

“BEST TEACHER WINS” INCREASING THE EFFECTIVENESS OF EXPERT WITNESSES

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October 28, 2014
ICPAS Fraud & Forensic Symposium

Topic Areas:

1. Dispelling common credibility myths/ what lawyers think is important
2. Statistics & common sense
3. Enhancing credibility of expert witnesses: non-verbal communication
4. Diffusing the “hired gun” perception
5. Navigating cross-examination & common landmines

Insight #1: Dispelling Credibility Myths

- ▶ What lawyers think is important to jurors....

CREDENTIALS

Long lists of:

- SPEECHES AWARDS DEGREES

Impresses Lawyers, NOT Jurors

- In fact, spending too much time on C.V. can backfire



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Insight #1: Dispelling Credibility Myths

CREDENTIALS

- Jurors don't care about credentials unless there is a significant disparity between experts
- In fact, spending too much time on it can backfire
- Experts who talk about themselves excessively come across as:
 - ⊙ *Not relatable*
 - ⊙ *Arrogant*
 - ⊙ *Snooty*
 - ⊙ *Makes jurors sensitive about being "talked down to"*



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Insight #1: Dispelling Credibility Myths

COMPENSATION

- Fees do not bother jurors
- Viewed as a “job”
- Expect expert to be paid



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Insight #1: Dispelling Credibility Myths

\$ COMPENSATION \$

- What does bother jurors & undermines credibility
 - Not knowing case facts
 - Expert is being paid & expected to know specifics
 - Seen as “not doing their job”
 - Unprepared
 - Disregard testimony



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Insight #1: Dispelling Credibility Myths

WITNESS CREDIBILITY

Credibility comes from:

- ✓ Being prepared
- ✓ General knowledge
- ✓ Case specific knowledge
- ✓ “Hands on” involvement
- ✓ Experts who are seen as teachers are consistently viewed as most credible



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Insight #2: Statistics & Common Sense

WITNESS CREDIBILITY

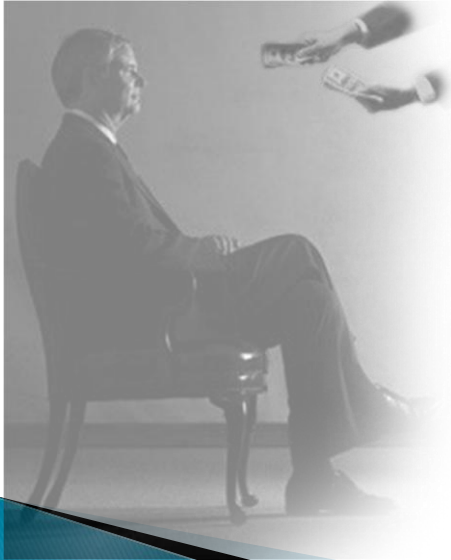
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Insight #2: Statistics & Common Sense

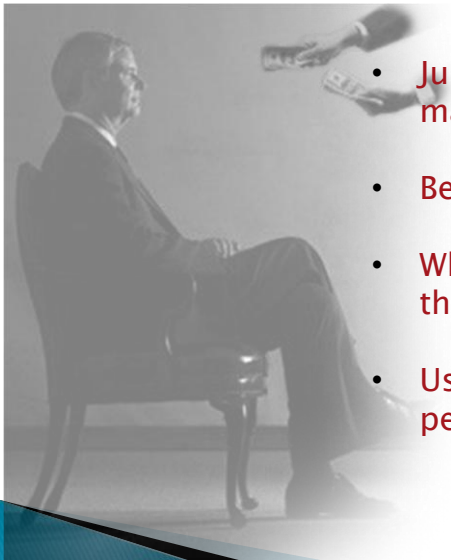


7 out of 10 jurors believe:

“attorneys can find an expert to back up their clients point of view”

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Insight #2: Statistics & Common Sense



- Jurors believe statistics can be manipulated
- Being right = effective witness
- What we “know” is what we think
- Use common sense & personal experience

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Insight #3: Non-verbal communication

- ▶ Jurors are always watching & notice.....
- ▶ -Dress
- ▶ -Demeanor
- ▶ -Body language
- ▶ -Treatment of others



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Insight #3: Non-verbal communication

Jurors' Assessments of a Critical Witness in a Recent Securities Case

- a) Knowledgeable
- b) Likeable
- c) Confident
- d) Trustworthy



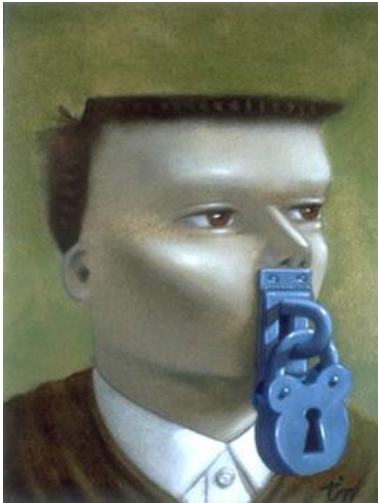
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Insight #3: Non-verbal communication

- Body language is used to evaluate:
 - * Believability
 - * Likeability
 - * Honesty

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Insight #3: Non-verbal communication



**80% of Communication
is Non-verbal**

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Insight #3: Non-verbal communication

Key Characteristics Associated with Trust

- Eye-contact
- Consistent Demeanor
- Open Body Language

Key Characteristics Associated with Suspicion

- Emotional/ argumentative witnesses
- Fidgeting
- Looking away, up or at the floor
- Movement
- Strong reactions
- Evasiveness



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Insight #3: Non-verbal communication

Jurors sense when communication style is unnatural

They observe discrepancies in behavior

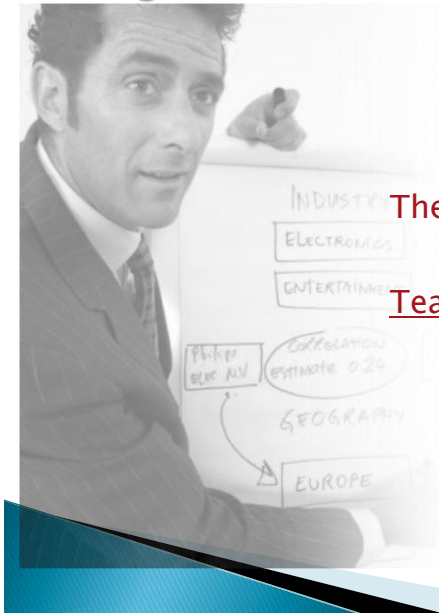


If it feels forced, it usually looks it.



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Insight #4: Best Teacher Wins



The Most Effective Experts...

Teach, not just a conclude

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Insight #4: Best Teacher Wins

HOW TO TEACH

1. Explain methodology for analyzing cases like this in general
2. Show jury how to use it on this case, step by step, leading to his or her conclusion

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Insight #4: Best Teacher Wins

- Jurors are persuaded by historical, market driven reasons
- Put case in larger social and cultural context
- Easier for Jurors to talk about historical events



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Insight #4: Best Teacher Wins

“Good” Expert Witnesses:

- Explain Well
- Simplify complex information
- Use laymen terms
- Are engaging
- Field Questions Well
- Stand Up To Cross-Examination
- Disclose Negative Information



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Insight #4: Best Teacher Wins

“Bad” Expert Witnesses:

- Are boring
- Use technical language
- Are flustered
- Argumentative
- Provide unnecessary details
- Are long-winded
- Use jargon jurors are unfamiliar with



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Insight #4: Best Teacher Wins

***“Communication is verbal.
Understanding is visual.”***

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Insight #4: Best Teacher Wins

GRAPHICS:

- Engage Jury
- Provide Context
- Increase Attention
- Increase retention
- Simplify Complex information
- Engage
- Reinforce Key facts
- Show & Tell



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Insight #4: Best Teacher Wins

- *TIMELINE*
- *DECISION TRESS*
- *COMPARISON*
- *RELATIONSHIP*
- *PROCESS*



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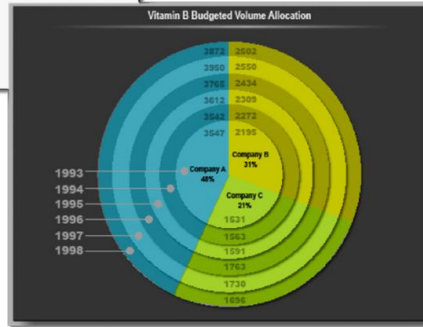
Insight #4: Best Teacher Wins

Vitamin E Volume Allocation

Year	Comp A	Comp B	Comp C	Comp D	Total	Source
Market Share	40%	20%	15%	25%		
1990	8331	5118	2752	1864	18365	Comp A 506619
1991	8930	5564	3076	2150	19720	Comp A 506613
1992 Home	3284	1487	0	800	5571	Comp A 506195
1993 Food	4324	4093	3100	1530	13146	Comp A 506194
1994 All	4608	5180	3100	2300	20177	Comp A 506192
1995 Human	2718	1320	0	2460	6498	Comp A 506171
1996 Food	3211	5003	3522	0	11736	Comp A 506170
1997 All	9929	6321	3522	2460	22236	Comp A 506549
1998 Human	3517	1803	0	901	6221	Comp A 506550
1999 Food	7043	4700	3551	1650	17944	Comp A 506555
1997 All	19518	6632	3551	2611	23352	Comp A 506557

After

Before



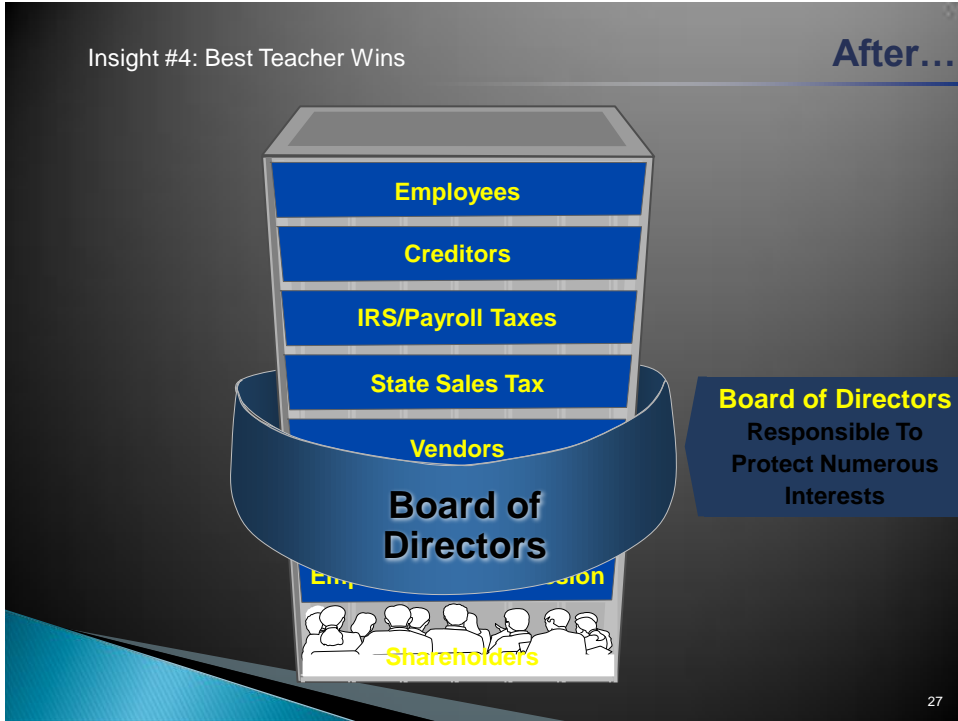
Insight #4: Best Teacher Wins

Before...

A Board of Directors Has The Responsibility To Protect Numerous Interest

Boards of Director:

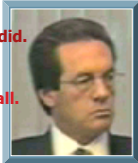
- Employees
- Creditors
- IRS/Payroll Taxes
- State Sales Tax
 - Vendors
 - Unions
- Employment Commission
 - Shareholders



Insight #5: Diffusing Perception of Hired Gun

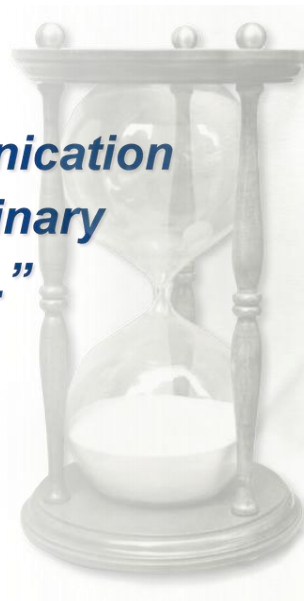
- EDUCATE, DON'T ARGUE
- REMAIN CALM
- ADMIT NEGATIVE INFORMATION
- REFRAME ROLE & PERCEPTION THROUGH LANGUAGE

David Viejo's Inconsistent Testimony

<p>Q: ...you believed that Mr. Quaranto was going to have a similar co-op advertising program like the [Patchogue] Studio Owner...?</p>	<p>A: At trial: No. At deposition: ...I probably did.</p>	
<p>Q: ...you told Mr. Quaranto that you had a way ...he could advertise for free...?</p>	<p>A: At trial: No. At deposition: I do not recall.</p>	
<p>Q: ...you understood that Mr. Quaranto had a co-op arrangement with Merle Norman...?</p>	<p>A: At trial: Not at that time. At deposition: Yes.</p>	
<p>Q: ...you wanted to help Michael Quaranto make it look to Merle Norman Cosmetics like the invoice was really 40% higher than it really was, correct?</p>	<p>A: At trial: No. At deposition: Yes.</p>	
<p>Q: Did you discuss with anybody at Clipper the need to issue credits against Michael Quaranto's invoices?</p>	<p>A: At trial: No. At deposition: Yes.</p>	
<p>Q: ...did you have discussions with Bob Zuckerman and Al Verunac about the need to issue credits against Quaranto's invoices?</p>	<p>A: At trial: No. At deposition: "with whom did you have those discussions? ...Bob Zuckerman and Al Verunac".</p>	
<p>Q: At the time you entered into this arrangement ...with Mr. Quaranto, you already knew of the agreement that Mr. Verunac had with the Studio Owner in Patchogue?</p>	<p>A: At trial: No. At deposition: Yes.</p>	
<p>Q: ...it was your understanding...that what you were doing with Mr. Quaranto was consistent with what Mr. Verunac was doing with a different...Studio Owner...?</p>	<p>A: At trial: No. At deposition: In essence, yes.</p>	

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***“Extraordinary communication
will lead to extraordinary
success. Always.”***



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Thank you!

▶ Q & A

