

If the defense refuses to produce a witness at the time of trial, what can happen? What inference can the jury draw as a result of the defense refusing to bring in this critical witness? You want to know the answer? Come join me as I share with you some great information. Hi, I'm Gerry Oginski. I'm a New York medical malpractice and personal injury trial lawyer practicing law here in the state of New York. It's a gorgeous day today here in Great Neck. It's a bit chilly. It's about a week away from Thanksgiving and now I just want to share this great information with you. So, let's say this is an accident case, and now the defense has had an opportunity to have you examined by a doctor of their own choosing. And now during the course of trial, they choose, actively choose not to bring that doctor in to come in and testify. What can happen in that instance? What does the judge tell the jury if the defense refuses to bring in their doctor who examined you to contest the severity of your injuries? You want to know what can happen? We can ask the judge at the end of the case for a missing witness charge. Now, what does that mean? It means the defense went out, hired their own doctor to go ahead and examine you for the sole purposes of contesting the severity of your injuries. And you presume that if the doctor came to conclusions to show that your injuries really are not as bad as you think they are, that they would bring that doctor in to come in and testify and explain to the jury what examination he did, and his conclusions that your injuries really aren't as bad as you claim they are. Well, what happens if now, at the end of the case, the defense says, "Your Honor, at this time we rest," and now they never brought in that doctor to testify. They simply cross-examined whatever doctors we brought in to talk about your injuries. Is that sufficient for the defense? Well now at the very end of the case, if the judge agrees with us, and now the defense does not have a valid explanation about why they are not bringing in their expert. Let's say the doctor is deathly ill or he's in another country, he can't come in to testify. If they don't have a valid explanation, there is a very good chance that the judge will give the jury what's known as a missing witness legal instruction. And that basically tells them, listen, the defense had an opportunity to examine this injured victim. They hired a doctor to do that, and now, you can infer why they didn't bring in that witness and assume that if they had information that would help them, they certainly would've brought that doctor in to testify in this case. And because they actively chose not to, now you can infer that those injuries really are as significant as they are, and otherwise, they would've brought this doctor in to testify against them. So why do I share this great information with you? I share it with you just to give you a tidbit of information about what goes on in the litigation process in a car accident case, in a medical malpractice case and even in a wrongful death case. You know, chances are you're watching this because you have questions or concerns about your own particular matter. Well, if your matter did happen here in New York and you do have legal questions, what I encourage you to do is pick up the phone and call me. I can answer your legal questions. You know, this is something I do every single day and I'd love to chat with you. You can reach me at 516-487-8207 or by email at [Gerry@Oginski-law.com](mailto:Gerry@Oginski-law.com). That's it for today's quick video. I'm Gerry Oginski. Have a fantastic day!