Preparing Your Expert To Win A Jury Trial

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Dancing With Antaeus: Ten Unusual Questions For Your Expert

You don't win a trial with their expert. You win a trial with yours. So forget all the movies you've seen, and all the stories you've heard. Stop daydreaming about your next cross examination, and start obsessing about your next direct examination.

Please stop rolling your eyes. Yes, lawyers at cocktail parties have told you that the direct examination of an expert is "like a well-choreographed dance," but they didn't tell you what kind of dance, and they didn't tell you anything about your dance partner.

Make no mistake. Like Antaeus of Greek mythology, experts often think of themselves as half-god, are usually better suited to fighting than dancing with lawyers, and only remain invincible while their feet remain on the ground. So if direct examination must be compared to a dance, let it be compared to a tango. Not a tango with a graceful, experienced dancer, but a tango with an awkward, homicidal giant.

Sound like fun?

Well, it can be. You can win trials with your experts, and your favorite trial stories can become stories about direct-examination, but you have to prepare your expert and yourself to win the trial. Alright, the big meeting with your expert is tomorrow, and you don't need any more metaphors. What you need are trial-proven strategies for preparing your expert to win the trial during direct examination. Well, here are ten rather unusual (read: totally counter-intuitive) questions you should ask your expert.

1. How can we make this more complicated?

Every lawyer is taught to "Keep It Simple Stupid." In general, that's good advice, and the acronym ("KISS") is certainly easy to remember, but attorneys often forget the reason behind the rule and only present the simplest explanation or the simplest exhibit. Those attorneys can learn the hard way that, by intentionally "dumbing down" the material, you can unintentionally "dumb down" your expert and your argument.

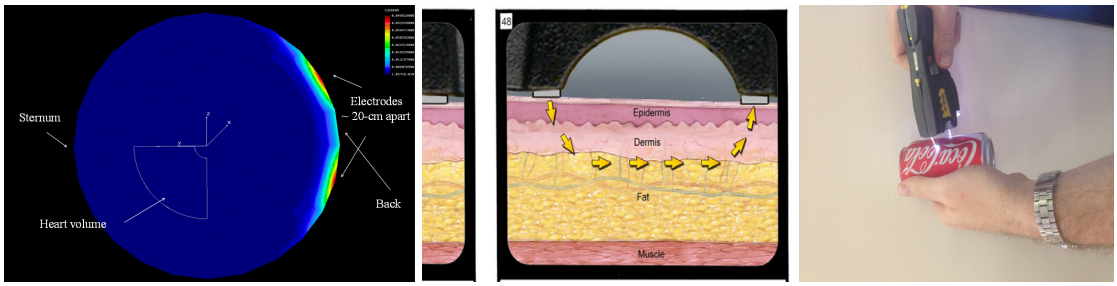
If you only keep it simple, you deprive the jury of the full body of evidence supporting your expert's testimony, and the jury may give that testimony less weight. If you only keep it simple, you may fill jurors with a false sense of confidence regarding the material, and find yourself giving closing argument to a jury that thinks they know as much as your expert. Picture a juror saying "it's not rocket science" because you didn't show them the rocket or explain the science.

Every direct examination should start by presenting the most accurate and the most complicated analysis before offering the more simple and accessible explanation. In so doing, you serve notice to the jury: (a) your expert knows infinitely more about the issue than anyone in the courtroom; and (b) they should trust your expert's conclusions.

Every meeting should start by asking your expert how they would explain a concept or opinion at the most prestigious conference in their field. Select the perfect exhibit(s) to show to their most learned peers. Then and only then ask your expert to identify the best way to explain and demonstrate the same concept or opinion to college students or interns. Then and only then ask you expert to identify the best way to explain and demonstrate the same basic concept or opinion to a high school freshman.

At trial, solicit all three explanations and present all three exhibits. Use the first explanation and exhibit to demonstrate your expert's degree of understanding and experience (i.e., the "he's smart" exhibit). Use the second explanation and exhibit to make the concept more accessible to the jury (i.e., the "that makes sense") exhibit. Use the third explanation and exhibit to convince the jury your expert is correct.

During the State v. Nugent manslaughter trial, we had the challenge of explaining to Winn parish jurors the path of electrical current during a drive-stun by a TASER® Conducted Electrical Weapon ("CEW"). Contrary to what the opposing expert said, the current only traveled between the two contact points (not all over the body like lightning), and the current did not travel below the layer of subcutaneous fat. While meeting with our expert in biolectricity, we learned the most accurate exhibit was an extremely complicated finite element model (Figure 1) that looked a lot like an atmospheric infrared image of earth and a little like the Death Star from the Star Wars movies. We also learned that the actual path of electrical current could be demonstrated by a simpler graphic (Figure 2) showing that the current took a direct path and did not penetrate below the layer of subcutaneous fat. But what was truly persuasive was our expert's demonstrating the fact that the electrical current only travels between the two contact points by nonchalantly drive-stunning a metal soda can while holding the metal soda can (Figure 3).



There is a significant difference between thinking your expert is correct, and knowing with 100% certainty your expert is correct. For me, the difference was my holding a metal can, pressing the TASER CEW against that metal can, and pulling the trigger. When I hesitated, I realized jurors also would doubt my expert's testimony until they saw the same demonstration. So, at trial, after showing and explaining the two more complicated exhibits, I had the expert drive-stun the soda can while holding it. During the next break, the bailiff approached me and said, "I figured you were right for the past week, but I didn't really get it until I saw that can."

There are an estimated 1,261,314 professional Disc Jockeys ("DJ"s) in the world, and it is perhaps time to transition from the "KISS" trial philosophy of the 1970s to a more modern "DJ KISS" trial philosophy of "Don't Just Keep It Simple Stupid."

2. Why are you just sitting there?

The days of listening to Abraham Lincoln and Stephen A. Douglas debate for three hours are long gone. Jurors have shorter attention spans and have become visual learners. They crave movement and they need visual reinforcement. So don't ask your expert to describe the location of L5-S1 on the lumbar spine. Tell your expert to stand-up and point to it on a model of the lumbar spine or on an MRI or on your back (or all three).

Make sure to practice your demonstrations with your expert. Don't just warn your neurosurgeon that you "may" ask him to stand-up and point to the herniation on an MRI. Don't just "agree" that your accident reconstruction expert will stand-up and draw the accident site for the jury. Tell your expert that you are a visual learner (which they will believe) and that you need your expert "show you" before the meeting ends. Never take the chance that you will blow-up the wrong image (i.e., axial instead of sagittal MRI view), that your expert's drawing will omit a critical detail (like a

median), or that your expert's hand-writing will look like a toddler's.

There is a difference between telling a jury that your witness is a good doctor and showing the jury that your witness is a good doctor. Don't be satisfied telling the jury that your expert has been practicing for twenty years, let them see and hear what twenty years of experience looks like. If a finding from a physical examination is critical (i.e., finding of muscle spasm), have your orthopedic surgeon stand-up and demonstrate on you how they routinely administer cranial nerve exams. Let the jury see and hear how professional and second-nature an examination is for your expert. If a field sobriety test is the key to the case, let the jury see and hear the officer administer one to you. If your expert analyzed a histology slide, let the jury see your witness "expertly" place a slide under a portable microscope, and hear your expert describe the steps involved in the analysis. Watching your witness do what your witness does every day reminds the jury that your witness is an expert. Whenever possible, let the jury see your experts doing their job.

There is a reason why students love "show and tell." Don't be satisfied with having your expert explain what was tested, show them. During the 1999 (four counts of first degree murder) capital jury trial in State v. Whitten, No. 393-956, Criminal District Court, Parish of Orleans, we needed to prove that the defendant killed all four victims and lived with their dead bodies (daily forging checks in one victim's name) until the smell and flies drove him out of the house. But, by the time the bodies were discovered, the bodies were so decomposed that the best way to date the time of death was the age of the maggots that covered them. During my direct examination of our expert in entomology, I had our expert explain how he calculated the gestational period and age of the collected maggots while the jurors passed around a clear container of maggots. That one exhibit drove home to the jury what our entomologist did every day, made the tragic deaths more real, and made certain that my direct examination never became an academic exercise. It kept our feet on the ground.

3. Who told you you're funny?

You know that friend of yours who thinks he's funny? How about that friend who thinks he knows everything? Or that friend who thinks he's a lawyer? Well, you need to figure-out what type of witness your expert thinks he is, and whether he is right or wrong. This can be the hardest part of preparing your expert for trial and the most important.

One size does not fit all, and one personality does not fit all witnesses. Some experts are natural-born witnesses. They are sincere and engaging. The performance of other experts can be tweaked or polished during an hour meeting. But many expert witnesses will never remotely resemble what you picture when you think of a "good expert." If you tell them to smile, their faces will contort in ways you cannot imagine. If you tell them to make eye contact with the jury, they will give someone on the jury a nightmare. If you tell them to be patient with opposing counsel, they will appear to be experiencing a seizure. So don't. Don't try to change them (because you can't). Instead, use your meeting to discover their real personality. Help them become who they are and figure-out how to sell that to the jury.

In the 2006 (trucking accident) jury trial in Swain v. RLI Ins. Co., No. 05-0852 (E.D. La. 2006), we retained a brilliant expert in cardiology who was unbelievably patient and nice (truly grandfatherly) toward me during our practice direct examinations, but was a callous and impatient curmudgeon toward opposing counsel during his deposition. It was actually difficult to watch him bully opposing counsel with one-word answers, pained expressions, and openly hostile criticism of the questioning. I quickly realized that the jury would almost certainly dislike and be suspicious of his Jekyll-and-Hyde routine, and I shared my concern with our expert. Our expert assured me that he would be folksy on the stand, and I assured him that he didn't have that club in his bag.

I made an executive decision. I asked our cardiologist to be equally abrupt with me and equally unforgiving of my questions. I assured him that nobody expected gray-haired cardiologists to suffer fools, and that I needed him to make an example of me (before he made an example of opposing counsel). Freed from having to pretend to be Mr. Nice-Guy, our cardiologist finally relaxed, answered our questions like they were being asked by lazy interns, and absolutely persuaded the jury the accident did not cause the plaintiff's subsequent heart problems. His surliness emphasized that the claim had no merit. It was a reminder that math teachers don't have to "sell" the idea that 2 + 2 = 4, and old math teachers have every right to get surly if

lawyers waste hours asking them to explain why 2 + 2 ≠ 147. It was also a reminder that jurors like "real" people and do not trust salesmen or experts trying to sell themselves as something they're not.

4. What's a good mistake I can make?

There was a time when jurors held lawyers in the highest regard and happily deferred to the experts who testified at trial. Today, jurors are suspicious of lawyers and their hand-picked experts. They will distrust any direct examination that appears too well-choreographed. They are neither surprised nor impressed when they hear your expert answer "yes, that's absolutely correct" for the first time - or for the fiftieth time. Which is why lawyers should stop soliciting that particular answer.

The real challenge is to stop asking what we want to ask our expert, and start figuring-out what jurors want to ask our expert. We have to stop trying to make ourselves look good with our questions, and start focusing on the best way to teach jurors with our questions. Because, sometimes, the best way to teach jurors is for you to make the mistakes, and for the jury to listen as the expert explains everything to you.

Every jury has a bias, prejudice, or misconception about some aspect of your trial (i.e., about a product, injury, diagnostic test, disease, etc.). When you identify that common misconception, don't try to disabuse the jury of it with a single, condescending question ("what if someone actually thought" or "what if someone stood-up in opening statement and said…"). Most misconceptions are based on one or more true premises, facts or metaphors. Let the jury hear your expert agree with the truth of those premises, facts or metaphors. Then ask why, if that premise/basis/metaphor is true, the common misconception isn't also true. Let your expert correct you and explain it to you. Picture a juror who holds that misconception thinking "hey, I was thinking the same thing" while your expert is agreeing with the premises, and "oh, I see why that isn't true" while your expert explains where you went wrong. Of course, that is easier said than done, and you have to be sincere in your curiosity and your questioning or the jury will recognize the whole line of questioning is staged.

Yes, some attorneys will balk at this approach. They will never intentionally make a mistake during direct-examination, and they would rather lose a trial than appear mortal. They would prefer to shine the light on themselves, and ask a series of questions designed to show the jury they have been "right all along" or that they "know everything about this issue." Which is hubris and hysterical. When you call an expert to the stand for direct-examination, you are asking the jurors to trust and defer to the expert answering the questions, not to trust and defer to the attorney asking the questions. Shine the light on your expert, and give your expert the chance to teach the jury and win the trial.

Toward that end, ask your expert to identify common mistakes and figure-out the wrong way to ask certain questions. Then make those mistakes and ask those questions the wrong way. Instead of a well-choreographed dance, treat the jury to a real conversation.

Before the Nugent trial, I met with our bioelectrician. Every time I asked a leading question, and he answered "yes", I got the distinct impression that he was thinking "close enough for government work." In contrast, whenever he corrected me, I found him engaging, sincere, and professorial.

On the eve of his direct examination, I made another executive decision. I told him to listen carefully to every question I asked during my direct-examination, and to correct me every time I said anything incorrect – no matter how insignificant the correction. During his direct examination, our bioelectrician took that advice to heart and repeatedly corrected me. The jury quickly realized he was not going to agree with anything he did not consider 100% accurate. Our wrestling match actually prompted laughter and resulted in the following exchanges:

> Q. … I've shown a couple of witnesses this diagram, which shows the TASER X26 being applied to the chest of a person. Does this – Is this a diagram that you have seen before?
>
> A. I have.
>
> Q. Do you believe it to be accurate?
>
> A. It is.
>
> Q. … it shows the location of the two prongs on the chest of a person… This would be looking down like this at [the] person if we were to literally take a, uh, slice, one slice out like this and then we were to rotate it. That's what it would look like?

A. Yes. Your –

Q. Looking down?

A. Your diagram is [being held] a little low. You want to be a little higher, become more, uh, pectoral muscle there and a little more of the heart.

Q. Okay. I didn't hold it at the right height, but it's a slice –

A. Yes.[1]

* * *

Q. And the taser the amount of energy is one tenth of one joule. Is that right?

A. That's correct.

Q. So if we're – If you heard the expression, that the dose is the poison, --

A. I've heard that expression.

Q. … if you say well, one Tylenol is not poisonous but if you were to have two hundred Tylenols, that could be poisonous?

A. Actually about fifteen will kill you.

Q. Right. Now, I – But I – Okay. But we're –

COURT REPORTER NOTE:

Laughter in the courtroom

A. And that's if you're not alcoholic.

Q. I'm gonna lose this battle. I'm gonna try. All right. Work with me. You're my witness. All right?

COURT REPORTER NOTE:

Laughter in the courtroom

Q. All right. I've been waiting how long to call a witness?[2]

* * *

Q. So, you can say, "well, [can] Tylenol kill you." Well, yes. If you take two thousand Tylenol. But did Tylenol kill a patient? You would want to look at the actual Tylenol that the patient took?

A. That's correct.

Q. The same is true for electrical current. The question of whether electrical current can kill you has been decided. Right? I mean we know from lightning whether electrical current can be delivered to the heart. We know from defibrillators. Is that true?

A. Yes and may I correct something?

Q. Please.

A. It's not fifteen Tylenol. Fifteen grams of Tylenol which will be thirty extra strength –

Q. Please.

A. --- would be lethal.

Q. Please stay with me. All right?[3]

This approach had the intended effect of emphasizing that my expert knew the subject better than anyone in the courtroom and should be trusted. It also had the unintended consequence of forcing me to be more exact in my questioning.

5. What are they right about?

Experts often charge exorbitant fees for an attorney meeting, and experts sometimes can't spare a lot of time – even for the attorneys who retained them. The need to "cut to the chase" can pressure an attorney into only asking what the other side is wrong about when every attorney needs to know what the other side is right about.

The most important documents to bring to your meeting are their expert's report and deposition testimony. Show your expert everything their expert said and find out what premises, assumptions, calculations, and opinions are 100% accurate and complete. That is your real starting point because that is what jurors want to hear first. They want you to tell them specifically where the two roads diverge in the yellow wood before you ask them to choose a road (to travel by). If you don't tell them, they may try to figure it out for themselves during jury deliberations. You don't want that.

6. How can we make their case better?

1 State v. Nugent, Trial Transcript, Day 5 (10/27/10), p. 33, line 30 to p. 34, line 18.

2 State v. Nugent, Trial Transcript, Day 5, (10/27/10), p. 30, line 24 to p. 31, line 12.

3 State v. Nugent, Trial Transcript, Day 5 (10/27/10), p. 31, line 23 to p. 32, line 7.

In most cases, jurors lack the experience needed to recognize "on a scale of 1 to 10" where a claim, defense, argument, or injury ranks. The best way to teach them is to show them what a better claim would be and what a more severe injury would have been. In a traumatic brain injury trial, your expert can respond to "gloom and doom" testimony about a subdural hematoma by explaining more severe injuries (that did not happen) like those involving mass effect, midline shift, or herniation. In a slip and fall case, your expert can attack the defendant's argument that the lighting was "reasonable" by discussing much better forms of lighting. Teach the jury what a much better claim/defense would have been, and the jury will learn why the current claim/defense is inadequate or untenable.

That trial strategy starts during the meeting with your expert. When you meet with your expert, find out what facts or circumstances would have made the plaintiff's case (or a defendant's defense) much better. Ask whether your case is a "textbook" example of whatever your expert is describing, and (if possible) have them show you the textbook.

During the Nugent manslaughter trial, I met with the forensic pathologist who performed the autopsy, concluded the cause of death was sickle cell sudden death, and classified the manner of death as an accident (not a homicide). When I asked him why he concluded the blood cells started sickling prior to the death, the doctor grabbed a textbook off his shelf, showed me a photograph of pre-mortem sickling, and told me the autopsy slides were identical. At trial, I had him show the jury the actual textbook, read the specific passages about "classic signs" of pre-mortem sickling, and show the jury the photographs. When he was finished, he agreed that the deceased's autopsy was a "textbook example" of sickle cell sudden death.

The reverse is also true. Always ask your expert to show you what a "textbook" example looks like. Picture your expert showing "textbook" cervical MRI images of acute trauma, and physically pointing to edema. Now picture your expert showing the plaintiff's cervical MRI image, and physically pointing-out where there is no edema. Prove that the present case is not a "textbook" case and you are half-way home.

7. What's he/she got that you ain't got?

Your witnesses may be experts, but they are not experts in preparing a curriculum vitae ("CV"). Yes, before your meeting, you should dissect your witnesses' CV and prepare questions to ask before you tender them as an expert. That is always a good starting point. But remember to also ask your witness if any additional positions, awards, honors, organizations, articles, lectures, or specific (similar) cases "would help jurors" understand what weight to give their testimony.

It is equally important to bring a copy of their expert's CV to your meeting with your expert. Hand your expert a copy of their expert's CV, and find out what qualifications and experiences your expert has that their expert doesn't. Ask your expert: "What is their expert's CV missing?"

Nothing is more effective during a jury trial than filling-out a chart comparing your expert's qualifications with theirs. Days later, jurors may not recall what each row addressed, but they will remember seeing a column of "yes" for your expert, and seeing a column of "no" for theirs. If you want that visual seared into a juror's mind, you have to bring a draft chart to your meeting, roll-up your sleeves, verify that you can write "yes" on every row of your expert's column. And, preferably, you should bring that same chart to your deposition of their expert and get them to say "no" to the exact same questions.

During the 2015 (wrongful death) jury trial in Ricks v. City of Alexandria, et al, No. 12-CV-0349, USDC, Western District, LA (Alexandria), plaintiff hired a cardiac electrophysiologist who, during his deposition, made a number of startling admissions regarding his lack of knowledge and experience before he was hired. At trial, during cross-examination, I showed the jury a chart and made the jury watch me write "no" in nine of eleven rows for the plaintiff's expert. The two times their expert answered "yes" (despite saying "no" during his deposition) required him to exaggerate his experience. The jury actually heard their expert insist he technically "researched" the product (prior to his being hired) when, while casually reading a journal, he read something about the product in an article. Which is like saying you're an expert and you've researched post-traumatic stress disorder because you read American Sniper.

Fortunately, the Ricks trial ended with a directed verdict for the defense, and we never had to call our expert. But, if the trial had continued, the jury would have

watched me write "yes" in every row of our expert's column during direct-examination, and the completed chart would have looked like this (Figure 1).

KNOWLEDGE & EXPERIENCE: CONDUCTED ELECTRICAL WEAPONS		
When Hired:	Kerwin	Swerdlow
Served on Scientific & Medical Advisory Board for TASER International, Inc.?	No	Yes
Served on Board for any CEW Manufacturer?	No	Yes
Published (first author) a peer-reviewed CEW scientific paper?	No	Yes
Published (senior author) a peer-reviewed CEW scientific paper ?	No	Yes
Published *any* peer-reviewed CEW scientific paper?	No	Yes
Written *any* CEW scientific papers?	No	Yes
Retained as an expert in a CEW lawsuit?	No	Yes
Researched effect of CEWs?	"Yes"	Yes
Touched a CEW?	No	Yes
Seen "in real life" a TASER M26 CEW?	"Yes"	Yes
In the broadest possible sense, did you have any exposure or experience with TASER CEWs?	No	Yes

During closing argument, we would have shown the chart again and suggested that our expert's opinion was objectively entitled to greater weight than a doctor who read an article and saw the product once.

8. What do you do all day?

Make sure the jury sees the big picture. Jurors often define who a person is by what they do. Remember to ask your expert to tell you what a "typical day" or "typical week" is like in their practice.

During the Nugent manslaughter trial, we decided to tender one witness as an expert "in the field of emergency medicine" and "on the physiological effects electronic control devices on the human body." Because our expert had conducted so many studies and published so many articles on the same product, we were concerned the jury would get the impression he was a "lab geek" or (worse) a "hired gun" who worked for the manufacturer of the product he researched and tested. To make sure the jury saw the big picture, we elicited the following testimony about a typical week in his life:

> Q. If you would, please tell the jurors about your actual practice, what you do in the course of a week?
>
> A. Several things. I wear many hats. Uh, in the course of a week I spend approximately twenty-four to twenty-five hours actually taking care of patients in the emergency department. I probably spend twenty to twenty-five hours, uh, doing what's called EMS, medical direction. So, I provide, administrative and medical director services to some of the law enforcement and, uh, fire department paramedic programs that are around our area, and I spend an additional twenty to twenty-five hours on research activities. So, my typical work week is about seventy hours or so.

Our expert's answer did not sound rehearsed, and his description of his typical work week emphasized he was neither a "lab geek" nor a "hired gun." We interviewed some of the jurors after they found our client not guilty of manslaughter. It was clear that those jurors realized our expert was a hard-working doctor who helped people every day, and that they gave his testimony great weight.

If a jury doesn't hear about your expert's practice, they may assume the worst. During the 2009 (paralysis) jury trial in Craige v. Grundmann, No. 06-12739, Civil District Court, Parish of Orleans, LA, we were faced with a classic battle of experts. Plaintiff's neurosurgeon testified that the plaintiff's paralysis was caused by trauma, and our neurosurgeon was going to testify that the real cause was (unrelated) transverse myelitis. During direct examination, Plaintiff's counsel failed to ask their expert about a typical day; and, during our cross-examination, we established that their expert did a lot of work for local plaintiff attorneys.

In contrast, during our direct examination, we made certain to ask our neurosurgeon to describe a typical day. The jury heard about his seeing patients, performing surgery, and preparing to present at an international conference. The compare/contrast was incredibly effective. Despite a very sympathetic (and paralyzed) plaintiff, the trial resulted in hung verdict (7-5) with the split jury unable to answer the very first question on the jury interrogatory: did the accident cause any injury?

Of course, what's good for the goose is good for

the gander. You should expect opposing counsel to prepare the same type of chart, and you should ask your expert: "What's their expert got, that you ain't got?" Hopefully, your expert's answer will be "nothing." But, if there are significant differences in qualifications, you will at least have time to discuss those differences with your expert and to prepare a response.

9. What are you really an expert in?

Make sure your expert agrees with the exact wording of every field in which you intend to tender your witness as an expert. Your expert will always be the best judge of whether the field is too broad or too narrow.

Avoid tendering an expert as an expert in doing something. There is a difference between tendering your witness as an expert "in the field of cardiology" and "in open heart surgery"; between tendering your witness as an expert "in the field of economics" and "in calculating present value of future medical expenses"; and between tendering your witness as an expert "in the field of human factors" and "in analyzing the rise and run of stairs." Know whether courts in your jurisdiction have allowed experts in your witness' field to offer the type of opinions you will ultimately seek. If so, get the court to accept your witness in that field and then establish your witness' experience performing open heart surgery, calculating present value, or analyzing the rise and run of stairs.

Broader is not better. During a 1998 hearing challenging the constitutionality of a Louisiana criminal statute, a local Law Clinic student tendered his witness as an expert in the field of theology (the study of God). Because he tendered the witness as an expert in the entire field of theology, the court allowed me to conduct almost unlimited voir dire on the tender. I was allowed to question the witness regarding every religion (from Judaism to Islam), any theological work (from Plato's Timaeus to Hegel's Phenomenology of the Spirit), and any theological concept (from Aristotle's Unmoved Mover to Cartesian Metaphysics). After repeatedly admitting his ignorance, the demoralized witness could not answer my final question: "which Apostle replaced Judas?" Judge Calvin Johnson, who attended an annual silent retreat, knew the answer and promptly ruled that the witness was only an expert as to the specific tenets of his specific faith for his specific church. By tendering too broadly, the student rendered the testimony meaningless.

10. What do you have to say for yourself?

Do not meet with your experts until you've researched your experts like you were going to cross-examine them at trial. Your experts may not know their skeletons are "out there" on the internet or in published opinions. They may not fully understand how those skeletons could negatively affect the way jurors listen to their testimony. And they may be (unwisely) expecting you to object and the court to sustain your objection. Always show your expert what you found, and find out what your expert would want you to ask about that issue (during direct or redirect) and how your expert wants you to ask.

Yes, it can be difficult to walk the line between "preparing" your expert and "scaring" your expert into not wanting to testify at trial. Never play Devil's Advocate so aggressively that you anger or alienate your expert during your meeting. Always approach the issue as if you are simply trying to make sure your expert's "side of the story" comes out at trial.

During the 2005 (negligent security) jury trial in Pyles v. Weaver: No. 2001-15258, Civil District Court, Parish of Orleans, LA, we represented a gentleman's club on Bourbon Street which was being sued by a former entertainer for having inadequate security the night a patron threw a glass at her. Plaintiff sustained dental injuries, and additionally claimed a cervical injury and permanent brain damage. The night before I called our security expert to the stand, I checked "one more time" to make sure there were no negative published opinions about our security expert. I ran a search and discovered that the Court of Appeals had just published an opinion in his personal lawsuit against a former employer in which our security expert claimed that he sustained… wait for it… permanent brain damage. Fortunately, we had time to meet with our (allegedly brain damaged) expert, and decide whether to discuss his lawsuit during direct examination or address it during redirect.

Four years later, during the 2009 (excessive force) judge trial in Octave v. Sheriff Willie Martin, Jr., No. 28753, 23rd JDC, Parish of St. James, LA, the plaintiff retained the same security expert. Incredibly, during his examination, plaintiff's counsel failed to ask the expert about his personal "brain damage" lawsuit. So, during my cross-examination, I challenged the expert's rather selective memory about the officer's testimony

by asking (now paraphrasing): “Well, you’ve told us what you remember about the officers’ testimony; but, in fairness to you, you do have permanent brain damage.” Needless to say, opposing counsel came out of his seat like he was shot out of a canon. He objected that I was insulting his expert and all-but demanded my immediate disbarment. The court calmly read the published opinion and overruled the objection. After my cross-examination, plaintiff rested and the court calmly granted our clients a directed verdict.

Make sure your expert knows when, what, and why you are going to be asking him direct examination questions about his skeletons to steal opposing counsel’s thunder. Never raise an issue with an opposing expert before you know what your expert would say about that issue, and never surprise your expert with “stealing thunder” questions.

Before the 2015 (personal injury) Crayton v. Campbell, et al, No. 704421, 24th JDC, Parish of Jefferson, LA, we realized the plaintiff’s neurosurgeon and the defense neurosurgeon had both omitted from their expert reports any mention of the edema (swelling) in a lumbar MRI taken one year after the car accident -- even though that edema was critical evidence of recent trauma. When we met with our expert, we showed him the MRI film, selected specific views to enlarge for the jury, and practiced direct examination questions about the extensive degenerative changes seen in the MRI. We also asked him about the significance of the edema, and explained why and when we would ask him one question to “steal their thunder” (i.e., “Mr. Glas criticized our expert for not mentioning the edema, so why didn’t you mention the edema in your report?”). Only after hearing his perfectly reasonable answer, did we decide to raise the issue during our cross-examination of their expert.

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John Jerry Glas is the Vice-Chair of the Civil Litigation Department. He has tried more than 70 jury trials to verdict, and recently authored the chapter on closing argument in the ABA's 2015 trial tactics book: "From the Trenches: Strategies And Tips From 21 Of The Nation's Top Trial Lawyers."
Jerry currently serves as lead national trial counsel for the worldwide leading manufacturer of conducted electrical weapons. He also represents national insurance and excess insurance companies, trucking companies, grocery chains, restaurant chains, and law enforcement agencies. He has been admitted pro hac vice to handle cases around the country, including California, Connecticut, Michigan, Missouri, Nevada, and Virginia.

Jerry was born and raised in New Orleans, and taught religion at Jesuit High School before attending law school. Jerry joined the firm in 1999 after serving as a Senior Assistant District Attorney for the Parish of Orleans, and enjoys teaching trial practice as an Adjunct Professor at Loyola University College of Law. Jerry is married and has two wonderful daughters.

Practices
- Commercial Transportation
- Appellate Litigation
- Aviation Litigation
- Manufacturer's Liability and Products Liability
- Premises Liability

Sucesses
- Wrongful Death - Product Liability - Smith v. TASER
- Commercial Transportation - Offord v. L&W Supply Corp.
- Commercial Transportation - Swain v. RLI Insurance Company
- Premises Liability - Tastet v. May
- Product Liability - Ricks v. City of Alexandria, et al,
- Product Liability - Fahy v. TASER International, Inc., et al.
- Transportation - Automobile - Grisoli v. Bradley, et al
- Transportation - Automobile - Craige v. Grundmann, et al
- Retail Defense - Wiltz v. Meraux

Accolades
- Super Lawyers, Civil Litigation, 2015
- Best Lawyers® in America, Personal Injury Litigation, 2012-2016
- Martindale-Hubbell® AV Preeminent® Peer Review Rating
- Federal Bar Association's Camille Gravel Public Service Award, 2009
- Louisiana State Bar Association's Pro Bono Publico Award, 2009
- New Orleans CityBusiness "Leadership in Law" list of 2012

Education
- J.D., Louisiana State University, 1996
- M.A., Philosophy, University of Toronto, 1992
- B.A., Philosophy, College of the Holy Cross, 1991