

THE USE AND EXAMINATION OF EXPERT WITNESSES



This CLE will discuss

- Basics for admissibility
- Discovery obligations & opportunities
- Best practices for selecting and working with experts
- Procuring adequate expert funds
- Investigating and crossing opposing experts
- Brainstorm of issues for experts
- Tips for starting an expert practice
- Tips for creative expert use and examination

ADMISSIBILITY

1. ER 702/703

2. *Frye* test

ER 702

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

FRYE STANDARD originated in Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923)

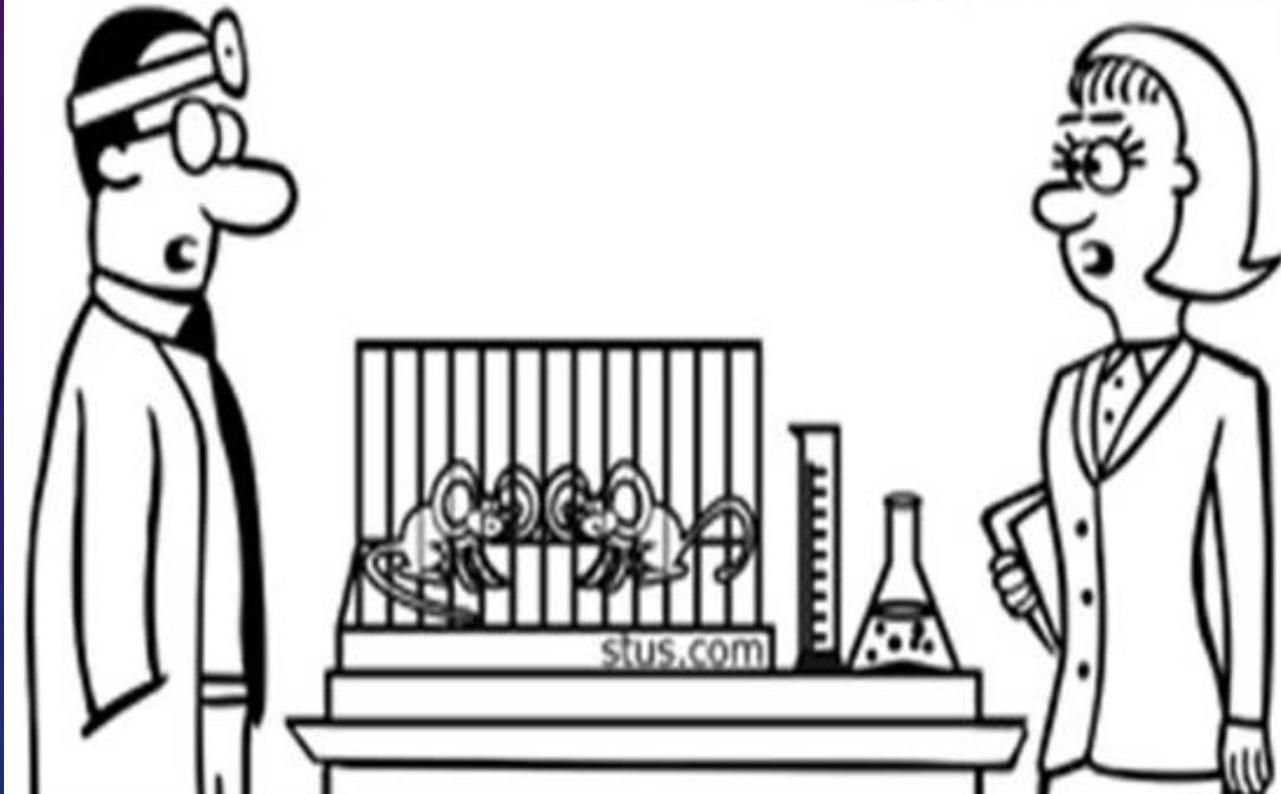
Applied in Washington in State v. Gregory, 158 Wash.2nd 759 (2006)

- Scientific theory & technique/methodology must be generally accepted
- NOT admitted if significant dispute among qualified scientists in relevant scientific community

General Rule:

My theories
aren't generally
accepted yet.

It's okay if your
peers don't respect
you, as long as the
judge and jury do.



ER 703 Basis of Expert Testimony

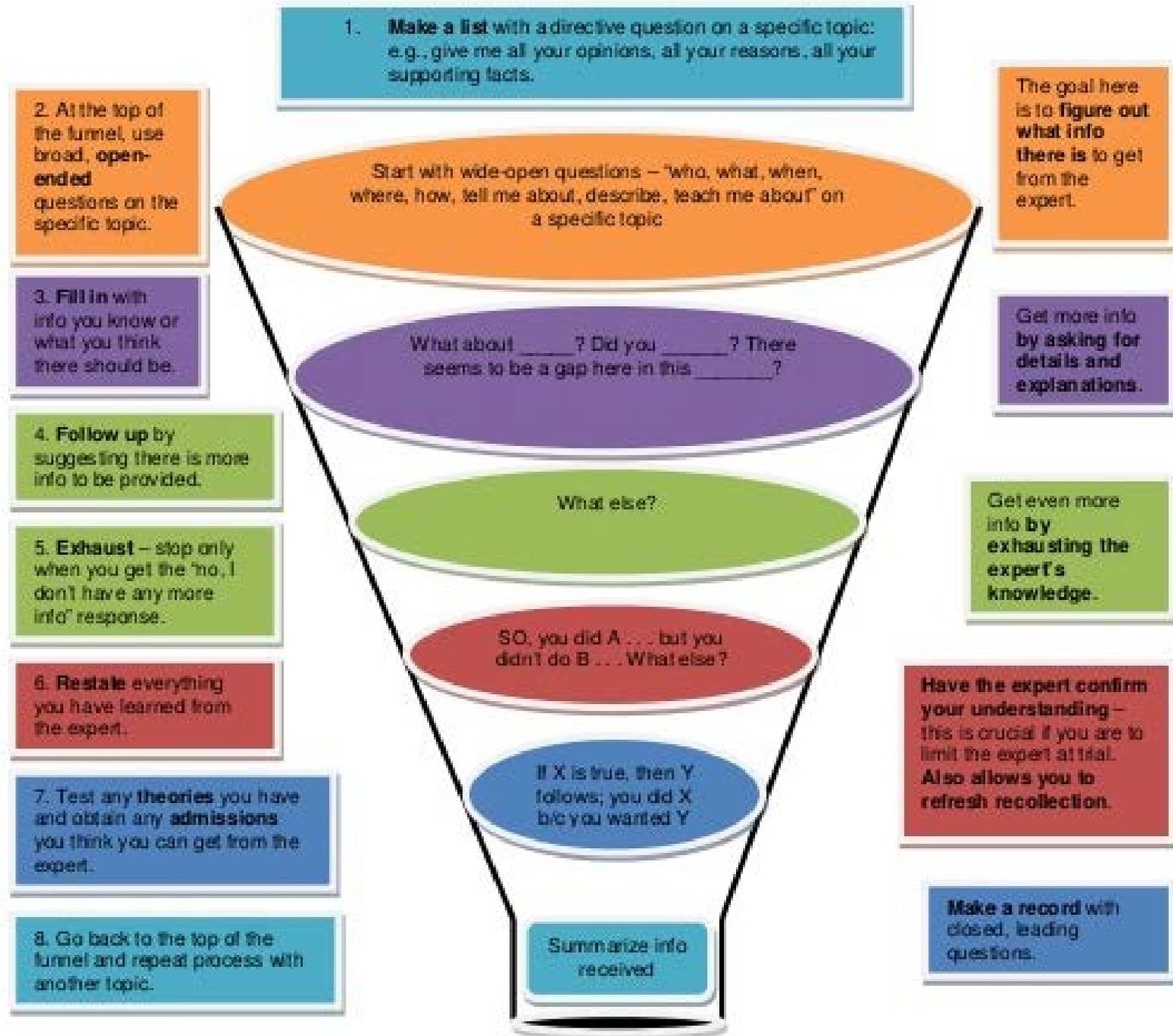
The **facts or data** in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. **If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.**

Discovery – obligations

- Prosecutor obligations
- Defense obligations
- Civil obligations
- Navigating obligations with your expert

Discovery – opportunities

- Criminal opportunities
- Civil opportunities
- Deposing / interview experts





FILED
2012 SEP -6 AM 10: 31
SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

THE STATE OF WASHINGTON,

Plaintiff,



ORDER ON MOTION

v.

Lee,

Defendant.

THIS MATTER having come on regularly before the undersigned Judge of the above court on the motion of [] State defendant [] court to:

to order Cori Shively to disclose counselor names withheld in interview.

AND THE COURT having considered the records and files herein and being fully advised;

Now Therefore,

IT IS HEREBY ORDERED that Ms. Shively disclose the names of the two counselors she disclosed previous abuse to by

14th September 2012, by way of victim advocate

DONE IN OPEN COURT this 6th day of September 2012

Judge *R. L.*

Presented by:

[Signature]

Deputy Prosecuting Attorney 32206

Approved for entry, copy received:

Attorney for Defendant 35380

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RECEIVED

NOV 02 2012

PROSECUTING ATTORNEY
FOR SNOHOMISH COUNTY
BY _____



CL15624356

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR SNOHOMISH COUNTY

STATE OF WASHINGTON,

11-1-01967-0

Plaintiff,

vs.

RLES V. LEE,

Defendant

MOTION FOR RELEASE AND
PRODUCTION OF RECORDS

COMES NOW the defendant, by and through his attorney, SONJA HARDENBROOK of the Snohomish County Public Defender Association, and moves this court to enter an order requiring release and production of the following records:

- 1. Copies of any records, either digital, handwritten or other, relating to treatment/counseling of Cori R. Shively (6/7/85).

The defense has provided notice to all interested parties pursuant to RCW 10.50.100 and filed copies of Declarations demonstrating compliance with CrR 4.8. The defense is requesting a court order be entered requiring that these records be released to the defense subject to protective order, or in the alternative be provided to the court for in camera review and disclosure of

Motion for Release and Production
Of Records - 1

SNOHOMISH COUNTY PUBLIC DEFENDERS
1721 HEWITT AVENUE - SUITE 200
EVERETT, WASHINGTON 98201
(425) 339-6300

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

2012 NOV -2 AM 9:53

FILED

Best Practices – my checklist

- Legal minds differ so develop your own best practices
- Consult other resources
 - ABA
http://apps.americanbar.org/abastore/products/books/abstracts/5310400%20chapter%201_abs.pdf
 - Pragmatic approach
https://www.americanbar.org/content/dam/aba/administrative/litigation/materials/sac_2012/45-1_a_pragmatic_approach_to_presenting_expert_witness.authcheckdam.pdf

Step 1: Identify issues for expert

- Read discovery
- Review statutes and annotations
- Get to know your client
- Review WPICs
- Identify facts or issues you *must* win, so need expert
- Collect relevant manuals/references



Step 2: Find Pool of Experts

- Academics & Authors
- Practitioners
- Professional witnesses
- Government employees
- Nonprofits
- ACLU special projects / ABA task forces
- Specialty bar groups



Step 3: Call potential experts

- Provide sketch of case
- Brainstorm possibilities
- Be clear about limitations
- List of what information
- Review funding parameters
- Discuss document retention policy
- Offer publicly available case materials before next step



Step 4: investigate potential experts

- Ask colleagues
- Google
- Caselaw search
- Read authored publications
- Consult references
- Observe class or testimony
- Review any available testimony / media
- Ask other potential experts
- www.isleuth.net



Step 5: meet with experts

- Face-to-face / Skype / Zoom
- Provide more case detail
- Review experts CV together
- Have them explain a complex concept in their field
- assess EGO
- Discuss notes and record keeping
- Assess appearance / demeanor
- Can they adapt to different audience?

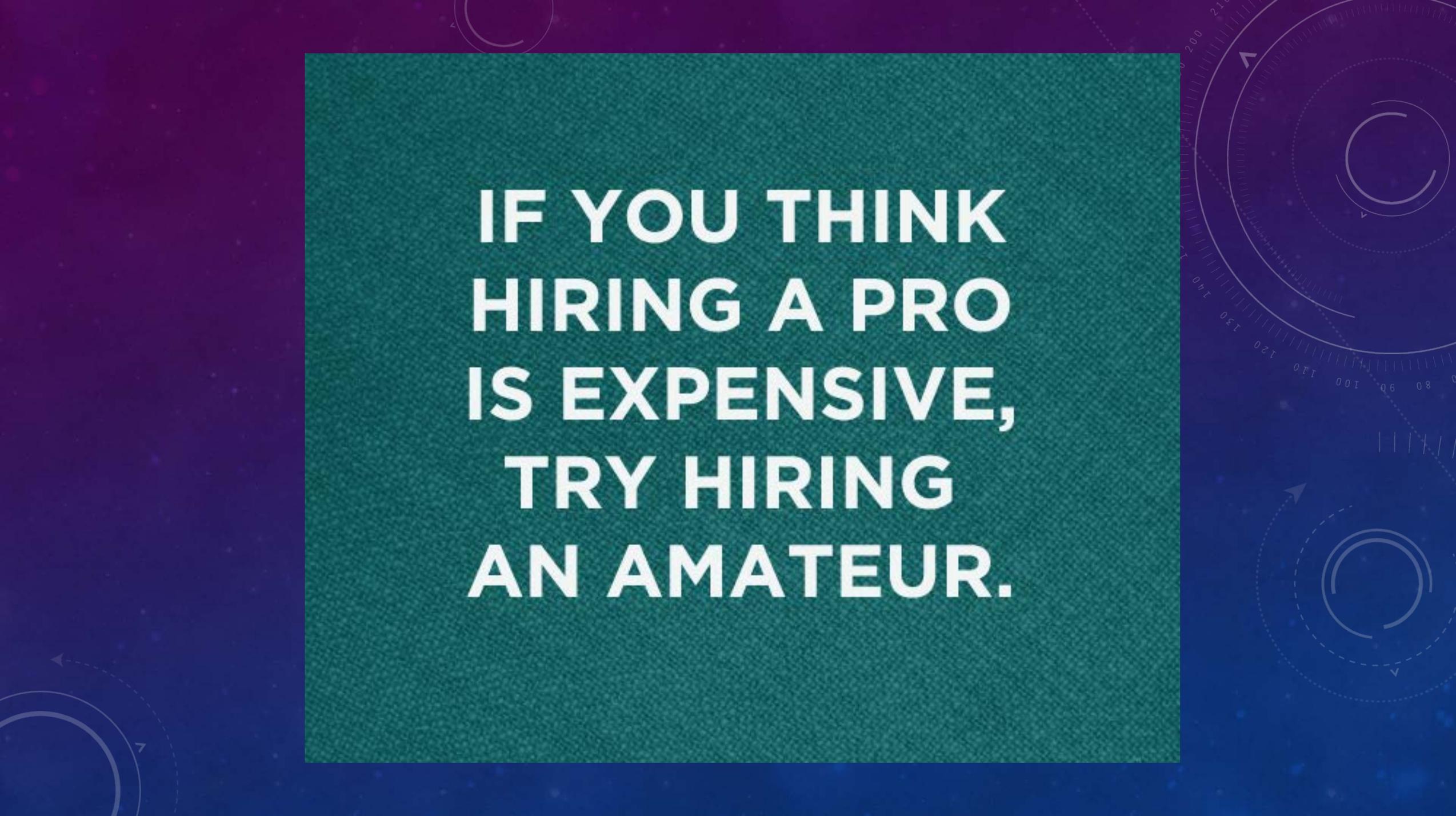


Step 6: ask about their closet

Directly ask in detail:

- Ever had testimony limited or excluded?
- Ever failed to be qualified?
- Any personal issues?
- Published articles opposed to your theory?
- Anything opposition could dig up





**IF YOU THINK
HIRING A PRO
IS EXPENSIVE,
TRY HIRING
AN AMATEUR.**

Step 7: hire the expert

- Execute written contract
- Talk through staged work both financial and in terms of product
- Discuss notes and record keeping (again)
- Discuss professional best practices you will hold opponent's expert to and ensure your expert follows
- Preliminary determination about consulting v testifying



Expert hired – all done?



Not by a long shot!

Step 8: facilitate experts work

- Get the information your expert needs / wants
- Discuss work at each step / conclusion
- Review drafts (in person or through scree sharing)
- Keep audience of report in mind
- Citations, citations, citations
- Schedule regular check-ins to keep on plate & current
- Preserve ability to testify, if possible

ORIGINAL

FILED

Discovery Request(s)



CL15369175

2012 MAY 30 PM 3:30
CLERK
SNOHOMISH COUNTY WASH
MAY 30 2012
PROSECUTING ATTORNEY
FOR SNOHOMISH COUNTY

STATE OF WASHINGTON

SNOHOMISH COUNTY SUPERIOR COURT

STATE OF WASHINGTON)

Plaintiff,)

vs.)



Defendant.)

DEFENSE SUPPLEMENTAL
DISCOVERY REQUEST

COMES NOW THE DEFENDANT and makes the following demand for specific discovery listed below, in reference to the YSTR / DNA and HUMAN ANALYSE evidence to be offered by the State in this case. CrR 4.7(d)

20

CASE FILES

Please provide legible copies of complete laboratory case files. Please include copies of any written material on the case file covers.

CONTAMINATION/DISCREPANCY RECORDS

1. Please provide copies of all contamination and discrepancy entries or logs in the laboratory's possession.
2. For each contamination event, please provide a description of measures used to correct and prevent further contamination.

QUANTITATION

1. Please provide high quality images (photographs or films) of all Quantiblot images generated in this case. If scan printouts are provided, please make sure they are first generation images rather than copies.
2. If real-time PCR was used to quantitate, please provide product accumulation curves in color.
3. Please provide all laboratory notes and records related to quantitation in the instant case.

COMPUTER GENERATED DATA

1. Please provide printed copies of electropherograms generated for each sample in the instant case. These should include, but not be limited to: All GeneScan, Genotyper and GeneMapper electropherograms for every sample, positive control, negative control and reagent blank associated with testing in the instant case.
2. Please include electropherograms for negative controls and reagent blanks even if no size data were generated.
3. Please include legible electropherograms for any contaminating DNA appearing in negative controls samples or in extraction blank samples.
4. Please include legible electropherograms for any positive controls or other known samples that gave other than expected results.
5. If available, please provide electronic matrix files (*.mtx) used in the instant case.
6. Please provide complete electronic copies of all electronic data associated with the instant

Step 9: Prepare Expert

- Determine how you want them to appear
- Instruct on clothing and mannerisms
- May vary for depositions and trial
- For deposition – fishing & time examples
- Spend time with expert on eve of testimony
- Final adaptations to trial rulings / presentation so far
- You create exhibits in consultation with them

Procuring adequate funds

- Avoid boilerplate
- Know your jurisdiction's procedures (protect work product)
- List potential direct and collateral consequences
- Cite to public defense standards <https://defensenet.org/resources/standards-of-indigent-defense-services/> & RPCs
- Cite helpful caselaw, like Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)(ineffective assistance), State v. A.N.J., 168 Wn.2d 91, 98, 225 P.3d 956, 959 (2010)(inadequate investigation)
- Justify expense but prepare for reductions or queries

Brainstom of Expert Issues

- Mental State
- Challenge the *actual* physical / digital evidence
- Challenge the *meaning* of physical / digital evidence
- Independent *examination* of the evidence
- Hire expert to visit scene and *find* evidence
- Sentencing or mitigation (i.e. not a defense, but ...)

Tips for new expert practice

- Pick a case with solid argument for funds and clear issue
- Pick experienced expert to guide you through
- Use checklist for expert vetting
- Over explain and overshoot for funding request
- Prepare, prepare, prepare!
- Be patient with yourself – this is hard!

For experienced expert practice:

- Craft your cross examination like a pageant
- Develop your own exhibits & analogies
- Increase use of learned treatises
- Develop files on experts and issues
- Go in person to labs, conferences, schools, etc.
- Use technology to assist in expert testimony

Opposing expert - Investigation

- Start with report & CV
- Google
- Check all factual references and citations in report
- Check licensing and organization memberships
- Find other reports / publications
- Request additional discovery
- www.isleuth.net

LAY GROUNDWORK AT THE DEPOSITION

- Methodically go through training and experience
- Minimize use of documents if possible
- Push expert to see how reacts when challenged
- Play dumb and make them explain *everything*
- Set the ground rules
- Commit them to authoritativeness of learned treatises and peer review in abstract

Do you recognize _____ as authoritative journal in your field?

- Sex Abuse
- Journal of Psychology
- Long Psychology
- Criminal Justice
- Archives of Sexual Behavior?
- Psychological Assessment
- Psychology: Public Policy & The Law
- The Journal of Interpersonal Violence
- Psychological Assessment
- Law & Human Behavior
- Criminal Justice & Behavior
- Journal of Consulting & Clinical Psychology
- American Journal of Forensic Psychology
- Journal of Forensic Psychiatry and Psychology

Prepare cross of opposing expert

- Figure out your own style for cross – be authentic
- THIS is why we went to law school!
- Know the facts, the research, and be over prepared
- Have a citation, quotation, or publication for every single question
- Set the ground rules (starts at deposition)
- Paper train the expert & amazing things happen!
- Organize in topical chapters for adaptation

Current research on general sex offender recidivism, has it between 5-6% or at most 11-12%, right? (*Dep p92, line 18-23*)

You use an adjusted actuarial approach in conducting your work on the SVP panel? (*Dep p75, page discussion*)
That's a combination of clinical judgment and actuarial instruments?

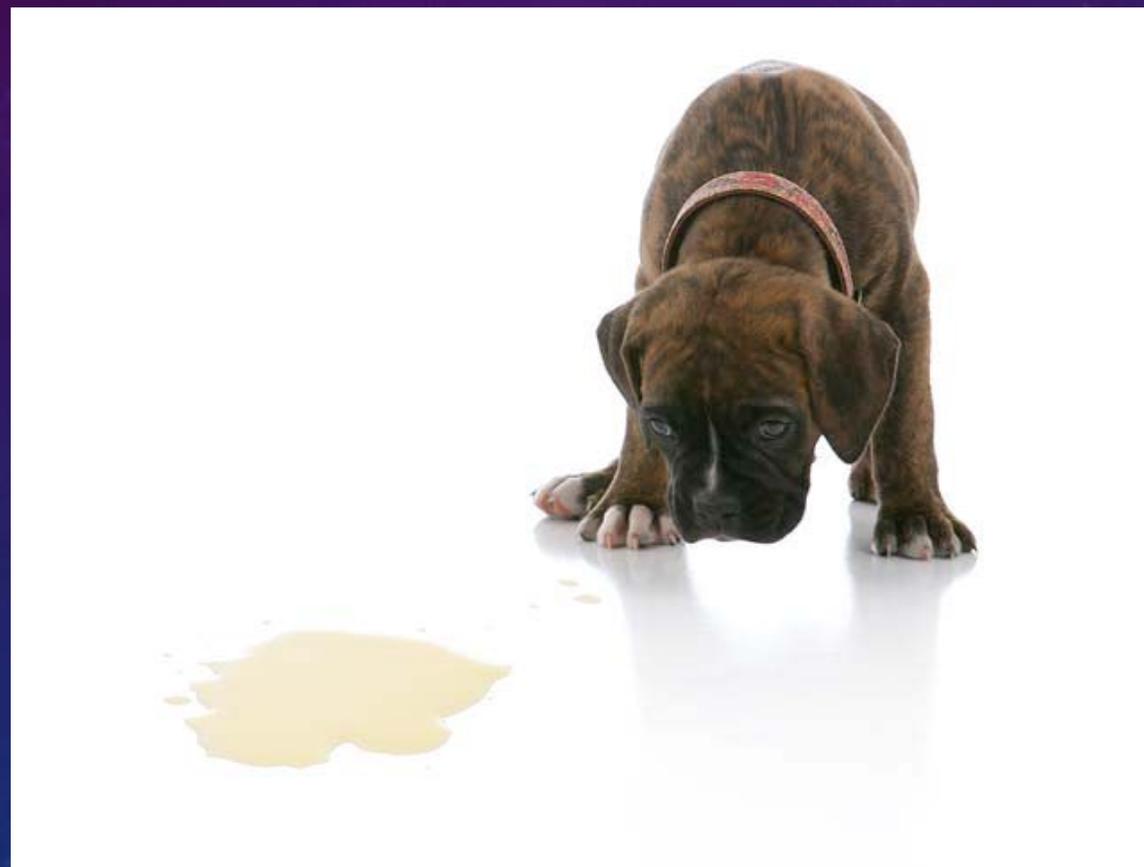
- Clinical judgment is basing your prediction of recidivism on your experience in the field and what you think" not based on any research?" (*Dep p75, line 3-7*)
 - Clinical judgment is subjective? (*Dep p75, line 8-9*)
 - Whereas "the strength of actuarial [is] that they are objective, not subjective?" (*Dep p75, line 8-9*)
 - And "research has established that the actuarial are better than clinical judgment?" (*Dep p75, line 14-15*)
 - And "the adjusted actuarial approach, according to research, has appeared on the spectrum somewhere between" those two? (*Dep p75, line 17-19*)
 - So you choose to use the adjusted actuarial approach "even though that's not always supported by the research?" (*Dep p88, line 6-7*)
-
1. Static -99R (7)(5 year 31.2; 10 year 41.9)
 - The Static 99R "the most widely used instrument in the world." (*Dep p71, line 13-15*)
 - It's the most researched? (*Dep p71, line 17*)
 - "[I]t's been around for a long time?" (*Dep p71, line 17-18*)
 - You agree "that the actuarial method is superior to clinical judgment?" (*Dep p74, line 21-23*)
 - That fact "has been well established in the literature?" (*Dep p74, line 24-25*)
 - You favor the "Static-99R . . . because it's the most researched and widely used" actuarial? (*Dep p88, line 18-19*)

MAKE EXPERT TELL CLIENT'S STORY - WHAT YOU DID NOT TELL THE JURY

- Client's life

- "father alcoholic" (Testimony 11/13/17 31:9-10)
- "father . . . not involved much in his raising." (Testimony 11/13/17 31:9-10)
- "mother was overly critical of him" (Testimony 11/13/17 31:10-13)
- "mother was . . . abusive at times" (Testimony 11/13/17 31:10-13)
- "mother would slap him with a razor strap when he misbehaved" (Testimony 11/13/17 31:10-13)
- "she tied him to the bed at . . . times." (Testimony 11/13/17 31:10-13)
- "sexually abused at age 16" (Testimony 11/13/17 31:20-21)
- But you concluded that 16 "would be an old age to be sexually abused?" (Testimony 11/13/17 31:20-22)
- _____ "had very few friends" as an adolescent? (Testimony 11/13/17 31:23-24)

TRAIN THE EXPERT



SET GROUND RULES?

Q. Can we have this understanding: I promise you that I won't be repetitious and waste your time if you can promise me that you won't try to help me by answering questions that I haven't asked, and you'll just answer my questions. Can we do that?

A. Yes.

.....

Q. You don't believe that it matters whether or not the victims are prepubescent or pubescent for Mr. Client to have pedophilic disorder, correct?

A. It would matter if he was not attracted or had sex with children generally 13 years of age or under and that if none of the children were in early pubescence, I would not feel a diagnosis of pedophilia would be technically accurate and that a diagnosis of pedophilia otherwise specified or not otherwise specified, either one, would be technically a more appropriate diagnosis.

Q: And like I said, Dr. X, you don't need to try to help me. I'm going to ask my questions. A lot of times they are "yes" or "no" answers.

IF HE PIDDLES, GIVE HIM A SWAT

1. Move to strike as non responsive (varies judge to judge)
2. Keep re-asking the question
3. Use body language to communicate displeasure and move on

14 A. Yes. That's what I said during the deposition.

15 Q. Thank you.

03:36

16 And then there was also a question about the second
17 deposition where I had asked if you recalled my asking
18 you if you had gotten any new information about the SCC
19 treatment program between your first eval and the
20 second dep. Right?

03:36

21 A. Yes. But I, you know, that was a vague question, and
22 I --

23 MS. HARDENBROOK: Objection. Move to strike as
24 nonresponsive.

25 THE COURT: Well, everything after "yes" will be

03:36

Q. Now, you wrote an article that was on your review of statistical issues in SVP cases that was actually rejected by the Journal of Sexual Abuse and Treatment; is that right?

A. Yes.

Q. And the Journal of Sexual Abuse and Treatment is a peer-reviewed journal?

A. Yes. It's peer reviewed.

Q. And it's also a journal that people in your field would look to and rely on in developing their opinions, correct?

A. Yeah. Among other places, but yes.

Q. Okay. And they did not -- they did not accept your article or publication; is that right?

A. That's true.

Q. And you did mention that it was later published in a book; is that right?

A. An award-winning book, yes.

Q. But that book is not peer reviewed, either, correct?

A. No. But it is edited by two editors who are at the top of the field -- of the field of criminal -- criminal psychology and criminology.

Q. But it's not peer reviewed, correct?

A. No. It's not peer reviewed and -- well, okay. Peer-review is not a single thing. It's like, whose peers are reviewing you?

Q. It's not peer reviewed, right?

A. Correct. It's not peer reviewed.

EXAMPLE: LIBRARIAN FANTASY



ONCE THE EXPERT IS TRAINED:

Q. Mr. Client is only attracted to children who can obtain an erection?

A. Yes.

Q. Children who can obtain an erection are not pre-pubescent.

A. Yes.

AND

Q. Dr. Szeibert cannot practice medicine west of the Mississippi?

A. Correct.



LEARNED TREATISES: ER 803(A)(18)

Learned Treatises. To the extent called to the attention of an expert witness upon cross examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

3 WAYS TO ESTABLISH THAT SOMETHING IS A “RELIABLE AUTHORITY:”

1. Opposing expert (easiest)
2. Your expert
3. Judicial Notice

Miller v. Peterson, 42 Wash.App. 822 (1986).

WHAT IS A “RELIABLE AUTHORITY?”

- Federal Courts have found that Federal Rule of Evidence 803(18) permits the receipt of information from medical journal articles, a published letter to the editor of a scientific journal, safety codes, an article from a trade magazine, a pamphlet published by the American Heart Association, and a safety report prepared for use by a governmental agency.

NOT A “RELIABLE AUTHORITY?”

- Articles from Newsweek, warnings on over the counter drugs (even when published in the Physicians Desk Reference), and written recommendations for a particular industry that have not been adopted have been rejected by federal courts as unreliable authorities.
- Letters to the editor in peer reviewed journals criticizing “hebephilia”

FOUNDATION REQUIREMENT IS “LESS RIGOROUS” ON CROSS

- Called to attention of the witness
- Doesn't require that witness relied on it
- Doesn't require that the witness themselves regards it as authoritative.

Falk v Keene Corp, 53 Wn.App. 238 (1989)

- Just need to show that it is generally considered authoritative

Miller v. Peterson 42 Wn.App. 822 (1986)

RESPONSES TO FOUNDATION OBJECTION:

- The witness can't frustrate cross examination by refusing to recognize it. Falk v. Keene
- The court has discretion under ER 104 and 611 to postpone foundational requirement
- Provide a declaration from your expert or another expert to establish that the treatise is authoritative.
- Interrupt state's expert and call your expert to establish foundation
- Use it with your expert on direct and make sure to have him testify that this is the article that state's expert refused to recognize.

RESPONSES TO ER 106 OBJECTION:

RULE ER 106
REMAINDER OF OR RELATED WRITINGS
OR RECORDED STATEMENTS

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the party at that time to introduce any other part, or any other writing or recorded statement, which ought in fairness to be considered contemporaneously with it.

- State can read any/all on redirect
- Paraphrase what the article stands
- Read abstract summary

NO OBJECTION: CONCEDES AUTHORITATIVE

Q. I'm handing you what's been marked as Exhibit 46, and that is an article entitled, The Accuracy of Recidivism, Risk Assessment for Sexual Offenders in Meta-Analysis of 118 Prediction Studies. Is that right?

A. Yes.

Q. And that is written by Karl Hanson and Kelly Morton- Bourgon, correct?

A. Yes.

Q. And Karl Hanson is, of course, one of the developers of the two tools that you used, the Static-99R and the 2002R.

A. Correct.

Q. And this is published in a peer-reviewed journal, correct?

A. Yes.

Q. And also, this is the type of article that people in your field rely on, correct?

A. That's true.

EXPERT DOESN'T KNOW WHETHER THE TREATISE IS PEER REVIEWED?

Q. I'm handing you what's been marked as Exhibit 54, and that is an article entitled, The Evaluation of Civil Commitment Criteria in a High Risk Sample of Sex Offenders. Correct?

A. Yes.

Q. And it's from 2006, correct?

A. Yes, it is.

Q. And it's published in the Journal of Sex Offenders Civil Commitment, Science and Law, correct?

A. Correct.

Q. That's a peer-reviewed journal?

A. **I don't know.**

ESTABLISH AUTHORITATIVENESS

ANOTHER WAY:

Q. it's written by Jeffrey Abracen and Jan Looman, correct?

A. Yes.

Q. And, of course, those authors are respected -- are frequent contributors to the research in the community of sex offender treatment providers, correct?

A. That's correct.

Q. And also sex offender risk assessment providers, correct?

A. Yes, I would say that's true.

Q. And their work is something that people in the field of risk assessment for sexual offenders would regularly rely on, correct?

A. I'd say typically, that's true.

Q. Okay. The article says: "What these authors found was that none of the subgroups of offenders reoffended --"

NOW IT'S YOUR TURN TO TESTIFY

1. Read a passage from the article
2. Explain what the passage means and get the witness to affirm.



EXAMPLE: LAWYER TESTIFYING

Q. What this article did is it examined four ways of structuring risk assessments: The empirical actuarial, the clinically adjusted actuarial, the mechanical, and the structured professional judgment. Is that right?

A. Yes.

Q. And so what empirical actuarial is, is just looking at risk assessment actuarials alone, correct?

A. Yes.

Q. And clinically adjusted actuarial is you use those actuarials, but then you do other things, like you did in this case, correct? You use your clinical judgment, correct?

A. Yes.

Q. So what the article says is that: "For the prediction of sexual recidivism, the approaches with the strongest predictive actuarials actually had a -- a D of .67, correct?"

A. Yes.

Q. And what a D of .67 means is that there is a high correlation between what the -- what the evaluators predicted and what actually came true.

A. Yeah. Pretty good.

Q. And then it says in the next paragraph: "The clinically adjusted actuarial approach has been frequently proposed, but rarely evaluated."

A. Yes.

Q. Okay. And that's what you used?

A. Yes.

Q. But the -- it says: "But the results were clear. In each study, the clinical adjustments decreased the predictive accuracy over that observed for the peer actuarial measures." Correct?

A. Yes, it does say that.

Q. What this study says is the best thing to do is just use the actuarials. That's the most accurate way to actually predict someone's recidivism, correct?

A. It does say that.

Q. And that if you do things like add your clinical judgment, it just adds noise; is that right?

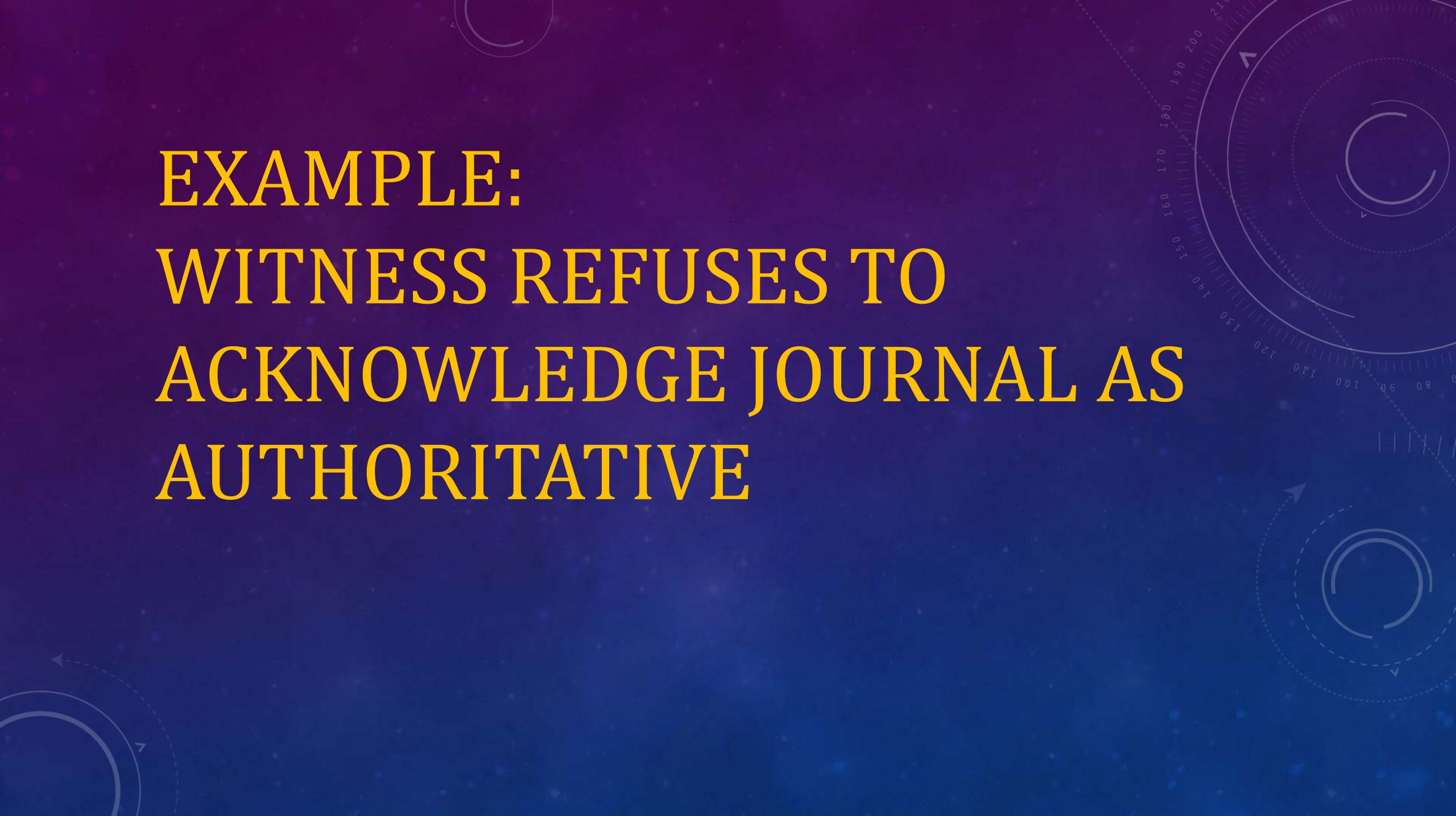
A. It lowers the predictability. I think it is saying that.

Q. So the way you did it is less accurate, according to this study, than just looking at actuarials alone, correct?

A. If I were to apply it to a thousand cases, you know -- if I do a big study and I do clinically adjust it -- ratings on people who have no clinical problems and they're in the study, then my belief is that the predictive power would go down. If I take a group of people who've been identified as probable sexually violent predators, I believe that the clinically adjusted approach is preferable.

Q. I'm handing you what's been marked as Exhibit 47. Now, the Hanson article we just talked about is not the only piece of literature that says that the statistical actuarial use is better than a clinically adjusted approach; is that right?

A. That's true.

The background is a dark blue gradient with a subtle pattern of white stars. Overlaid on this are several technical diagrams in a lighter blue color. In the top right, there is a large circular gauge with concentric rings and numerical markings from 0 to 210. Below it is a smaller circular diagram with dashed lines and arrows. In the bottom left, there is another circular diagram with a dashed arrow pointing left. The text is centered in the upper half of the image.

**EXAMPLE:
WITNESS REFUSES TO
ACKNOWLEDGE JOURNAL AS
AUTHORITATIVE**

Q. I'm handing you Exhibit 51. And this is an article entitled, Applicability of the New Static-99 Experience Tables and Sexually Violent Predator Risk Assessments, correct?

A. Right.

Q. And it's from -- it's written by Brian Abbott, correct?

A. Yes.

Q. And it is published in the Sex Offender Treatment Journal, correct?

A. Yes.

Q. And that is a peer-review journal?

A. I don't know.

Q. And that is from 2009?

A. Yes.

Q. And certainly a journal that people in your field would read and rely on for informing their opinions, correct?

A. I never -- never relied on it, but perhaps people do.

Q. And on page 17, it says, in the third paragraph: "The base rate of sexual recidivism ---
"

OBJECTION: FOUNDATION

RESPONSES?

- Foundation was laid because he said “perhaps” other people in the field rely on it
- Other options?
 - Judicial notice
 - Ask judge do postpone foundation requirement
 - Declaration from Brian Abbott or another defense expert
 - Call Brian Abbott to establish foundation.

SUSTAINED



STICK IT

MAKE A RECORD:

- State v. Benn 161 Wn.2d 256 (2007)
- Supreme court found trial court erred in refusing to allow cross of state's expert on blood spatter treatise, but found it was harmless error because there was no offer of proof about how the court's ruling harmed defendant or affected the outcome.

RECOVER:

- Show that the expert is only refusing to acknowledge it as a reliable authority because it's written by opposing expert
 - Q. Brian Abbott is the other expert in this case, correct?
 - A. One other, yes. Another, yes.
- Move on by stating, "That isn't the only research on topic x....here's exhibit 2, which is also on that topic..."



Don't do this.



REMEMBER . . .

When things go wrong with expert witnesses keep 2 things in mind:

1. You will never make the same mistake again, nor will your colleagues
2. You will have an amusing story to tell at a CLE or over cocktails

QUESTIONS ...

I'm always happy to brainstorm issues or ideas of potential experts
– email me at shardenbrook@snocopda.org