

Appraisal Institute
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Effective Court Presentation, Witness Performance and Jury Selection

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Evidence

Proving Your Case



Evidence Means

Testimony, writings, material objects, or other things presented to the senses, that are offered in an action to prove or disprove the existence of nonexistence of a fact. (Evidence Code § 140)



Relevant Evidence Means

Evidence including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action. (Evidence Code §§ 210, 780, 1202)

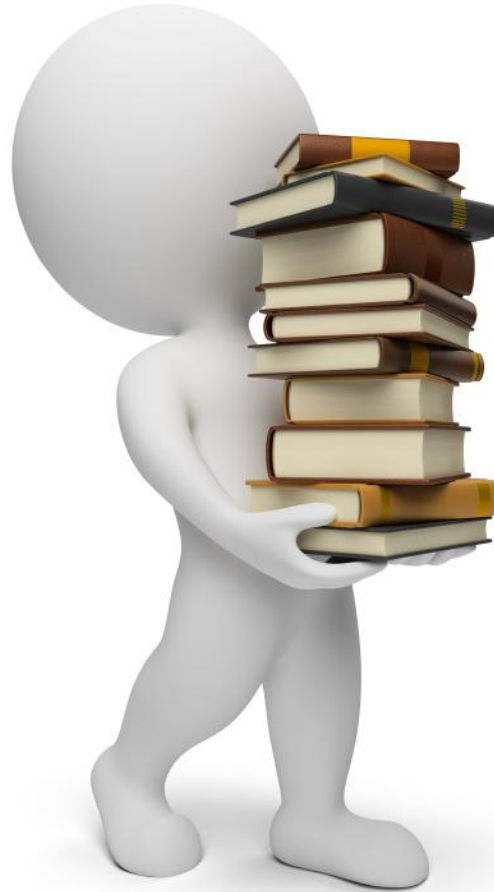


Witness Testimony

Percipient Witness



Expert Witness



Tools to Maintain Jury Focus

- Prepared Direct Examination Testimony
- Butcher paper
- Dry Erase boards
- Color Pens
- Prepared Charts Glued Onto Cardboard
- Photographs
- Foam Core Boards
- Video
- Presentation Computers
- Elmo overhead projector
- PowerPoint
- Artist renderings (single image, video)
- 3 Dimensional Models
- Touch Screen (TrialTouch by IPP)



Pre-Trial

- Court's permission to use technology
 - Many Courts have technology installed (particularly Federal Courts)
- Pretrial hearing to lay foundation for use of exhibits (or stipulation)
- Single or multiple witnesses re foundation (depends upon complexity and factual bases for demonstrative exhibit)
- Opposite now – Must seek court permission to use oversized exhibit boards



Witness Performance



The Three-Second Paradox



Personal Factors

Jurors Notice Everything



“S-T-P” Serious-Thoughtful-Professional



Cross Examination

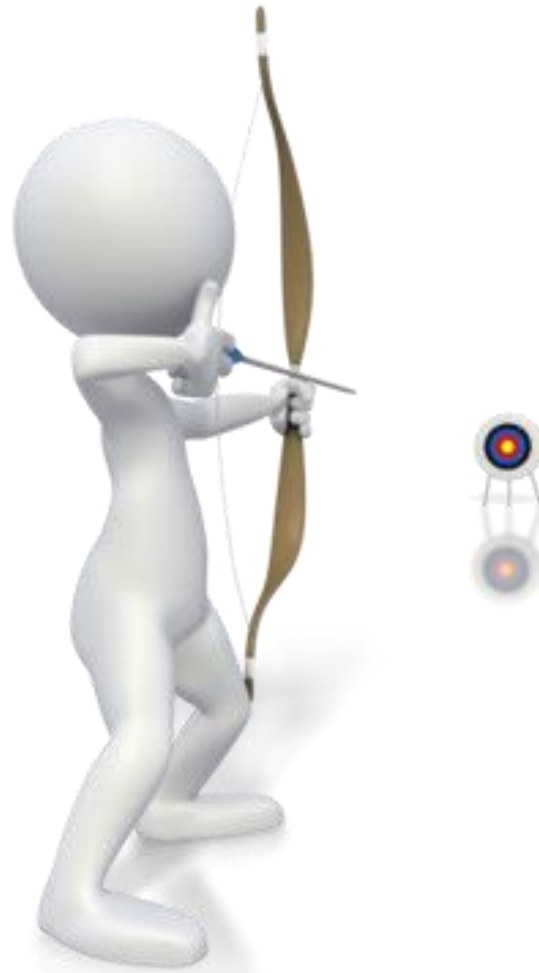
Three Important Rules for Cross Examination:

1. **Confident and Calm**
2. **Don't Fight Unnecessarily**
3. **Answer the Question Directly, but Get your Point in**

Don't say yes or no, but start with the point and then agree to the question under your terms.



Delivery



Delivery

- A Relaxed Demeanor = Confidence
- Never Show Arrogance (#1 Complaint of Jurors)
- Neither Combative nor Submissive
- Extrovert / Introvert
 - *“My worst experience with an expert was one who was a lion in trial preparation but at trial became a lamb.”*
- Attitude Matters – Too Much Advocacy Undermines Credibility



Best Testimony Is Prepared Testimony

- **Script v. Outline**
- **Technical v. Simple**
- **Graphics and Other Visual Aides**
- **Be Prepared** (Jurors Will Know)
- **Practice, Practice, Practice**



Non-Verbal Behavior

- Pace
- Volume
- Tone
- Eye contact
- Posture
- Hand gestures
 - Showing Nervousness with Hands
- Fidgeting
- Inappropriate Facial Expressions:
 - Smiling at Inappropriate Moments
 - Scowling
 - Eye-Rolling



Pre-Trial Preparation

- Rehearsal with Demonstratives
- Videotape Direct Examination



Exceeding the Scope of Testimony

- As soon as an expert witness starts testifying to matters outside the scope of the question asked or the matter at hand, he or she is in dangerous waters, and risks making statements that would be to the detriment of your client's interest in the case.



Attention Span

Attention Span

- Use Photographs, Graphics, and Video whenever Possible



Attention Span

- Attention span is the amount of concentrated time on a task without becoming distracted. Most educators and psychologists agree that the ability to focus attention on a task is crucial for the achievement of one's goals.



Goal = Focus Juror Attention



Attention Span

- If the questions and testimony are not engaging or are not presented in an interesting format, then jurors will not be able to focus on and retain your key points.



Attention Span

Average length watched of a single internet video = **2.7 Minutes**

Average number of times per hour an office worker checks their email inbox = **30 Times**

Percent of people who forget their own birthdays from time to time = **7 %**

Percent of teens who forget major details of close friends and relatives = **25 %**

The average attention span in 2000 = **12 Seconds**

The average attention span in 2013 = 8 Seconds



The Average Attention Span of a Goldfish



Information Retention Rate

Comparing retention of information presented to focus groups by three different formats:

- Orally only = 10%
- Visually only = 20%
- Both visually and orally = 65%



The Ability to Perceive, Understand and Recall Is Increasingly Determined by Visual Cues

As our society becomes increasingly saturated with technology, jurors expect the use of visual aids in the courtroom. Jurors, especially younger ones, have come to count on visual media to augment their understanding of a topic.



The Jury

Jury Selection

Positive Profile

- **Fiscally conservative**
- **Homeowners (Tax payers)**
- **Asians (not Filipinos) tend to be fiscally conservative on damages**
- **Older and retired jurors (tend to hold more conservative or moderate views on spending)**
- **People with Finance, Accounting or budgeting backgrounds or jobs**



Recommendations for Eminent Domain *Voir Dire*

1. Carefully identify anti-Eminent Domain jurors: The Judge should ask questions regarding attitudes toward Eminent Domain; and
2. Individually ask follow-up questions to anti-Eminent Domain jurors: The Court and the lawyers should privately and individually (outside the purview of the larger jury panel) *voir dire* prospective jurors with negative views on Eminent Domain to prevent the panel from learning what answers will get them dismissed.



Drones

Drone Photograph of Lancaster Water Reclamation Plant



Drone Photograph of Lancaster Water Reclamation Plant



Drone Photograph of Lancaster Water Reclamation Plant



Drone Video of Lancaster Water Reclamation Plant