

CAREFUL,
I AM AN EXPERT



Rule 702 of the Federal Rules of Evidence provides that expert opinion evidence is admissible if:

1. the witness is sufficiently qualified as an expert by knowledge, skill, experience, training, or education;
2. the scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
3. the testimony is based on sufficient facts or data;
4. the testimony is the product of reliable principles and methods; and
5. the expert has reliably applied the relevant principles and methods to the facts of the case.





Credentials are important, but credentials alone do not qualify an expert to testify.

Even with the best of credentials, an expert may not be qualified to opine on a subject because the techniques involved may not be reliable.

Court observed that "given the increasingly specialized and technical nature of medicine, there is no validity, if there ever was, to the notion that every licensed medical doctor should be automatically qualified to testify as an expert on every medical question."

Q. And in looking over the resume that you provided with your opinions, it appears, based on what you provided, that the last time you were actually a corrections officer was between the years of 1967 to '68, when it indicates you were a resident staff member for the Parkview Juvenile Detention Center.

A. That would be correct, yes - other than that I managed and administered, yes.

Q. Okay. So, then, just for clarification points with the jury, the last time that you actually directly handled inmates as a detention officer was 47 years ago?

A. The last time I directly handled -- When you're involved in jail management, the way I'm involved in jail management, I was heavily involved with inmates, I was there a lot, I was heavily involved with inmates. I was not an office manager.

Q. Is the last time you were a correction officer where your job title was correction officer, where your duties were to act as a correction officer for your entire shift, was that 47 years ago, sir?

A. It would be, yeah.

Q. Yes. The answer is yes? Correct?

A. The Parkview Detention Center. I'm doing the math here and trying to figure out how many years ago, but --

Q. Okay. I'll give you time to do the math. From 1967 to today's date --

A. That's correct. That's correct.



*What I don't know...
I can always make up!*

A trial court is well within its discretion in determining that an expert was too far removed from surgical practice and even from teaching to form a reliable opinion.



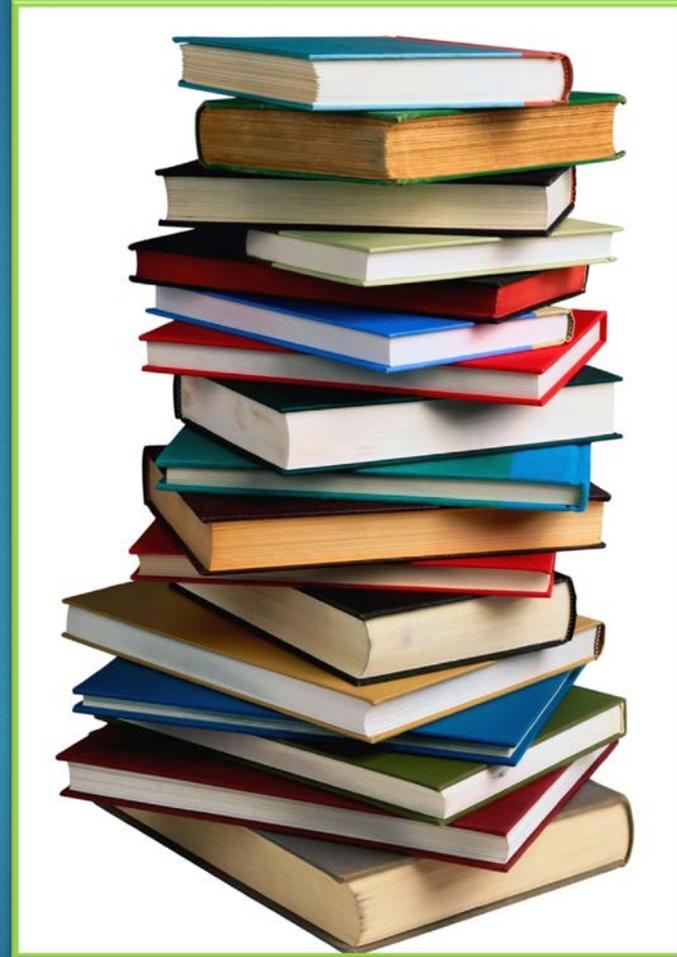
To flesh out the qualifications inquiry try this two-step inquiry:

1. the witness must have a sufficient background in a particular field, and
2. the witness's background must go to the matter on which the witness is to give an opinion.

The focus is on the "fit" between the subject matter at issue and the expert's familiarity of the subject matter.

Expert testimony must "help the trier of fact to understand the evidence or to determine a fact in issue."

Helpfulness is a "threshold determination" that must be satisfied before expert testimony is admissible.



Does this particular expert testimony actually provide the help a reasonable juror needs?

Expert testimony is permitted because of the assistance it can provide to the jury. If an expert is not qualified, his testimony will not assist the jury. If the expert is qualified but the testimony is irrelevant or unreliable, it will not assist the jury.





The Court instructed the trial court to exclude an expert's opinion whenever "the jury is equally competent to form an opinion" on the topic of the expert's testimony. In other words, the jury needed only its "collective common sense," not an expert, to assist it in deciding that issue.

"The question under Rule 702 is not whether the jurors know something about this area of expertise but whether the expert can expand their understanding of this area in any way that is relevant to the disputed issues in the trial."

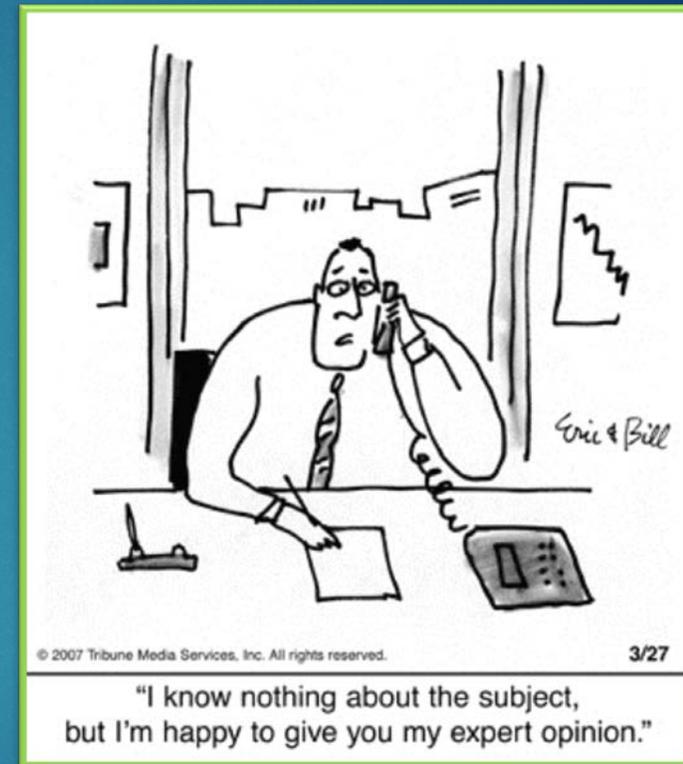
Stated negatively, expert testimony is unhelpful when the subject does not need expert "illumination." Or, expert testimony is not admissible when it is "directed solely to lay matters which a jury is capable of understanding and deciding without the expert's help."

Expert opinions are not helpful when the jury's common sense or general experiences common to the community enable it to determine the matter without any other assistance.



The relevance inquiry originated from Daubert's requirement that the opinion must "fit" the issues in the case; it must be "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute."

Ultimately, the test for relevance looks at the fit between the testimony and the issues the factfinder must decide, which will be determined not only by the factual disputes but also by the relevant legal inquiries.





Rule 702 further requires that the evidence or testimony "assist the trier of fact to understand the evidence or to determine a fact in issue." This condition goes primarily to relevance. "Expert testimony which does not relate to any issue in the case is not relevant and, ergo, non-helpful."

Daubert v. Merrell Dow Pharms., 509 U.S. 579, 591 (U.S. 1993)

Rule 702 of the Federal Rules of Evidence likewise divides the reliability inquiry into three prongs. It requires that expert testimony

1. be "based on sufficient facts or data";
2. be "the product of reliable principles and methods"; and
3. "reliably apply the principles and methods to the facts of the case."





"The trial court should undertake a rigorous examination of the facts on which the expert relies, the method by which the expert draws an opinion from those facts, and how the expert applies the facts and methods to the case at hand."

Stated differently, courts should ensure that the expert "is being as careful" and as unbiased "as he would be in his regular professional work outside his paid litigation consulting."

The law requires experts to substantiate their opinions, and for good reasons. Experts who testify on behalf of parties to a lawsuit are subject to biases and potential abuses that are not always present outside the courtroom, and the courtroom itself may afford experts a veneer of credibility not present in other contexts.

Legal sufficiency review requires courts to ensure that a jury that relies on an expert's opinion has heard factual evidence that demonstrates that the opinion is not conclusory on its face. An expert's reliance on insufficient data and unsupported assumptions and analytical gaps in her analysis render her opinion conclusory and without evidentiary value.





Courts treat expert testimony as conclusory or speculative, such that no objection is necessary to preserve error, when:

1. the expert fails to provide any explanation or predicate for her opinion;
2. the explanation the expert provides for her opinion suffers from too great an "analytical gap";
3. the explanation is predicated on facts, data, or assumptions that do not actually support the expert's explanation or that are not supported by the evidence;
4. the expert's explanation is at such a general level that it offers no meaningful information to the jury to enable it to review the reliability of the opinion; and
5. in the context of causation opinions, the expert fails to rule out other plausible causes or explain why the theory of causation adopted by the expert is superior to other plausible theories of causation.