


Steve Scarborough



- 1 Forensic Scientist with LVMPD (retired)
- 2 Bachelor of Science, Cal State Univ. LA
- 3 Testimony Articles in trade magazines & journals
- 4 Books on court testimony
- 5 Author of "The Skeptical Juror's Handbook of Lawyers' Dirty Tricks"

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Court Testimony for the Expert Witness

Skills for Compelling Expert Testimony & Recognition of Defense Attorney Schemes & Tactics


Steve Scarborough, Forensic Scientist



2

Disclosures

The speaker has no disclosures.



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Who This Course is Designed For

This course is for ALL expert witnesses. DREs, (Drug Recognition Experts,) toxicologists, forensic experts, medical professionals, pathologists, police, fire, first responders, and anyone called to be an expert witness.



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Learning Objectives

Learning Objectives

- 1 Emphasize the importance of preparation for expert testimony
- 2 Build confidence and credibility to ensure success
- 3 Maintaining objectivity, professionalism, and scientific integrity
- 4 Assist all expert witnesses in recognizing the techniques and tactics that may be used against them in court.

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Learning Objectives

Learning Objectives



- 5 Reinforce expert witness fundamentals
- 6 Understand the purposes of defense attorney tactics
- 7 Preparing expert witnesses for the reality of court
- 8 Learn about various defense attorney schemes.

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Defense Attorneys

“ Did you hear the one about a bunch of lawyers down in a hole 12 feet deep? ”






7

Defense Attorneys




“ Did you hear the one about a bunch of lawyers down in a hole 12 feet deep? ”

Deep down, they're really very lovely people.

8

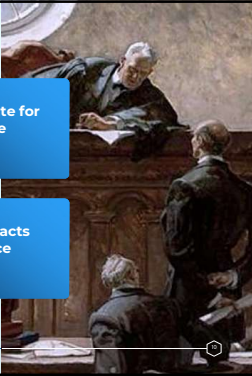

The Role and Responsibility of The Expert Witness

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Expert Witness Role



- Educator of the jury
- Not an advocate for either side
- Neutral, objective presentation
- Focused on facts and science



10

Expert Testimony Is a Skill

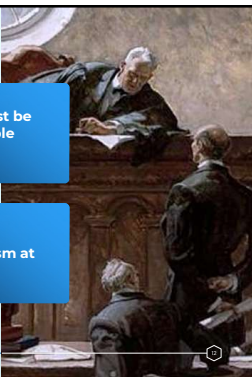

- Learned, not innate
- Requires preparation and repetition
- Improves with experience and reflection
- Practice Practice Practice



11

Objectivity & Integrity

- Opinions based on data
- Methods must be reproducible
- Avoid speculation
- Maintain professionalism at all times



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Power of Expert Testimony

- ✓ Few cases go to trial
- ✓ Trials change lives
- ✓ Expert witnesses influence outcomes
- ✓ Experts carry significant responsibility



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Power of Expert Testimony

- ✓ The Murdaugh Case



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Expectations vs Courtroom Reality



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TV Court vs Real Court

- Slower and strategic
- Witnesses are challenged
- Manipulation is common
- Expert Witnesses are part of a team




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The Adversarial System

- Attorneys seek to "win"
- Debate-team mentality
- The Spin is a legal tool




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The Adversarial System

- Justice system hijacked
- Evolution into the Spin
- Truth must be protected by the witness



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Both Sides Use Tactics

- Prosecutors too

- Emotional pressures exist

- Expert must remain neutral



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Smoking Gun Cases

- TV shows and movies

- Criminals don't plan to get caught


- Examples of actual SG cases



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Importance of Pre-Trial Preparation





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Pre-Trial Preparation



- Avoid entering court cold
- Anticipate difficult questions
- Identify weaknesses early
- Preparation builds confidence



22

Preparing Your Testimony

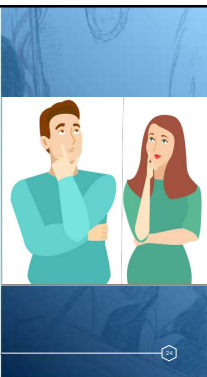

- Review all reports
- Know all dates, calculations, and relevant information
- Prepare voir dire answers
- Know your conclusions



23

Preparing Your Testimony

- During voir dire answers
- Resist advice on memorization
- Use a thinking pause
- Precise responses reflect professionalism




24

Questions for the Prosecutor

- What are the toughest questions?
- What tactics should I expect?
- Has similar evidence been challenged?
- Discuss any terminology concerns?

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Preparing Your Testimony

- Stand your Ground
- Discipline approved answers
- Resist any pressures
- Anticipate opposing counsel's style

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Track the Experience

- Maintain testimony log
- With dates and case numbers
- Types of cases
- Obtain transcripts from previous appearances

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Importance of Visual Exhibits

- Discuss exhibits pre-trial
- Graphic or photographic exhibits

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Importance of Visual Exhibits

- Jurors are visual learners
- Images, color, diagrams help
- Exhibits improve retention

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Professional Demeanor on the Stand

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Professional Demeanor on the Stand

Simple language
Short sentences

Avoid jargon

Explain technical terms

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Professional Demeanor on the Stand

Calm and confident posture

No defensiveness
No hostility

Jury observes everything

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Professional Demeanor on the Stand

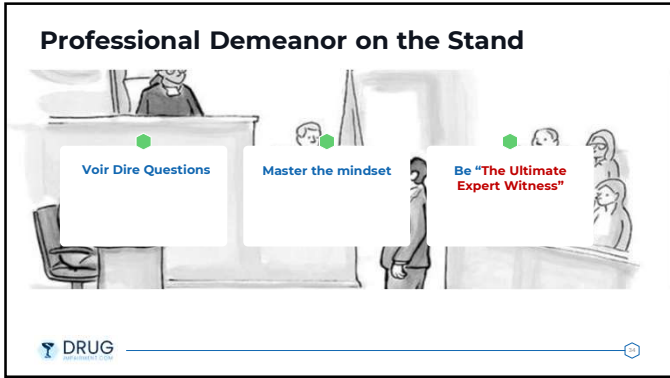
Stop at objections

Always, always pause

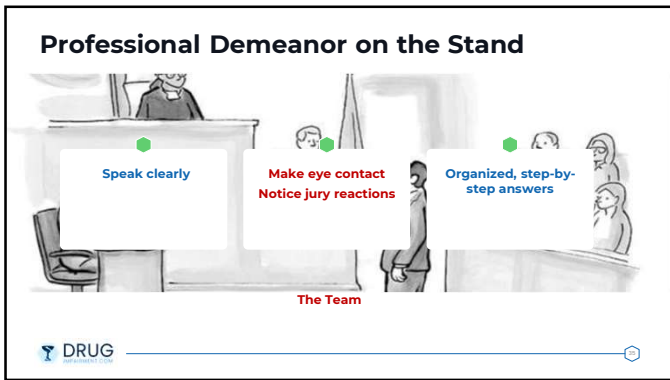
No discussion

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34



35



36

Ambiguous Questions

- Designed for double meaning
- Can trap the witness
- Ask for clarification
- Do not guess intent

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Leading Questions

- Suggest desired answers
- Place words in your mouth
- Listen carefully
- Correct false assumptions

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Two- & Three-Part Questions

- Catch-22 design
- Answer one part only
- Identify multiple parts
- Ask for rephrasing

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Yes-or-No Traps

Create false impressions

Request permission to explain

Defer to the judge

Accuracy over brevity

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Yes-or-No Traps

Request permission to explain

Accuracy over brevity

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Paraphrasing Tricks

"So what you're saying..."

Often incorrect statements

"Let me summarize..."

Correct immediately

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Paraphrasing Tricks

"Repetitive questioning"

"I believe I have answered that before."

A cognitive test

Answer consistently

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Rapid Fire Questions

Rapid Fire

Multiple quick questions

Thoughtful slow answer

Slow it down

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Linguistic Manipulation Techniques

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Semantic Infiltration



- Softens harmful actions
- "Tapped" vs "punched"
- Recognize re-label phrasing

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Semantic Infiltration



- heightens harmful actions
- "interrogate" vs "interviewed"
- Restate proper terminology

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Normalization



- Repeating extreme terms
- Makes abnormal seem normal
- Dulls emotional impact

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Redefining Law & Facts



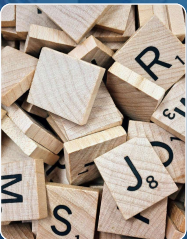
- Altered legal definitions
- Misstated charges
- Expert must correct errors

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Memory Misattribution

Psychological Manipulation



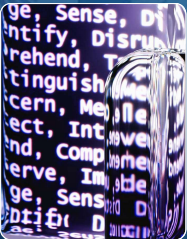
- False memories introduced
- Misleading questions
- "Wouldn't you say..."

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Belief Speaking

Psychological Manipulation



- Emotional persuasion
- Sincerity over facts
- Confidence without evidence

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Gaslighting the Witness *Psychological Manipulation*

- Alternate reality suggested
- "What really happened was..."
- Control through confusion

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Gaslighting the Witness *Psychological Manipulation*

- Reinterpretation of evidence
- Repetition of false narratives

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Gaslighting the Witness *Psychological Manipulation*

- Gaslighting is about control
- Robert Blake case

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On The Stand: Credibility Attacks & Witness Intimidation




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Character Assassination

- Attacks on credibility
- Background and mistakes
- Qualifications challenged
- Remain calm and factual




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Impeachment Tactics

- Personal relationships
- Alleged **Confirmation Bias**
- Career incentives
- Financial motives




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Witness Nullification

- Canceling expert testimony
- Weakens evidence impact
- "Everyone disagrees" effect




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Hired Defense Witnesses

- Paid opinions
- Built-in bias
- Alternative theories
- Contrast with practitioners




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Expert Witness Response

- Short, truthful answers
- Admit uncertainty when needed
Special TIP: Concede when necessary
- Never argue
- Stay in Your Lane Do NOT testify beyond your discipline




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On The Stand

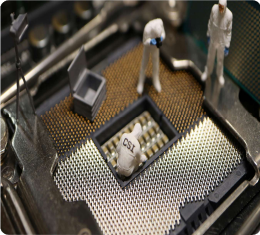
- Immediately correct any mistakes
- Speak to judge



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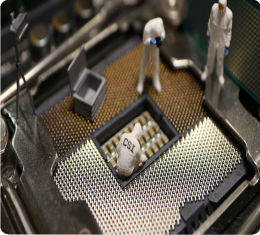
The CSI Effect



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The CSI Effect



- Unrealistic jury expectations
- Absence of evidence ≠ innocence
- Educate the jury
- Explain limitations

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The CSI Effect

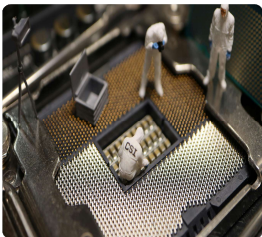


Absence of evidence ≠ innocence

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Minimizing Key Evidence



To try to minimize significant evidence

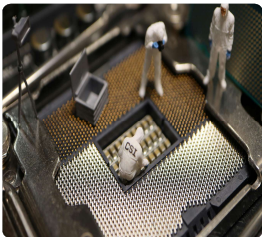
Reject significant evidence

Focus on the lack of some evidence

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McScience



Fringe or weak science

Poor validation

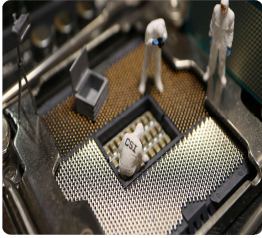
Speculation presented as fact

Recognize pseudoscience

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McScience

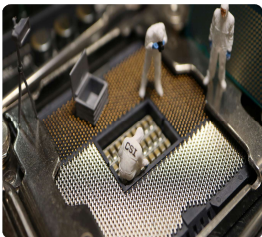


- Voice analysis
- 911 call analysis
- Speculation presented as fact

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McScience

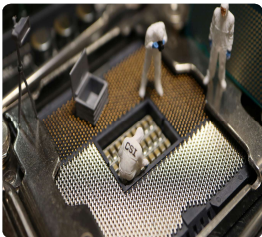


- Psychological assessment
- Innocent looking appearance
- "Look at them, they could never commit such a crime."

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McScience




- Lindburgh - "wood expert"
- Bloodstain Pattern Analysis

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High Impact Defense Strategies




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The Rambo Lawyer

- Scorched-earth tactics
- Attacks everyone
- Intimidation
- Spectacle over substance




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The Hammer

- Hammer the facts
- Hammer the law
- Hammer the table (witness)
- Aggressive deflection





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Bushwacking


- Outside-the-record influence
- Press conferences
- Jury pool contamination
- Slanted narratives




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Courtroom Theatre



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Courtroom Theatre




- 1 Dramatic visuals
- 2 Emotional displays
- 3 Acting for jurors
- 4 Can mislead perception


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Courtroom Theatre

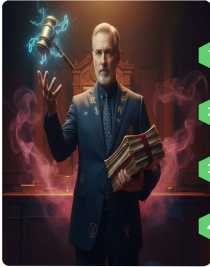


NOT GUILTY	<input type="checkbox"/>	SELF-DEFENSE BEYOND A REASONABLE DOUBT
NOT GUILTY	<input type="checkbox"/>	SELF-DEFENSE HIGHLY LIKELY
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NOT GUILTY	<input type="checkbox"/>	PROBABLY SELF-DEFENSE
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NOT GUILTY	<input type="checkbox"/>	HIGHLY UNLIKELY SELF-DEFENSE
GUILTY	<input type="checkbox"/>	PROVEN NOT SELF-DEFENSE BEYOND A REASONABLE DOUBT


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76

Distraction Techniques

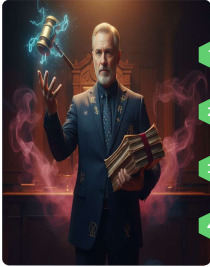


- Excessive objections
- Paper shuffling
- Interruptions
- Physical antics


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Recognizing Distractions




- Distractions mean impact
- Your testimony matters
- Stay focused
- Maintain composure

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Expert Witness Distractions




- 1 Items on the defense table
- 2 Display board
- 3 Clarence Darrow
- 4 **Regain attention with voice**

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Distraction Techniques




Distractions in the OJ trial

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Distraction Techniques



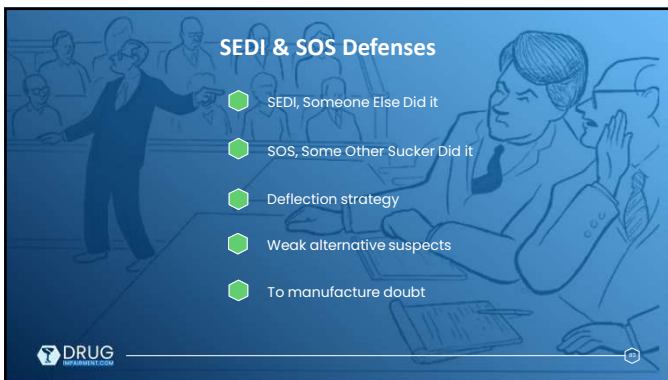
Distractions in trials

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81



82



83



84

SEDI & SOS Defenses

- Mischaracterizing strong cases
- Control through confusion
- "All evidence is circumstantial"
- Witness Having Other Reasonless Explanation



85

Alternative Perpetrator Defenses



86

"Look Here, Not There"

- Redirects attention
- Mitigate **Key** evidence
- Classic distraction

NOTHIN' TO SEE HERE...



87


"Look Here, Not There"

- Try to minimize significant evidence
- Emphasize absence of evidence
- Neutralize other evidence

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"Look Here, Not There"




- The media following phantom burglars
- Avery's Auto Salvage
- The glove doesn't fit

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Outrageous Defenses in Real Cases




- Sleepwalking Defense
- Spray Tan Defense
- Twinkie Defense
- Cold Medicine Defense
- Affluenza Defense

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Expert Witness Testimony




- Preparation is key
- Critical Thinking
- Identify Manipulation

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Expert Witness Testimony



- Calm Confidence
- Impartial Facts
- Integrity = Credibility

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Addendum



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CONTACT ME

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