow, she showed up with what must have been a form of Ballet shoes and I swear, she was almost my height. Worse, when I did my fancy turns, she quipped, "My learned attorney has said that my client should pay a fine, and he emphasized it with this movement." She then made a turn that I had used, but hers was truly graceful. She continued. "Just as my learned client makes errors in his ballet steps, so does he make mistakes in claiming that my client should pay a fine."

So now, when Miss. Framin and I are both scheduled in court, it is standing room only with knowledgeable visitors. She keeps showing me up! I think I must either give my my fancy steps, or, gasp, start taking ballet lessons!