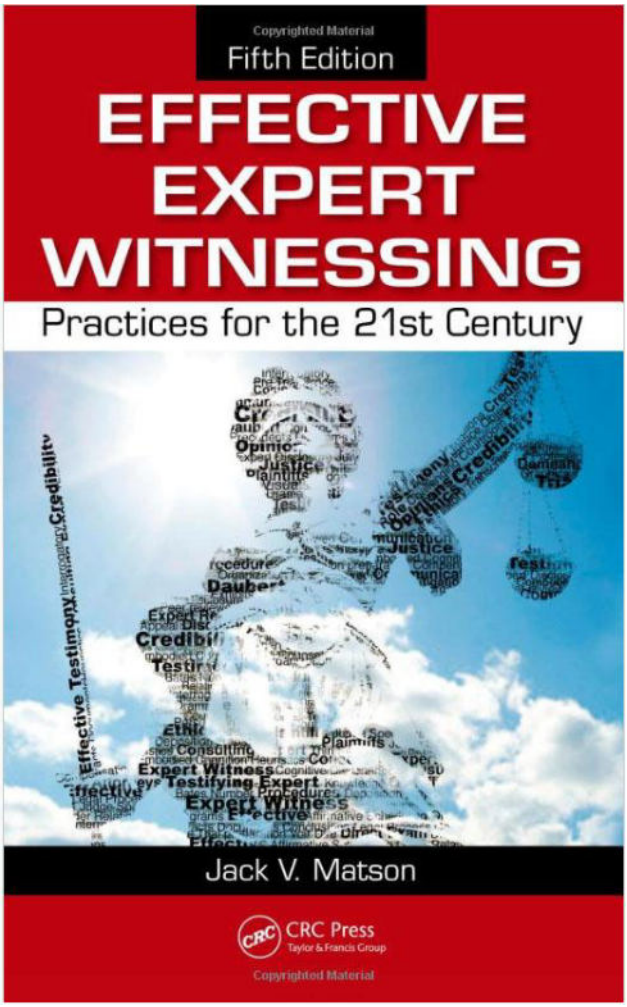

EFFECTIVE EXPERT WITNESSING BY MATSON

Study Guide for IAI CSCSA Exam

ABSTRACT

A review of key terms from third required reading for the IAI Certified Senior Crime Scene Analyst exam. While it is strongly recommended you read the entire book, use this guide to assist you in your learning.

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Chapter 1: The Legal Environment

- **Litigation**: A legal proceeding between two or more parties in an attempt to "right" an alleged wrong. It's more often about losing less than winning more.
- Lawyers are the vanguards of the justice system.
- The American Bar Association's Model Rules of Professional Conduct: provide attorneys with a framework for carrying out their responsibilities to their clients, the courts, and society in a professional manner.
- **Model Rules**: Require lawyers to provide "competent representation" to their clients in the areas of legal knowledge, skill, thoroughness, and preparation.
- **Legal knowledge includes**: Knowledge of federal and state rules of evidence and civil procedure, as well as precedents set by case law, in order to "advance and protect the integrity of the fact-finding process."
- **Attorney-Client relationship**: Is formed when the case is accepted. The relationship is documented in an agreement that clarifies the responsibility and expectations of each party.
- **Evidence:** Is information presented to a court to support or refute a case or a position in a lawsuit. May include oral testimony or material items.
- **Federal Rules of Evidence**: Adopted in **1975** to provide uniform guidelines that specifically address the admissibility of evidence.
    - Rule 104: Judge decides if individual is competent to be a witness
    - Rule 104(b): Gives the scope of the judge's responsibility.
    - Rule 401: Addresses what kind of evidence is relevant.
    - Rule 403: Excludes evidence, even though relevant, on the grounds of prejudice, confusion, misleading, unfounded, waste of time.
    - Rule 702: Allows admission of expert testimony if it will be helpful in deciding the facts.
- **Expert witness**: Can be portrayed as liar or hired gun. Two types of witness:
    - **Lay witness**: They saw or heard something
    - **Expert Witness**: Are able to explain facts that might otherwise escape notice and consideration. Most often challenged on the reliability of their interpretations of the facts and on the objectivity or bias of their testimony.
- **Two types of Expert Witness**:
    - Consulting: Proved background knowledge and lend their expertise outside the courtroom.
    - Testifying
- The distinction between a testifying expert and a consulting expert is important because the identity and opinions of testifying experts must be revealed to the opposing party in advance of the trial.
- Testifying experts are required to reveal all materials provided to them by attorneys and to provide data and pertinent information used to form opinions.
- Consulting Experts can be divided into three categories:
    - Experts that do not testify, they help in prep. Their opinions can be discovered only in exceptional circumstances.
    - Experts that are consulted informally in trial prep. They do not have to be disclosed.

    - Experts that have personal knowledge about the facts. They are not included in Federal Rules of Civil Procedure (26)(4)(b).
- Judicial rules for consulting experts are significantly different. All communication is protected so open discussions can be encouraged.
- **Expert Reports**: Should address explicitly the factors for reliability and relevance. Include:
    - Qualifications
    - Compensation received
    - List of cases involved in for last 4 years
    - Any publications written

Chapter 2: A Closer Look at the Impact of Daubert

- **Frye:** Evidence admissible if it was generally accepted by the scientific community. Experts were expected to explain why and how their work met the test of general acceptance. Novel theories could not be presented to the jury, even when the expert's credentials and methodology were valid. (Until they were accepted by the rest of the scientific community).
    - It excluded junk testimony which often was misleading the judge and jury.
    - It limited the use of scientific evidence that had not yet gained general acceptance.
- **Daubert:** Federal courts were given far greater flexibility in determining the admissibility of expert scientific testimony. Judge became the "gatekeeper".
    - A judge can exclude expert opinion as long as they are not abusing their discretion.
    - Focus can now be placed on the principles and methodology of the experts' testimony instead of the conclusion.
    - Judges can hire experts to help them understand the testimony being given before making a ruling.
    - Daubert serves both to limit as well as to broaden the admissibility of evidence.
    - Not all courts 1st -11th use the Daubert standards the same way. They can use/interpret them anyway they see fit.
    - Not all states follow or adhere to Daubert standards in their entirety. (Florida, Maryland, NJ, NY, Penn)
- Choosing an expert requires consideration of the follows six things:
    - Qualifications
    - Ability to communicate
    - Litigation experience
    - Commitment
    - Proximity
    - Cost
- In the absence of all the facts, experts must make reasonable assumptions and extrapolate information upon which to base their judgments and opinions. As a consequence, their realities end up constituting the basis for challenging the admissibility of their opinions.
- The expert's report and testimony, whether in deposition or a pretrial hearing, must clearly and explicitly cover how the expert has met each of the appropriate factors.
- Experts must use theories that have gravity. (pg 19)
- **Junk Science**: Is the willful manipulation of biased data, false or erroneous conclusions, and fraudulent methodology in the attempt to substantiate a point "scientifically" that, in reality, cannot be substantiated. Science or theory that has not been subjected to the scientific method and therefore lacks defensible support in the scientific community.
- Judges must be careful not to let the adversarial system degrade respectable and quality work as a matter of course just because someone has called it "junk."
- **Rule 701**: Governs opinions offered by lay witnesses. The new amended 701 does not distinguish between expert and lay witnesses, but rather between expert and lay testimony.

- **Rule 702**: Specifically applies to scientific and technical experts. The new amended 702 extends the Daubert gate keeping role of trail judge to all expert testimony, in accordance with the Supreme Court decision in Kumho.
- Under some instances witness can testify under both 701 and 702 in the same case.
- **Rule 703 amended**: Prohibits disclosure of otherwise inadmissible data unless the court determines that the value of the evidence to the jury in understanding the expert's opinion substantially outweighs the potential for bias or prejudice.
- **Rule 705**: Amended to allow an expert to provide his or her opinion without disclosing any underlying facts or data.
- **Rule 706**: Allows federal courts to appoint their own expert witnesses.
- Many states have adopted the Federal Rules of Evidence, or a close approximation such as Uniform Rules of Evidence (1999).

Chapter 3: Key Cases and Precedents Affecting Expert Witnessing

- **Frye v. United States (1923)**: Murder case. Polygraph test. Defendant wanted the polygraph test admitted. Appellate court said expert witness testimony only if founded on methods, principles, and procedures agreed upon as valid by the scientific community.
- **Frye test requires trial court to consider two factors before admitting expert testimony**:
    - Court must identify the witness's expertise in a specific field of science.
    - Court needs to determine whether methods, theories, and conclusions of the expert meet the "general acceptance" standard.
- Consensus is reached when scientists evaluate the quality of a proposed scientific theory through peer review, publication, criticism, replication, and determination of reliability in predicting future results.
- Frye left no room for new, emerging, or novel scientific theories that might support a party's claim. Science is always changing so this caused issues.
- When the **Federal Rules of Evidence were adopted in 1975**, the Rules Committee declined to incorporate the Frye Test in the rule governing the admissibility of expert testimony.
- Proponents contended that the "general acceptance" standard established by Frye ensured reliability of evidence based on established science, promoted uniformity of decisions, and expedited the trial process by reducing arguments concerning the admissibility and reliability of testimony.
- **Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993):** Infants born with birth defects from mothers taking Bendectin a morning sickness pill. One of the most influential cases to set the standard for the admission of scientific evidence in light of the Federal Rules of Evidence.
- Supreme Court rejected Frye as the sole standard for the admissibility of scientific evidence. Noting the passage of the Federal Rules of Evidence, the Court held that it was within the purview of trail judges to exercise their discretion in admitting expert testimony; trial courts were "gate keepers" for such admissions.
- The Court identified four factors that courts should use to determine the reliability for scientific expert opinions:
    - The science can and has been tested.
    - The science has been subjected to peer review and publication.
    - The known or potential error rate of the science.
    - The general acceptance of the science in the relevant scientific community.
- The practical effect of these changes is that experts are likely to be subjected to a Daubert challenge to exclude the expert's testimony prior to the trial.
- **The Daubert Trilogy**:
    - **General electric v. Joiner**: Established the standard of review for Daubert decisions.
    - **Carmichael v. Kumho Tire Company**: Expanded the scope of Daubert to all experts, rather than only experts on scientific matters.
    - **Daubert itself**.
- **Rule 801:** Defines hearsay as a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

- **Rule 803**: For expert witnesses. Enumerates 24 exceptions that allow hearsay evidence to be admitted. Statements contained in published treaties, periodicals, or pamphlets etc.

Chapter 4: The Pretrial Process

- In most cases, the first formal notice of a lawsuit is the complaint.
- Providing there are no objections to the complaint, the opposing party files an answer.
- All claims are typically denied and so-called affirmative defenses are presented.
- An affirmative defense is a legal basis to bar a plaintiff from recovery. It refers to legal grounds for dismissal, as opposed to factual grounds.
- Common **affirmative defenses are**:
    - Waiver
    - Assumption of the risk
    - Statute of limitations
- A claim made by the defendant against the plaintiff is called a counterclaim.
- Third-party claims involve shifting the responsibility to another party.
- For any affirmative defense or third party claim, the burden of proof resides with the defendant.
- Complaints, affirmative defenses, and counterclaims combine to create the pleadings in a case and define the legal issues, factual contentions, and theories of relief or defense.
- **Discovery:** Is the formal pretrial process of fact finding. No surprises. Both sides use the information provided during discovery to develop their strategies for trying the case. It is often the most time consuming aspect of litigation. Sometimes lasting years.
- **Discovery is composed of three primary parts**:
    - Interrogatories: a common form of written discovery. Comprises of written questions sent to the opposing party.
    - Request for production of documents
    - Depositions
- Information must be relevant and must lead to the discovery of admissible evidence.
- To be successful as an expert witness, you must know the strategy and tactics required to organize yourself and your information most effectively.
- Experts should assist in both developing and drafting interrogatories.
- Identifying the right questions and giving thorough responses during the interrogatory process can greatly enhance the defensibility of expert testimony.
- **Rule 26 of the Federal Rules of Civil Procedure**: Were amended to limit both the number of interrogatories a party may propound to 25, including subparts, and the number of depositions to 10.
- **Rule 26(a) (Civil)**: Requires that each party provide to the other the following information without waiting for a discovery request:
    - The names and addresses of all witnesses and the subject matter on which they have information.
    - A list of all relevant documents, data, or other tangible information relevant to the proceedings that the party has in its possession.
    - Any and all damages claimed, including the basis upon which they were calculated.
- **Rule 34 in federal cases**: The production of documents.

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- An effective expert needs to educate the lawyer on the types of documents that are available and that are most likely to provide the best insight into the case and the opposing party's position.
- Some documentation is considered privileged and does not have to be turned over to opposing council.
- **Three categories of Privileged Information**:
    - Attorney Client Privilege
    - Work Product Privilege
    - Proprietary Processes and Patents Privilege
- **"In Camera"**: A process where only the judge reviews the material (in secret) before issuing a ruling on the validity of the claim of privilege.
- **Chain of Custody**: Refers to the ability to:
    - Establish the existence of a piece of evidence currently within a person's possession, custody, or control.
    - Illustrate the safeguards taken to preserve the condition of the evidence while in that person's control or possession.
- To avoid **"spoliation"** of evidence, the expert should consider the following:
    - Work closely with the attorney who engaged you. Explain what tests you will be doing and if the evidence will be altered or destroyed during this process.
    - Determine if any relevant professional organizations have testing protocols applicable to the testing to be conducted.
    - Document the testing process and results with photographs and/or video
    - Do not throw away anything.
    - Anticipate potential questions about the testing process and address them before court.
    - If testing, and evidence will be destroyed (unavoidable) have opposing council and their experts test in a neutral process (together)
- Experts alone are expected to handle evidence in accordance with scientific, technical, and legal standards and to maintain the chain of custody properly.
- The consulting expert provides background knowledge, while the testifying witness provides testimony in support of the party's claims in depositions, hearings or trials.
- The identities of experts who are informally consulted and retained but who will not testify are protected by law, as are their reports and other work product.
- An expert report is a formal written document that contains:
    - Testifying expert's credentials,
    - Opinions,
    - The basis for those opinions,
    - Conclusions to be offered at trial.
- A supplementary expert report: Is written in cases that require a preliminary report early in the proceedings when little information is available, or where the expert changes his/her opinion or conclusions based on newly discovered material or errors.
- Draft reports can be discoverable and presented as evidence in court. They can be used against the expert because it demonstrates weaknesses and ambiguities prior to developing the final report.

- **Federal Rule 26: amended 2010**. From that date forward, draft reports are exempt from mandatory disclosure. It only affects cases filed in the federal court system.
- Information that you relied upon to develop your opinion is most likely also discoverable. Papers, articles, memos, calculations, and facts you used to prepare your expert report must be made available to the other side.
- **Rule 26(a)(2):** Requires that any expert who may be presented at trial must be identified beforehand and that a signed report must be provided.
- The 1993 changes not only made the filing of expert reports mandatory in federal court cases, but also changed the way expert testimony is accepted by the court. Experts must include all facts and conclusions in their written report because what they include in those pages will dictate what is allowed in their oral testimony.
- A professional expert report should include the following items:
    - Your qualifications
    - Clients name and address
    - Client's attorneys name and address
    - General description of the subject
    - Objective
    - Methodology
    - Summary of the conclusions
    - Demonstrative evidence (photos, charts, etc)
    - Test examinations
    - Consultation with other experts
    - Findings on physical examination
    - Limiting conditions, exclusions, and disclaimers.
- **Deposition:** The purpose is to gather information, not to try the case. They provide the best, most direct way to define the bases of expert opinions closely and to characterize the background and expertise of the witness.
- **Under Federal Rules of Civil Procedure Rule 26 (b)(4)(A)**: The deposition of an expert is to be taken after the expert report has been completed and reviewed by parties from both sides and all supporting information has been identified. The deposition transcript becomes a written record by which an expert or witness can be impeached if the testimony varies between the deposition and the trial. If there are multiple expert reports, there can be multiple depositions. The other side has the right to depose an expert whenever opinions change or new facts are added to the existing opinions and a supplemental report is filed.
- There are **two kinds of depositions**:
    - **Discovery:** Taken by the opposing party to learn what the witness has to say.
    - **Evidentiary**: Taken to record and thereby preserve a witness's testimony for use at trial.
- Depositions can be more important than trial, since most cases settle and never get to the courtroom. They are used to set the tone for the case. Can be either major battlefields or minor skirmishes. What and how things are said can establish the foundation for settlement negotiations and mediation.

- The scope of questions at a deposition can be much broader than at trial. Opposing attorneys may take greater risks in the questions posed.
- As an expert witness you might be asked by the attorneys to help in the depositions to help create a strategy for cross examination, should the case proceed to trial.
- Failure to appear at deposition can result in a number of different sanctions, such as monetary penalties, or exclusion of the expert's testimony.
- **Two types of subpoenas** are associated with expert witnesses:
    - **Simple subpoena**: Appear at a certain time/place
    - **Duces Tecum subpoena**: Most common for experts. Requires that specific materials, files and documents be brought to the deposition.
- Preparation for a deposition is different from preparation to testify at trial. You must have a complete grasp of materials, pleadings, interrogatories, documents, depositions of other witnesses, and any other material supplied by the attorney. As an expert you must be able to express your opinion and to provide the professional, academic, or research foundation supporting it.
- Practice how to answer open-ended and "help me" questions appropriately without falling into the traps that opposing lawyers may set.
- Your attorney needs to give you direction on how to handle document production in a way that both is reasonable and honors the subpoena. It is a good idea to ask your attorney before the beginning of the deposition about any stipulations or agreements between the two parties that might have an impact on your testimony.
- The deposition can be harder than the trial. It's harder because you have no control over the questioning process and may only answer the questions asked. The opposing attorney is in control.
- The opposing attorney's job is to size you up, and if possible, set you up for a Daubert motion to exclude you as a witness or to impeach your testimony at trial. They want to build doubt in the veracity of your opinions. The more holes they can find and develop in your testimony, the less the case is worth to the side retaining you.
- Opposing council is looking for the following weakness' in the experts
    - Bias
    - Credibility
    - Truthfulness
    - Likeability
    - Self interest
- Damage the attorney can inflict by clouding your opinions and undercutting your credibility is considered the highest order of work well done for his/her client.
- The opposing attorney has multiple goals in questioning you:
    - **Impeachment:** The attorney will be searching for inconsistencies, contradictions, and mistakes in your work. As the attorney approaches a weakness of yours they have two choices: Bore in and make you aware of it or hold off and blitz at trial. You will get to know what the opposing attorneys think/know about your testimony and where they think you are vulnerable.
    - **Daubert Challenge**: Hitting on the relevance and reliability test.

  - **Background**: Education, years of experience, publications. They will attack where you are weakest
  - **Character/bias**: Emotions do not get recorded in the deposition transcript; only your words do. Be professional in your demeanor and responses. Take time if necessary to think about your responses before answering. Time may be noted but has little or no impact on your testimony.
  - **Fencing/"freezing**:" Deposing attorneys may try to limit the extent of your testimony to certain parts, usually the weaker or vulnerable parts. By building a "fence" around your testimony, they are able to limit what you can say at trial or your ability to elaborate later. They do this by starting broad, and then narrowing the questions "funneling" you in.
  - **Stretching**: Stretch your opinion beyond your expertise
  - **Endurance:** Will try and wear you down with long hours of questions and then get you to answer wrong because you're tired.
- Additional pointers for depositions:
  - Never "volunteer" information
  - Take time to think before answering
  - Make sure that you understand the question
  - Never guess at an answer
  - Never get emotional and lose your cool
  - Finish your answers
  - Correct your answers
  - Take time to review documents
  - Cautiously answer hypothetical questions
  - Listen to objections
- At the end of deposition taking you will be asked if you want to review the transcript in order to correct any possible errors. This question will determine whether you waive or reserve the right of signature.
- A waived signature on a deposition means the transcript will stand as written by the court reporter as the official record of the deposition.
- A reserved signature on a deposition means that you will have time to review and make any changes in either form or substance, provided you give the reasons for making them.
- Do a careful review of your transcript and correct any errors.

Chapter 5: Preparing For Trial

- A plausible and convincing trial theme is an important factor in winning a case. The theme provides the jury with a framework to decide the case and gives attorneys the skeleton upon which to develop a strategy for winning.
- Attorneys use the themes as a filter for the evidence presented to the jury.
- Develop a complete list of questions that you want to be asked on direct examination.
- One of the most effective ways to educate the attorneys with whom you are working is to go through a mock cross-examination of your opinions before trial.
- During the mock examination, the attorney should attempt to push you to the boundaries of your comfort zone during cross examination. This with establish your boundaries and then do not cross them. This exercise will instill confidence in you and ensure that you are prepared.
- A change of opinion after the discovery cutoff should be made only if absolutely necessary.
- Jury members rarely have any technical training. It takes jurors about 2 to 5 minutes to tune out highly technical and, to them, incomprehensible explanations of the expert opinion.
- You need to capture the jury's attention and make an impression that stays with them long after you have left the witness stand.
- **Highly effective ways to present information visually**:
    - Flip charts
    - Photographs
    - Drawings/computer graphics
    - Highlighted critical documents
    - Models: other side can use your model to demonstrate its own points.
    - Video: any longer than 3-5 minutes loses its force.
    - Animation
- Some motions seek the exclusion of evidence or testimony, including an expert's opinion (the Daubert motion).
- **Federal Rule 56 of civil procedure**: A motion for summary judgment. Typically does not require a hearing, instead, the parties submit documents, deposition transcripts, and affidavits to show that none of the central facts of the case are in dispute.
- In many cases a court can resolve Daubert issues when addressing a motion for summary judgment.
- **Motion in Limine**: A motion to prevent an opposing party from introducing or mentioning a particular fact in front of a jury. In federal cases Evidence Rule 104(a) governs this and states: a party may petition the court to preclude questions, facts, or evidence that are so prejudicial that merely asking the question or presenting the facts or evidence will have a prejudicial and/or inflammatory effect on the jury, despite an objection that could be raised.
- Successful Daubert motions to exclude your testimony go on your track record and will be used against you in subsequent litigation.
- The opposing side's expert testimony can be attacked at:
    - Deposition
    - Motion in limine
    - Motion for summary judgment

  - Daubert hearing
  - At trial
  - Motion for directed verdict
- Never forget that motions on the admissibility of expert testimony are often crucial to the outcome of a case and will be expediently filed whenever questionable expert testimony is encountered.
- The judge is responsible for determining the reliability and relevance of expert testimony and other evidence. He/she will also determine how broad or narrow testimony can be. Judges have two different approaches in this regard. They will allow everything, or they will restrict what is admissible and narrow the focus in order to expedite the trial. It is important to understand which will be employed and then tailor your testimony accordingly. A judge who understands the case may be more effective in transmitting clear instructions, which typically leads to a more just outcome.
- **Two types of Juries**:
  - **Grand Jury**
    - *Regular*
    - *Special*
  - **Petit Jury**: Citizens summoned to serve for civil/criminal jury trials.
- **Regular Grand Jury:** Consists of 15-23 members and serve a term of 6 to 18 months. They consider bills of indictment, hear witnesses, and determines whether there is sufficient probable cause to believe that an accuse person should stand trial in a criminal case.
- **Special Grand Jury:** Consists of 7-11 citizens of a city or county charged by a court to investigate and report upon any condition that tends to promote criminal activity in the community.
- Grand Juries do not determine guilt or innocence nor are expert witnesses used during their hearings.
- **7th Amendment guarantees a trial by a jury of peers**.
- Jury duty is mandatory. Must be a U.S. Citizen, at least 18 years of age, understand English, physically and mentally capable of serving. Never convicted of a felony. Can be required once every two years or more.
- Some jurisdictions use:
  - Voter registration records
  - Customer mailing lists
  - Telephone directories
  - Utility company lists
- **Voir Dire**: Is the process used to examine prospective expert witness or jurors under oath regarding their qualifications and suitability to serve in that specific trial. The purpose is to eliminate potential jurors who may be biased and therefore unable to make a fair and impartial decision based on the evidence presented.
- Attorneys want to know if jury members have:
  - Prior knowledge or information about the case
  - Harbors opinions that may affect his/her ability to be both fair and impartial
- There are **two types of challenges that can be used to dismiss a potential juror**:

- **Challenge for Cause**: Unlimited number, show potential bias so juror is incapable of being impartial and reaching a fair verdict.
- **Preemptory Challenge**: Limited in number, do not need a reason to be stated or substantiated as to why they are being dismissed.

Chapter 6: The Courtroom Drama

- The judge decides all issues of law, but the jurors are the ultimate arbiters of the facts that are presented.
- The jurors don't vote on any clear sense of absolute truth. They vote on their impressions.
- It is more important for the jury to hear what it needs to know rather than to hear everything that the expert knows. Answers to questions must be directed to and have an impact on the jury. To have an impact, the jury must understand what is being said. The jury will reward and find favor in the side that helps them clearly understand the technical aspects of the case.
- Trial begins with opening statements. To many legal experts this is the second opportunity in the court trial process to win or lose a case (after jury selection). They reveal to the judge and jury the opposing story lines. Lawyers outline the issues involved in the case and the evidence to be presented that will firmly establish the validity of the claim or the defense. Weaknesses will also be addressed about the case as well as the experts.
- Exhibits can be used to better illustrate points made during the opening statements and can be far more effective and convincing than oratory alone.
- A lawyer has an opportunity to preempt the opposing side's argument concerning that testimony, while building credibility with the jury when it shows the weaknesses of their case in the opening statements.
- The opening statements should also prepare the jury for the more antagonistic aspects of the trial.
- Opening statements are not considered evidence and, in theory, are intended simply to acquaint the jurors with the nature of the case. They set the tone for the trial. This first impression often profoundly influences the final verdict.
- **Direct Examination**: Considered the HEART of the case. It consists of questions posted to a lay or expert witness to elicit facts that corroborate a party's theory of the case. The goal of direct examination is to educate the judge and jury.
- It is imperative that direct testimony be:
    - Understandable
    - Interesting
    - Persuasive
- **Direct Testimony**: Should hit the high points and refute any weak points of the case. It should also identify any weaknesses so that, on cross-examination, the jury has already heard the issue and is impressed by the candor of the witness in revealing facts that may be brought up by the other side.
- Limit direct expert testimony to hours, not days. A time limit should also improve the quality of the witness's testimony by making it more succinct.
- It is critical that your qualifications be established prior to providing any opinions.
- **Voir Dire**: Is an examination of an expert's qualifications but is more often a preliminary mini cross examination.
- Direct examination is often a test of the credibility and preparation of the expert witness; therefore, your credibility as an expert witness must be consciously maintained.

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- Many times, an expert's credibility is damaged during direct examination due to the nature of the questioning by the expert's own lawyer. You must be perceived as a responsible, objective observer. If the witness looks like a "hired gun" his/her testimony suffers.
- The expert must show independence of thought and no bias in coming up with those opinions.
- Remember that anything you say in open court or in deposition is public record. Your statements may stay with you for the rest of your career. Your honor and credibility are all that you have to offer. You must protect them from even the hint of tarnish.
- In many cases, the success or failure of the case depends on the effectiveness of the expert during the trial.
- The attorney can enhance the effectiveness of the expert by carefully orchestrating the way in which expert testimony is presented. This can be achieved by organizing the direct testimony of experts using a method that includes "introduction, tickler, qualifications, tender, opinions, bases for opinions, rationale, and anticipated cross-examination" challenges and questions.
- Experts should be introduced in a way that establishes a rapport between them and the jury and that reinforces that they are real people and not simply educated or famous mercenaries.
- The directing attorney must ensure that you look and act in a way that reinforces your role as an independent professional, rather than allowing you to be perceived as a co-counsel.
- The opinion of any expert is greatly diminished if the jury believes that the opinion has been purchased.
- The examining attorney relies as much on the credibility of an expert as on the opinions that the expert provides in support of the case.
- **"Tender"**: In some jurisdictions the formal presentation of an expert and qualifications is referred to as "tender". The act of tender provides the opportunity for the opposing attorneys either to perform a voir dire inquiry or, if allowed by the judge, to present a Daubert challenge based on an objection to the claim of expertise.
- Examination of a witness can be accomplished through:
    - The question and answer technique (aka "two-step" or "opinion-first"). Attorney has more control over the testimony.
    - The narrative-testimony technique
- **Rule 611 of the Federal Rules of Evidence**: States that attorney's cannot ask questions that suggest or contain the answer during direct examination.
- The narrative testimony technique provides a forum for you to offer your opinions and the bases for them in a single, albeit sometimes lengthy, answer. It allows you to appear more genuine to the jury and is especially effective when you have a gregarious and engaging personality.
- The use of high-impact visual materials is strongly suggested during direct examination. Major opinions and supporting facts that are visually displayed are essential in building the case.
- **"Theory Differentiation:"** It is intended to expose the flaws and failures of the other expert's theories without attacking the experts themselves. Done with grafts, pictures, etc.
- Personalizing your testimony is in many ways more important than the testimony itself in establishing your credibility.

- Your direct examination should clearly articulate your opinion and illustrate how you arrived at it, why that particular opinion is relevant, and where you are going next with your testimony. Your attorney must help you create a bond of trust with the jury that allows you to build the case persuasively.
- Successful cross-examination begins with thorough preparation and pre-trial discovery before the witness testifies.
- The **bases to challenge the credibility of an expert or to diminish the impact** of the expert's testimony comes from:
    - Qualifications
    - Proffered opinions
    - Foundational bases and data for those opinions
    - Publications
    - Previous testimonies provided
    - Fees
- Examining you own testimony as if it were the testimony of an opposing expert is an excellent way of preparing for cross-examination.
- Evidence introduced and substantiated on cross-examination often has a greater impact than evidence introduced on direct.
- Being ill-prepared and surprised on cross-examination can destroy your credibility as well as the entire case for your side.
- Irving Younger's "**Ten Commandments" for attorneys conducting cross examinations**:
    - Be brief
    - Ask short questions; use plain words
    - Ask leading questions
    - Ask only questions to which you already know the answers
    - Don't let the witness merely repeat his direct testimony
    - Don't let the witness explain
    - Listen to the witness's answer
    - Don't quarrel with the witness
    - Avoid the one question too many
    - Save the argument for summation
- Opposing attorney will first attempt to impeach you and your testimony.
- Impeachment discredits the witness as a reliable source. The kiss of death for an expert.
- Impeachment is normally based on inconsistencies in an expert's testimonies and/or opinions.
- Public statements and presentations can be used against the expert, if the differences are of sufficient magnitude.
- If impeachment is not possible, the opposing attorney will then attempt to diminish the impact of your testimony. The effectiveness of the expert's testimony depends largely on the logic of his work product, his ability to clearly describe his work and state his opinions, and his readiness to answer challenging questions on cross-examination. Of crucial importance for the expert is to maintain his credibility in front of the jury.

Effective Expert Witnessing by Matson

- The most effective way to diminish the impact of an expert is to challenge the expert's credibility.
- If the other attorney pummels the expert it could turn the jury against the lawyer and towards the expert.
- It is important for you to understand the objective of cross-examination: to persuade the jury by whatever means available to accept the cross-examinating attorney's version of the truth.
- Attorneys sometimes use the **4 "C's" in cross-examination**:
    - Commit
    - Credit
    - Confront
    - Contrast
- Malone and Zwier identified the following techniques for cross-examination:
    - Constructive cross examination
    - Micro cross-examination: attorney will confront you with any contradictions and errors in your work and testimony.
    - Macro cross-examination: will attack your entire field or total area of expertise
    - Destructive cross-examination: will attack your credentials
- Cross examination there can be leading questions.
- A hypothetical question is one that assumes facts not in evidence, the answer to which requires a witness to guess or surmise the answer. The answer necessarily is an opinion. Can help clarify your opinion, but they also can flush out inconsistencies or portray you as unreliable.
- Hypothetical situations and/or questions signal danger and opportunity.
- When confronted with a hypothetical question you can do the following:
    - Answer directly and without qualification: risk losing the opportunity to explain how the hypothetical situation departs from the actual facts in evidence.
    - Decline to respond: will make you look vulnerable or cast doubt on the veracity of your opinion.
    - Ask for clarification: most successful approach.
- Cross-examination can be waived by opposing council. This sends a message to the jury that the experts testimony is of little importance or impact. It could also backfire and tell the jury that the expert is beyond challenge.
- Do not let the examiner cut you off or limit your responses. You may have to answer a yes or no question, but you also have the right to explain your answer.
- **Jury Instructions**: Purpose is to ensure that the jury decides the case pursuant to the applicable law, rather than according to any opinion of what the law should be.
- **Federal Jury Instruction Guide**: Judge directs the jury as follows: "If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely."
- Suggested jury instructions are prepared well in advance by the lawyers representing both sides and submitted to the judge.

- After the judge has given the jury instructions, the attorneys make their closing arguments. The defense always goes first.
- Closing arguments may draw conclusions and are designed to persuade the jury to accept the party's theory.
- Once the verdict is rendered, the attorneys may file various post-trial motions.
- Usually "no new evidence can be presented in the appeal process since the court will only consider evidence presented in the trial" and contained in the trial record. "However, there can be exceptions which could result in the appeals court ordering a new trial."

Chapter 7: The Art of Expert Witnessing

- Experts rely primarily on the attorney who hired them for the information necessary to do their work.
- Your first duties are to explore the technical issues and to educate the lawyer.
- Experts tend to gravitate to one point of view and negate dissenting opinions. Lawyers, on the other hand, live in a world of gray, where facts can be toned and shifted into various points of view.
- The lawyer has to instruct you on the precise legal standards that must be addressed and on any relevant tests followed in the specific jurisdiction in which the case is pending.
- **Maximized your Effectiveness by doing the following**:
    - Practice
    - Study
    - Be prepared
    - Be professional
    - Be organized
    - Tell the story
    - Show emotion
    - Educate
    - Create vivid visualizations
- Nothing improves our ability to be an effective expert witness like practice.
- Poor preparation not only can jeopardize the case at hand and your chances of being retained for future engagements, but also can result in personal and professional embarrassment and the loss of credibility.
- Your lack of preparation allows the opposing side to cast doubt, on the record, upon your opinions, methodologies, and conclusions.
- More knowledge makes a better expert.
- It is also critically important to know the composition of the jury.
- **Affinity Bias**: The more the jury relates to and likes you, the more credible you will be and, as a result, the more impact your testimony will have.
- Never exaggerate your qualifications.
- Be truthful and forthright. If you try to be an expert in many areas, the odds are that you will appear to the jury to be an expert in none.
- There is a fine line between impressing the jury and arrogance.
- The first few minutes of **direct examination** are critical in establishing your relationship with the jury. **You should do the following**:
    - Make eye contact
    - Sit up and smile
    - Speak loudly and clearly
    - Avoid jokes or anecdotes
- On cross examination, be polite to opposing counsel, but protect yourself and your reputation.
- If necessary, with the permission of the court, step down from the witness box to point out an exhibit or chart that reinforces your point.

- Ask for definitions of terms.
- Never argue with the opposing attorney. You only lose as your credibility suffers with the jury.
- Never personally attack the opposing expert witness.
- Choose your words carefully.
- Well organized answers are easier to follow and more likely to be understood and believed.
- In response to complex or probing questions, you should **frame you answers in the following sequence:**
    - Conclusion
    - Explanation of your method you used to reach the conclusion
    - Examples or analogy to drive home the point.
- Make your main points with strength of conviction
- Your role is to develop a common understanding of events.
- Different jurors will interpret information differently. Repeat what you say in different ways.
- If you maintain the juror's attention and confidently answer the questions, the jurors will perceive you, and the opinions that you give, as credible, and they will give great weight to what you say.
- Visualization is your most difficult task. You must take technically complex issues and break them down into components easily understood by the jury.
- You represent your profession and associated professional organizations.
- You are ethically bound to be totally candid with your lawyer on the development of your opinions.
- The lawyer is ultimately the spokesperson for his or her client and thus will want you to provide an opinion that most strongly supports winning the case. This is where the majority of ethical dilemmas arise.
- As an expert you are being "paid for the time to testify, not for the testimony."
- The single most important obligation of an expert witness is to approach every question with *independence and objectivity*.
- American Association for the Advancement of Science (AAAS) have initiated a "demonstrative project" aimed at testing and evaluating the use of neutral, court appointed experts in federal cases. According to Rule 706, the court can appoint neutral experts, as opposed to those chosen by the parties, to help assess and screen, effectively and impartially, substantial amounts of often contradictory scientific data in order to prevent junk science from entering the courtroom.
- Modern jurors have grown up with television, and they believe and remember what they see. Today's jurors must be shown as well as told. Digital imaging is the future.
- **Arbitration and mediation are the primary forms of Alternative Dispute Resolution (ADR)**.
- Arbitration typically involves a truncated presentation of facts and law before a panel of arbitrators chosen by the parties. Parties in arbitration are often more open to smaller damage awards in exchange for a less acrimonious and less costly process.
- Mediation differs from arbitration in that the decision of a mediator is nonbinding.
- The increasing use of ADR is going to require the expert to develop broader skills.
- No juries are present in arbitration, so experts can be less formal, but they still have to study the facts of the case and give their opinions.

- Part of the call for tort reform is in response to the enforcement of seemingly antiquated, unbalanced, and/or potentially obscure laws that tort reformers contend need to be reviewed, at the very least.
- The tort system was established to provide recourse for legitimate victims and to dissuade illegal injurious conduct.

Chapter 10: Psychology and the Art of Expert Persuasion

- Experts and attorneys have focused on the qualities of credibility that will resonate with a jury: expertise, confidence, objectivity, likeability, and the ability to educate and explain their findings. Is this what we should really be trying to do?
- Juror's psychological biases affect their views of expert witnesses.
- Attorney and Expert need to become more knowledgeable about the psychology of credibility, including applicable research on how confidence is measured, how likability and trustworthiness are determined, how body language is evaluated, and how lying is perceived.
- Jurors' increasingly sophisticated use of technology in their everyday lives affects their approach to a trial. Particularly, a complex trial, in many ways.
- Most jurors prefer visual versus oral modes of communication and learning.
- Their tolerance for dry verbiage is low and thus a trial can be tedious proposition for them. Their need for quickly moving, multicolor, multidimensional visual displays and models is high. They prefer expediency over depth of presentation, and they need drama and emotion to stay engaged.
- Law school creates attorneys who live in a world of analysis, procedures, and oral tradition. Many do not live where jurors live: in a world of emotion and instantaneous communication.
- Many experts want to talk to jurors with a high level of detail and have trouble "cutting to the chase" when it comes to providing their opinions. As a result, their testimony many be boring or tedious and many test the patience of even the most interested juror.
- Jurors have barriers or "mental handcuffs" that prevent them from listening to, understanding, encoding, and remembering evidence and argument without bias. Often their tech savvy ways decrease, not increase, their psychological barriers to learning.
- Juror stress has been well documented, along with the idea that jurors in cases tried in the public eye may need assistance in the form of counseling after making a controversial decision.
- 46.9% of individuals waking hours are spent thinking about something that they are NOT doing. Mind wandering.
- Faced with pressures to focus and make sense of information in an unfamiliar world, jurors resort to using cognitive and emotional strategies to simplify, sort, and deal with the judgments and decisions they must make in trials.
- Jury decision making is a complex phenomenon involving both individual psychology and group psychology.
- It is important to point out that the strength of the evidence presented at trial is most influential factor in jury decisions, but important (and often subtle) psychological factors can also influence the way that the evidence is perceived and interpreted.
- **Cognitive Dissonance**: A term that helps to explain why it is that jurors will attempt, in the context of being overwhelmed by two contradictory viewpoints (at trial), to resolve the dispute or argument into which they have been drawn quickly and efficiently.
- Jurors at trial will attempt to make an initial assessment of who is right or wrong during the early part of the trial. They will each watch the same information that others have viewed, but they will interpret this information according to their own views of the world. They will then proceed to

minimize and even forget the points that differ from their own theory of what happened, while remembering everything that fits into their theory.

- This concept teaches that lawyers and experts must look for ways to assess jurors' initial attitudes towards a case, as well as look for ways to match their worldviews.
- The implications of failing to help jurors resolve dissonance may mean that the psychological basket into which they choose to put the favorable evidence might not be the right basket.
- **Heuristics**: Generally speaking, if an individual has the cognitive resources (the mental capacity to process information) and is motivated to pay attention to the information, then he/she may go about an analysis of the known facts and circumstances to make a decision. If the individual lacks the capacity or motivation to process the information deeply, they will make their decision based on Peripheral cues the superficial characteristics of the witnesses (attractiveness, clothing, demeanor, delivery) as well as simple themes and even misinterpretation of information.
- The heuristic systematic model (HSM) posits that information processing either relies on the systematic analysis of information (when ability and motivation are present) or relies on heuristics. Heuristics are mental shortcuts that allow an individual to come to a quick conclusion based (often) on faulty assumptions. Several of the most important heuristics seen in jury decision making include:
    - Hindsight Bias
    - Anchoring
    - Availability
- **Hindsight Bias**: Tendency to overestimate the predictability of past events. (They should have known they were going to get hurt). Frequently operates against defendants because jurors tend to overestimate the likelihood that bad outcomes could have been foreseen or predicted and prevented. It is very difficult to overcome, but you can minimize the impact.
- **Anchoring**: (Example) The difference between the sale price and regular original price. Jurors assume that each party has an agenda to inflate or deflate its anchor number. Avoid numbers that are devoid of logical connection to the perceived damaged.
- **Availability Heuristic**: Describes the frequency of an event by the ease in which one can bring examples to mind via knowledge that is already available. Example would be: risk of lung cancer in males based on the frequency of one's own experiences with family and friends encounters with lung cancers, not taking any other variables into consideration.
- **Thin Slicing**: Jurors often make snap judgements and initial decisions. Time is short, they are used to sound bites, and have little patience to integrate the evidence.
- **Snap decisions**: Researchers believe that they are based on an unconscious ability to perceive patterns and behavior based on past experiences and to act on those perceptions long before our conscious state is aware of the pattern.
- **Priming**: People perceive words, images, and actions and based on these perceptions, reach conclusions that impact their behavior without being consciously aware that the process is happening. (read a lot of words about old people and people then walked slower)

- **Embodied Cognition**: Refers to the idea that there may be an automatic or unconscious link between our cognitions and behavior. (told people to remember time when they were left out of a group then asked what the room temperature was at the time of the incident people said cold)
- Studies have found evidence of an automatic, reciprocal relationship between our cognitions and our behaviors.
- Humans tend to process information automatically
- The valence of our initial thoughts influences our subsequent reactions even without our awareness.
- Jurors learn better when they are in an active environment. That means better concentration and retention, which means that an expert's testimony is more likely to be understood and remembered. They will make better trial decisions if active learning environment is encouraged.
- Jurors learn more through some "senses" than others. Some are visual learners, while others are auditory or kinesthetic learners. So if notes and communication are not allowed, some jurors will not do well in this setting.
- Experts using various modes of teaching, such as graphics, animations, and even demonstrations or handheld models, increase the likelihood that jurors not only will understand the information provided, but also will retain it longer than using only one mode of presentation.
- **Resistance to Persuasion**: Nothing turns off a juror more quickly than having someone take away the one thing they can control in a court room, their own decisions.
- Listeners do not just reject stories that do not comport with their worldviews, but they actually push back at the challenges and reassert their own familiar structures of meaning.
- **CSI Effect**: They have higher, unrealistic expectations about the capabilities of forensic science. Influences of these shows has been posited as a reason for many hung juries and acquittals in criminal cases.
- Experts in civil cases will find that jurors also expect "details" and want to see the evidence graphically, much like the CSI shows do, and when there is a lack of technical or scientific specificity or visual demonstrations, jurors often respond with similar suspicions.
- What makes an expert effective? When a lawyer is asked they say:
    - Credentials
    - Expertise or experience
    - Communication style
- When the jury is asked the same question they say:
    - Communication
    - Experience
    - Credentials
- They list credentials last because all experts have credentials so it cancels itself out.
- Jurors want an expert who can help them:
    - Understand
    - Believe
    - Retain
- Brodsky, Griffin and Cramer suggest that perception of an expert's credibility addresses four domains:

  - Knowledge
  - Confidence
  - Trustworthiness
  - Likeability
  - Attractiveness
  - Diversity
- Jurors believe that expert witness preparation or "coaching" is unethical and should be discouraged.
- Credibility has been shown to be the key to witness effectiveness.
- Confidence is a characteristic related to perceived credibility. People make quick judgements based on the confidence expressed in the message or by the messenger. Confidence, measured by verbal and nonverbal behaviors, is a cue that an individual is knowledgeable and, in essence, credible. Particularly when there is stress in the context or there are time constraints, subjects have been found to judge those with the most confidence to be the most accurate and/or credible.
- The audience is important: Judges and lawyers prefer experts who are highly confident, and rated experts who failed to state certain conclusions as problematic compared to non-lawyers. From these studies, it appears that the nature of the listener (judge/jury) and the context (legal case, type of witness) may influence what level of confidence leads to the greatest perceived credibility.
- Trustworthiness as a component of credibility, means honesty and truthfulness. And for a juror it also includes believability. It is worth noting that, in our field studies, jurors perceive a difference between "being honest" and "being believable". Being truthful may be perceived as disingenuous or even dishonest if it does not comport with what they expect the witness to say based on their own life experiences and their beliefs about human nature (and sometimes their unrealistic expectations.)
- It only takes 33 milliseconds of exposure to a face to decide whether a face looks trustworthy or not.
- **Our brains judge individuals faces to determine credibility in three ways**:
  - Sign of masculinity and dominance in the face
  - Subtle signs of anger such as flared nostril
  - Emotionally neutral faces that look happy.
- Jurors identified low confidence with nonverbal indicators such as:
  - Slouching
  - Fixed eye contact
  - Fidgeting
- Jurors identified medium confidence with nonverbal indicators such as:
  - Straight posture
  - Control of emotions
  - Consistent eye contact
  - Hearing questions correctly
- Jurors identified high confidence with nonverbal indicators such as:
  - Assertive/combative mannerisms
  - Good posture with periodic leaning forward

- **Likeability is associated with credibility**; experts who are perceived as likeable are more persuasive and credible than experts whom jurors dislike. They will see you as a friend.
- Nervous behaviors are less likeable such as:
    - Fidgeting
    - Touching the face
- Being too relaxed can appear to be uncaring or distant.
- Likeability of a witness had a positive, linear relationship to his/her credibility. The more likeable a witness was considered by the jurors, the more willing they were to believe the witness. Perceptions of likeability directly influenced the jurors' trust, but not necessarily decisions.
- Witnesses with whom a juror can identify or project onto are likely to be perceived as likeable, whereas witnesses who are perceived as distant or arrogant are not likely to be likeable.
- Attractive defendants are treated more leniently by jurors than unattractive ones, and jurors seem more willing to place trust in attractive defendants.
- Highly attractive witnesses may be suspect because they are so attractive.
- Attractiveness is an attribute that can be perceived:
    - Positively
    - Negatively
    - Neutrally
- Black Female experts are considered the most effectively persuasive by both races, showing that there was no "own race" bias.
- Contrast Effect: When the expert exceeds those expectations in terms of knowledge or ability to educate the jury, the expert gets bonus points in jurors' assessments. Especially if the expert is a minority female. (they educated themselves where other black females did not).
- Research in neuroscience suggests that there may be a reason that nonverbal behavior is so important to us: we actually possess specific neurons that cause us to "mirror" or match the nonverbal facial and body languages of others, which is part of our hardwiring for social interaction.
- Speech rate is actually something that we consider under nonverbal behavior since it is perceived as part of how someone says something rather than what is said.
- 1980's research found that while talking faster boosted credibility, it did not boost persuasion, in part because when someone talks quickly it is hard to absorb what is being said so the message does not have a chance to stick.
- **Recommended Non-verbal Behavior (ROLE)**:
    - Relax
    - Open: don't fold arms or legs
    - Lean
    - Eye Contact
- Increasing credibility nonverbally means that the witness should always have the same body language, whether it is direct examination or cross examination. This indicates to the jurors that the expert witness is simply being the objective assistant to the court, not the biased expert retained by one side.
- **Special Considerations for Video/Digitized Depositions**:

  - Look Credible at all times
  - Nonverbal behaviors are Key
  - Possible trial testimony can result
- Look at the questioner not the camera when giving a deposition.
- Practice your deposition in front of a video camera so you can see how you look and sound.
- **Effective Verbal Communication**:
  - Keep it as Objective as Possible
  - Help Jurors to comprehend the Information
  - Help Jurors retain the information
  - Help Jurors fill in the gaps
- At trial, an expert's job is to use memory cues, such as repetition, and concepts, such as **primacy** (what was said first) and **recency** (what was said last), effectively so that jurors remember the meaningful message days or weeks later during deliberations.
- By using themes and strategic graphics to provide a framework for the evidence, you show jurors how the evidence should be interpreted and the way in which it makes the most sense. If you don't do this they will fill in the stories gaps with their own ideas and beliefs.
- **Graphics can Affect Cognition**: Well-developed graphics can help avoid the kinds of psychological biases and barriers that prevent comprehension and retention and can even lead to thin slicing and emotional connections that are positive for your case.
- **How Graphics help the Trial**:
  - Reduce boredom and increase interest
  - Make the theme simple and easy to understand
  - Facilitate juror comprehension
  - Can be interactive
- Are Judges Biased? They can be just as susceptible to certain cognitive errors as were jurors, like hindsight bias. They were affected by anchoring as well as egocentric bias which is the tendency to credit oneself with the results of a joint effort more than an outside observer would credit one.

Chapter 11: Nine of the Worst Mistakes That Experts Make and How to Avoid Them

- Mr. Blinkoff vs Blinkon: Someone who comes to court and doesn't look professional. Bad clothing choices, hair not cut or styled. In a blink of an eye the jury will either turn them on or off.
- Mr. Unlikeable vs Likeable: Unlikeable ignores the jury, rarely shows emotion. Monotone using technical words and doesn't explain them. Likeable looks at the jury when answering questions. No jerky hand movements, uses emotional expressions. Not faked or forced.
- Dr. Bellicose vs Zen: Bellicose will question the questions in an attempt to belittle the cross examiner. He is belligerence, and uses smokescreens and discounts opinions. Believes that his credentials are sufficient to convince everyone that he is right. Zen: There to teach the jury. Complex ideas are presented in a way that is respectfully simplifies the constructs so the jury can digest the information. Seems unafraid of cross examination questions.
- Mr. Wimpy vs Warrior: Wimpy allows the opposing attorney to extract concessions and chip away the foundation of his opinions creating doubt with the jurors as to his credibility. Timid, no stamina. Warrior has a strong will and passion to fight for and defend his opinions. Prepares and studies and knows the weaknesses of his opinions and how to explain them so they retain validity.
- Ms. Freako vs Cool: Freako goes ballistic when asked why couldn't pass test. Shows weakness to the jury and shows lack of confidence in herself. Cool remains calm and cool when asked the same question. Explains the reasons behind not passing the test. Speaks with self assurance and poise, confidence. Lose your cool you lose your credibility.
- Dr. Bias vs Fair: Bias goes beyond the bounds of normal subjectivity by cherry picking data and facts and ignoring discovery materials. Opinions have half truths, suspect assumptions and misleading conclusions. Fair makes well grounded assumptions and forms opinions that are demonstrably credible.
- Dr. Fudger vs Precise: Fudger had errors on his CV. Credentials are fair game because the background of an expert is directly related to the strength of the opinions. Precise: updates his credentials regularly. Reviewed his employment and expert related activities.
- Ms. Make Up vs Exact: Make up will attempt to make up a seemingly plausible answer to cover up her ignorance. Exact knows where to draw the line. Answers I don't know if she doesn't know. Do not speculate; do not guess under any circumstance under oath.
- Robot vs Human: The challenge is to allow the jury to see you as a normal, vulnerable human being who is testifying to assist the jury in understanding the technical aspects of the case. Your demeanor should be on the humble, introspective side. Your explanations associated with opinions need to be exceedingly jury friendly, showing that you are reaching out to them to help them understand what you are talking about.

1. Establishing Credibility
2. Likeability
3. Confidence
4. Trustworthiness
5. Knowledge
6. Credibility