Procrastinators’ Programs℠

Everything You Need to Know About Expert Witnesses

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Walter C. Morrison, IV was born in Baton Rouge, Louisiana on October 19, 1967 and raised in New Roads, Louisiana. He graduated from Catholic High School of Pointe Coupee in 1986 and from Louisiana State University with a B.S. in accounting in 1990. He attended Mississippi College School of Law where he was the Production Editor of the law review and graduated with a Juris Doctor in 1993.

Walter's practice started in Jackson, Mississippi when he joined Upshaw Williams in 1993 and focused primarily on the defense of personal injury cases. In 2000, Walter joined the firm of Sessums, Dallas & Morrison where he remained until January 2013 focusing primarily on plaintiff's personal injury litigation, primarily medical malpractice. Walter joined Gainsburgh, Benjamin in January 2013 and he practices in both Mississippi and Louisiana.

Walter is a Fellow of the American College of Trial Lawyers and an Associate of the American Board of Trial Advocates. He has been named to the Best Lawyers in America from 2008 until 2013, Mid-South Super Lawyers for 2011 and 2012 and has an “AV” rating in Martindale Hubbell. He is also a member of the Million Dollar Advocates Forum and the Litigation Counsel of America.

Walter currently serves on the Adjunct Faculty of the Mississippi College School of Law where he teaches Law and Medicine. He has also lectured at the University of Mississippi School of Law and the Mississippi College School of Law in the areas of trial practice. He has given seminar and continuing legal education presentations through Barristers and the National Business Institute in the areas of litigation, evidence, medical malpractice and trial practice.

Walter is a member of the Mississippi State Bar Association and the Louisiana State Bar Association.
I. INTRODUCTION

At some point during the life of a case every one of us has asked this question – “Do I need an expert?” If the answer is yes, various questions often follow.

“What will the court allow me to call an expert?”

“Am I required to call one?”

“What kind of expert do I need?”

“Where do I find an expert?”

“What do I do with him at trial on direct examination?”

“How do I handle the opponent’s expert on cross-examination?”

What’s the big deal with experts anyway? While we all have opinions, seldom is opinion testimony allowed at trial. Courts prefer to deal with facts and though juries are allowed to make reasonable inferences based on facts, opinions, or what someone thinks about an issue in a case, are generally not allowed.

But if you have ever been on the opposing side of an expert rendering opinions against your client’s position in a case, you understand the power that accompanies an expert’s testimony. Juries generally respect experts who bring their knowledge, training and experience to court and help guide juries in their decision making. It has been noted that “there is a certain mystique about the word ‘expert’ and once the jury hears of the expert’s experience and expertise, it might think the witness even more reliable than the judge.”¹ Unlike most fact witnesses, experts are allowed great latitude, not only in being allowed to express opinions, but they are allowed to rely on inadmissible evidence in support of their opinions (La. Code Evid. Art. 703), express opinions on ultimate issues (La. Code Evid. Art. 704), and receive compensation for their work and even their testimony.

II. WILL THE COURT ALLOW ME TO CALL AN EXPERT?

Article 702 of the Louisiana Code of Evidence, which governs the admissibility of expert testimony, provides, in pertinent part: “a witness who is qualified as an expert by knowledge,

¹ Askanase v. Fatjo, 130 F.3d 657, 673 (5th Cir. 1997).
skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact-in-issue. Consequently, before a court will allow an expert’s testimony, it must conclude that the testimony would help the trier of fact understand the evidence or determine a fact-in-issue. The Louisiana Fourth Circuit Court of Appeal in *Clement v. Griffin* explained:

> Because La. C.E. art. 702 is identical to Federal Rule of Evidence 702, the Louisiana jurisprudence on admissibility of expert testimony generally follows the federal interpretations. Therefore, Louisiana, like the federal courts, has started questioning whether experts are properly being utilized in cases, especially in cases where the expert's opinion is not supported by peer review or publication. A major reason for the increased scrutiny given expert testimony is the fact that the use of experts has become so frequent. In fact, it has become almost common knowledge that many experts were available to the highest bidder; in other words, they will testify favorably to whomever pays for their services. Thus, a study of both the Louisiana jurisprudence and the federal jurisprudence reveals a concerted effort to find a method for controlling expert testimony.

The Advisory Committee notes to Federal Rule of Evidence 702 guide: “[t]here is no more a certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best possible degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute.”

Louisiana courts have excluded expert testimony in two general situations: (1) where the expert testimony offered consists of legal opinions and conclusions; and (2) where the expert’s opinions and evaluations are within the capability of the fact-finder to comprehend for himself/herself.

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2 La. C.E. art. 702.
4 *Cross v. Cutter Biological, Div. of Miles Inc.*, 676 So. 2d 131 (La. App. 4th Cir. 1996) (citing *Clement*, 634 So. 2d 412, 426, *writs den.* 94-0717, 94-0777, 94-0789, 94-0791, 94-0799, 94-0800 (La. 5/20/94), 637 So.2 d 478-79) (citing *In re Air Crash Disaster at New Orleans*, 795 F.2d 1230 (5th Cir. 1986)).
5 Fed. R. Evid. 702, Advisory Committee Note.
The United States Fifth Circuit Court of Appeals has expressly held that expert testimony should be excluded if the trial court finds that “the jury could adeptly assess the situation using only their common experience and knowledge.”\(^6\) Furthermore, “the trial judge ought to insist that the proffered expert bring to the jury more than the lawyers can offer in argument.”\(^7\)

The following cases are additional examples of courts’ disallowing experts:

- **Oliver v. Orleans Parish School Bd.,** 2009-0489, (La. App. 4th Cir. 2009), 25 So. 3d 189 (testimony of an expert is proper for the purpose of assisting the court only in those fields in which the court lacks sufficient knowledge to enable it to come to a proper conclusion without such assistance. A court does not abuse its discretion in excluding expert testimony in the field of legal ethics where the court feels it possesses sufficient knowledge in that area);

- **Maldonado v. Kiewit Louisiana Co.,** 2012-1868 (La. App. 1st Cir. 5/30/14), ___ So. 3d ___, reh'g denied (Aug. 24, 2014), reh'g denied (Sept. 26, 2014) (plaintiffs sought wrongful death and bystander damages arising out of the collapse of a steel reinforcing bar cage; trial court committed prejudicial legal error in permitting plaintiffs’ expert to give opinion testimony interpreting the contract between two of the defendants because the expert’s opinion was not relevant to assist the jury on a technical issue or in determining the contracting parties' intent; the jury could have easily concluded the facts for which the testimony was offered without the assistance of the expert);

- **Jones v. H.W.C. Ltd.,** CIV.A. 01-3818, 2003 WL 42146 (E.D. La. Jan. 3, 2003) (plaintiff allegedly slipped in oil; plaintiff's experts excluded because their reports “intrude upon the domain of common sense matters upon which jurors require no expert assistance”);

- **Diaz v. Delchamps, Inc.,** CIV. A. 97-0681, 1998 WL 42885 (E.D. La. Jan. 30, 1998) (plaintiff injured in motor vehicle accident caused by grocery store's shopping cart in the road; plaintiff's safety expert excluded because “scientific, technical, or other specialized knowledge is not necessary for the trier of fact to understand the evidence or to determine a fact in issue”);

- **Matherne v. MISR Shipping Co.,** CIV. A. 88-2261, 1991 WL 99426 (E.D. La. May 31, 1991) (plaintiff allegedly injured due to vessel's steps not being properly secured; plaintiff's safety expert excluded because “a jury is competent to determine such liability issues and a “safety expert” would not assist the jury in making such a determination”);

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\(^6\) Peters v. Five Star Marine Serv., 898 F.2d 448, 450 (5th Cir. 1990).
\(^7\) McMullen v. BP Exploration and Prod., NO. 12-206, 2013 WL 12556032 (E.D. La. June 10, 2013) (quoting In re Air Crash Disaster at New Orleans, La., 795 F.2d 1230, 1233 (5th Cir. 1986)).
• Gayle v. Louisiana Dock Co., CIV.A.99-3110, 2000 WL 1059815 (E.D. La. July 31, 2000) (plaintiff allegedly injured while transferring cargo between vessels; plaintiff's safety expert excluded because his “report contains nothing that an ordinary factfinder, using common sense and general knowledge, could not also adequately assess”);

• Pope v. Chevron U.S.A., Inc., CIV. A. 93-2949, 1994 WL 179938 (E.D. La. Apr. 28, 1994) (plaintiff allegedly injured during transfer from vessel to platform; plaintiff's safety experts excluded because “expert testimony is unnecessary here for the jury to decide whether it was reasonable to transfer plaintiff in a personnel basket from the vessel to a fixed platform in rough seas”);

• Thomas v. Global Explorer, LLC, CIV.A. 02-1060, 2003 WL 943645 (E.D. La. Mar. 3, 2003) (plaintiff allegedly injured in fall from ladder; expert excluded because his testimony would “intrude upon the domain of common sense matters upon which jurors require no expert assistance”); and

• Roy v. Florida Marine Transporters, Inc., CIV.A.03-1195, 2004 WL 551208 (E.D. La. Mar. 18, 2004) (plaintiff allegedly injured when he fell from a milk crate used as a step on a vessel; expert's testimony limited because much of it “will not assist the Court as trier of fact”).

III. IS MY EXPERT QUALIFIED TO TESTIFY?

As you are all aware, countless scholarly articles have been written on Daubert v. Merrell Dow Pharm., Inc. Courts issue Daubert rulings daily. The Federal Rules of Evidence and the Louisiana Code of Evidence have adopted the methodology requirements of Daubert, which require that expert opinions be grounded in approved methods and procedures of science, rather than just subjective belief or unsupported speculation; the trial court must also ensure that the scientific evidence admitted is not only relevant, but reliable.

But do not confuse the methodology requirements of Article 702 with whether your expert is “qualified” to testify in a particular subject area. Article 702 states that a witness may be qualified as an expert “by knowledge, skill, experience, training or education.” However, formal education or training in a particular field is not always a necessary prerequisite to qualifying as an expert in a particular field. Experience alone is sufficient. Consequently, the most uneducated witness may still qualify as an expert through training or experience.

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9 See State v. Foret, 628 So. 2d 1116 (La. 1993) (Louisiana Supreme Court in interpreting Article 702 of the Louisiana Code of Evidence elected to follow the lead of the US Supreme Court in Daubert).
IV. MUST I CALL AN EXPERT?

Though there is no formal requirement for expert testimony, it is a virtual necessity in particular types of cases. For instance, in professional liability cases, particularly medical malpractice, “expert testimony is generally required to establish the standard of care and whether that standard was breached, unless the negligence complained of is so obvious that a lay person can infer negligence without the guidance of expert testimony, such as fracturing a leg during an examination, amputating the wrong limb, or leaving a sponge in a patient’s body.”

Despite the above guidance, in all but the rarest of circumstances, one should not even consider handling a medical malpractice case without the assistance of an expert witness. Even in the rare circumstance where it is obvious that a healthcare provider breached the applicable standard of care, expert testimony is still required to establish causation.

In Pfiffner v. Correa, the Louisiana Supreme Court provided the following guidance with respect to the necessity of expert testimony in medical malpractice cases:

We hold that expert testimony is not always necessary in order for a plaintiff to meet his burden of proof in establishing a medical malpractice claim. Though in most cases, because of the complex medical and factual issues involved, a plaintiff will likely fail to sustain his burden of proving his claim under LSA-RS 9:2794’s requirements without medical experts, there are instances in which the medical and factual issues are such that a lay jury can perceive negligence in the charged physician’s conduct as well as any expert can, or in which the defendant/physician testifies as to the standard of care and there is objective evidence, including the testimony of the defendant/physician, which demonstrates a breach thereof. Even so, the plaintiff must also demonstrate by a preponderance of the evidence a causal nexus between the defendant’s fault and the injury alleged.

Legal and accounting malpractice cases, like medical malpractice cases, also require an expert witness to establish the applicable standard of care, whether or not that standard was breached and causation. However, like in medical malpractice cases, there are, of course, exceptions to the general requirement of expert testimony. For instance, Louisiana courts have held that “where the trial court is familiar with the standard of practice in the community or where the attorney's conduct obviously falls below any reasonable standard of care, the assistance of an expert witness may be unnecessary to prove the appropriate standard of conduct in the legal community.”

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13 Pfiffner v. Correa, 94–0924 (La. 10/17/94), 643 So. 2d 1228
14 Id. at 1234.
15 Buras v. Marx, 04-802 (La. App. 5th Cir. 12/14/04), 892 So. 2d 83, 88 (citing Watkins v. Sheppard, 278 So. 2d 890 (La. App. 1st Cir.1973); Muse v. St. Paul Fire, 328 So. 2d 698 (La. App. 1st Cir.1976); and Dixon v. Perlman, 528 So. 2d 637 (La. App. 2d Cir. 1988)).
The following cases are examples of legal malpractice cases in which expert testimony was necessary:

- *Reed v. Verwoerdt*, 490 So. 2d 421 (La. Ct. App. 1986) (holding that expert testimony was necessary to establish the alleged negligence of the attorneys where plaintiff asserted a claim for legal malpractice on the basis of an allegedly excessive contingent fee and failure to inform her of the present value of a structured settlement);

- *Sunset Ins. Co. v. Gomila*, 02-633 (La. App. 5th Cir. 12/30/02), 834 So. 2d 654 *writ denied*, 2003-0607 (La. 5/2/03), 842 So. 2d 1102 (holding that expert testimony is admissible in legal malpractice cases to establish the standard of care exercised by attorneys in the locality; in certain cases, the opinion of experts may be essential to prove the standard of care an attorney must meet);

- *Morgan v. Campbell, Campbell & Johnson*, 561 So. 2d 926 (La. App. 2d Cir. 1990) (expert testimony is admissible in a malpractice action to establish the standard of care exercised by attorneys in the locality, and in some cases may be essential; in other cases, where the trial court is familiar with standard of practice in its community, or where the attorney's conduct obviously falls below any reasonable standard of care, assistance of expert testimony may be unnecessary);

- *Buras v. Marx*, 04-802 (La. App. 5th Cir. 12/14/04), 892 So. 2d 83 *writ denied*, 2004-3204 (La. 3/11/05), 896 So. 2d 70 (the plaintiff failed to meet its burden of proof by not calling an expert to establish the appropriate standard of conduct in the legal community in a claim of legal malpractice involving allegations that the attorney did not advise, in writing, of his refusal to take the plaintiff's malpractice case or of looming prescription and/or preemption dates);

Similarly, in cases brought under the Louisiana Products Liability Act (“LPLA”), expert testimony is generally required to prove a product defect. Generally, a product can be unreasonable dangerous under the LPLA if it has construction or composition defects, design defects, an inadequate warning or by breach of express warranty. But in order to establish such defects, expert testimony is generally required.\(^\text{16}\) In *Batiste v. General Motors Corp.*, the Fourth Circuit held that the “failure of an airbag to deploy . . . is not analogous to the examples of obvious negligence described in [Pfiffner v.] Correa.”\(^\text{17}\) The court further explained: “[i]n saying this, we wish to stress that we are not saying that expert testimony would be required in order to prove the existence of a defect in every instance where an airbag fails to deploy.”\(^\text{18}\) Likewise, in *Bourgeois v. Garrard Chevrolet, Inc.*, the Fourth Circuit granted the defendant manufacturer’s motion for summary judgment, reasoning:

Without expert testimony concerning GMC specifications and standards, the plaintiff's testimony is inadequate. **The plaintiff is**

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\(^{16}\) See *Batiste v. Gen. Motors Corp.*, 2000-2027 (La. App. 4th Cir. 5/23/01), 802 So. 2d 686 *writ denied*, 2001-2193 (La. 11/9/01), 801 So. 2d 375.

\(^{17}\) *Batiste*, 802 So. 2d at 690.

\(^{18}\) *Id.*
required to present expert testimony to show a genuine issue of material fact. Without expert testimony, the plaintiff cannot carry his burden of proof that the ABS braking system was defective in design or that an alternative design would have prevented the plaintiff's injuries. (Emphasis added).\(^\text{19}\)

Expert testimony by automobile accident reconstructionists also proves beneficial in automobile accident cases. For instance, an accident reconstructionist might offer his/her expert opinion regarding the existence of a defective condition of a roadway in an auto accident case,\(^\text{20}\) or the cause of an accident.\(^\text{21}\)

Expert testimony by actuaries, economists, and/or CPAs can also be effective in putting forth evidence as to wage and economic losses claimed in any personal injury case. Expert testimony in this regard is especially helpful where such losses call for complex calculations on earning capacity, discounts to present value and other variables.\(^\text{22}\)

V. WHAT KIND OF EXPERT DO I NEED?

Primarily, your expert must meet the requirements of Louisiana Code of Evidence Article 702 but assuming that such is the case, issues such as whether your expert should come from private practice or academia, a particular geographic location, or have significant litigation experience are often considerations to take into account when choosing an expert witness.

Furthermore, particular areas of expertise often overlap and all would meet the requirements of Article 702. For instance, in medical malpractice cases where the alleged negligent act raises issues which are limited and peculiar to the medical specialty, only those who are qualified in that specialty may testify as to the applicable standards.\(^\text{23}\) However, it is a specialist’s knowledge of the requisite subject matter, rather than the specialty within which the specialist practices which determines whether a specialist should testify as to the degree of care which should be exercised.\(^\text{24}\) Moreover, a specialist need not be actively practicing in the particular specialty about which he/she will testify.\(^\text{25}\)

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\(^{19}\) Bourgeois v. Garrard Chevrolet, Inc., 2002-0288 (La. App. 4th Cir. 2/21/02), 811 So. 2d 962, 966-67, writ denied, 2002-0846 (La. 5/24/02), 816 So. 2d 854.

\(^{20}\) See Lavalais v. State, ex rel. Dept. of Transp. and Development, 26 So. 3d 895 (La. App. 3d Cir. 2009).

\(^{21}\) See Haik v. Allstate Ins. Co., 2009-0860 (La. App. 4th Cir. 3/31/10), 39 So. 3d 711, 715-16 writ denied, 2010-1921 (La. 11/5/10), 50 So. 3d 809 (an expert certified in accident reconstruction who qualified by the court as an expert in accident investigation, was allowed to testify regarding his opinion as to the cause of the accident).

\(^{22}\) See Viator v. Liverpool & London S.S. Prot. & Indemn. Ass'n, 97-264 (La. App. 3d Cir. 10/8/97), 701 So. 2d 487, 497 writ denied sub nom. Viator v. Liverpool & London Steamship Prot. & Indemn. Ass'n, 98-0027 (La. 3/13/98), 712 So. 2d 880 (plaintiff utilized an expert economist to opine as to his loss of future earnings and to contest the defendant’s expert economist’s opinion, along with a rehabilitation expert to opine as to the plaintiff’s impaired earning capacity).

\(^{23}\) Hebert v. Podiatry Ins. Co. of America, 688 So. 2d 1107, 1113 (La. App. 3d Cir.1996); Turner v. Massiah, 641 So. 2d 610 (La. App. 5th Cir. 1994), rev’d in pt. on other grds, 656 So. 2d 636 (La. 1995).

\(^{24}\) Coleman v. Deno, 787 So. 2d 446, 467 (La. App. 4th Cir.2001); Turner, 641 So. 2d at 617.

\(^{25}\) Bradbury v. Thomas, 98-1678 (La. App. 1st Cir. 9/24/99), 757 So. 2d 666, 674 (citing Piazza v. Behrman Chiropractic Clinic, Inc., 601 So. 2d 1378 (La. 1992)).
When medical specialties overlap, Louisiana courts recognize that it is appropriate to allow a specialist in one field to give expert testimony as to the standard of care applicable to practices common to both disciplines—referred to as “cross-over testimony.”26 In other words, “Where the procedure alleged to be negligently performed is one that is not limited to a particular specialty, and where there is no showing that the standard of care is different for different medical disciplines, an expert with knowledge of the requisite procedure should be allowed to testify regarding the standard of care regarding that procedure.”27

As the Louisiana Supreme Court explained in *McLean v. Hunter:*28

... it is a specialist's knowledge of the requisite subject matter, rather than the specialty or sub-specialty within which the specialist practices, which determines whether a specialist may testify as to the degree of care which should be exercised by general practitioners. A particular specialist's knowledge of the subject matter on which he is to offer expert testimony should be determined on a case by case basis.29

Consequently, a neurologist who sees patients in the emergency department may qualify as an expert to testify critically of an emergency department physician whose care of a patient’s head injury is at issue.

The following are examples of medical malpractice cases in which Louisiana courts have permitted crossover expert testimony:

- **Leyva v. Iberia Gen. Hosp.**, 94-0795 (La. 10/17/94), 643 So. 2d 1236 (an obstetrician/gynecologist was permitted to testify as to the standard required of general practitioner in performing tubal ligation);

- **Soteropulos v. Schmidt**, 556 So. 2d 276 (La. App. 4th Cir. 1990) (an orthopedist was permitted to testify as to standard of care required of vascular surgeon in smoothing edges of tibia during amputation);

- **Steinbach v. Barfield**, 428 So. 2d 915 (La. App. 1st Cir. 1983) (specialists in colon and rectal cancer, family practice, and diagnostic radiology were permitted to testify as to standard of care required of specialist in internal medicine in diagnosing colon cancer);

- **Turner v. Massiah**, 641 So. 2d 610, 617 (La. App. 5th Cir. 1994) (the court allowed an oncologist to testify as to the standard of care applicable to a plastic surgeon in diagnosing and spotting breast cancer);

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26 *Hebert*, 688 So. 2d at 1113; *Ricker v. Hebert*, 94-1743 (La. App. 1st Cir. 5/5/95), 655 So. 2d 493, 495.
27 *Ricker*, 655 So. 2d at 493.
29 Id. at 1302.
- *Slavich v. Knox*, 750 So. 2d 301, 304 (La. App. 4th Cir. 1999) (the court allowed a general surgeon to testify as to the applicable standard of care of an internist in diagnosis and detection of cancer)

The party offering the expert must establish the witness's expertise, skill, and training in the procedure.\(^{30}\) It is for the Court to determine on a case-by-case basis the expert's qualifications to testify as to the standard of care.\(^{31}\)

Certainly, jury appeal should play a part in your decision. For a trial in south Louisiana is an expert from New York going to be more accepted than one from Houma?

VI. WHERE DO I FIND AN EXPERT?

Today, the market is flooded with expert referral services. ALM Experts produces an annual directory broken down by geographical regions of the United States. Other expert referral services include Tasa, Juris Pro, and HG Experts. Just remember, however, that the experts listed in these referral services likely have a significant testimonial history. Such baggage can sometimes be problematic. On the other hand, these experts are generally more familiar with the litigation process and are likely to be savvy on the witness stand.

Authors of authoritative treatises and journal articles often make good expert witnesses. Colleges and universities well respected in particular subject areas can also be a great source of expert witnesses. People you run into daily, such as your physician, engineer, accountant and even your auto mechanic may be good sources of experts. Of course, referrals from other attorneys may also be a good source. Finally, simple internet searches can turn up hundreds of potential expert witnesses in any given subject matter.

VII. RETAINING AND UTILIZING THE EXPERT.

Once you retain an expert, you must provide him with the information necessary for him to form the opinions he will ultimately give at trial. Ensure that your expert has all of the necessary records, deposition transcripts, photographs and access to the product or premises in question necessary for him to reach a well-reasoned opinion. Rely on your expert in the discovery process. If possible, have him accompany you to depositions, assist you in formulating discovery requests and have him review and interpret data obtained in the discovery process.

At trial, your expert should steal the show. After qualifying him, have him get out of the witness stand, stand before the jury and educate the jury as to the issues involved in the case. Generally, experts are experienced in teaching and enjoy the process. Have the expert utilize exhibits and demonstrative aides to drive home your theory of the case. Above all, take your time with your expert. He will likely be your strongest weapon at trial.

Of course, cross-examining expert witnesses is quite difficult. Preparation is the key to an effective cross-examination. You cannot start too early in preparing to cross-examine your

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\(^{30}\) *Hebert*, 688 So. 2d at 1113.

\(^{31}\) *See id.* (citing *McLean*, 495 So. 2d 1298).
opponent’s expert. Gather as much information as you can regarding the expert’s background and prior work as an expert witness. Both the plaintiff and defense bars have a wealth of information on the testimonial history of hundreds of expert witnesses. Try to obtain transcripts of prior depositions or trial testimony. Search Westlaw to determine if the expert has ever been excluded from testifying by a court.

The purpose of your cross-examination should be to show that the expert is biased, unprepared, has not reviewed all of the relevant material, or simply wrong. Bias can be established by showing that the expert always testifies for plaintiffs or defendants or that a large majority of his income is made by testifying as opposed to practicing his particular profession. An expert can be shown to be unprepared if he has not familiarized himself with all of the evidence available in the case. He can be shown to be simply incorrect if learned treatises or scholarly articles directly contradict his opinion.

VIII. CONCLUSION

Expert witnesses can make or break your case. Issues regarding the qualifications of an expert, an expert’s methodology, when to call an expert and how to handle an expert at trial certainly cannot be answered in a 1 hour CLE presentation, but hopefully this paper will provide a starting point, guiding you in the right direction the next time questions arise in your practice regarding expert witnesses.
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<th>Louisiana Code of Evidence</th>
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| **Article 701. Opinion Testimony by Lay Witnesses**  
If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are:  
(1) Rationally based on the perception of the witness; and  
(2) Helpful to a clear understanding of his testimony or the determination of a fact in issue | **Rule 701. Opinion Testimony by Lay Witnesses**  
If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:  
(a) rationally based on the witness's perception;  
(b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and  
(c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. |
| **Article 702. Testimony by Experts**  
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:  
(1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;  
(2) The testimony is based on sufficient facts or data;  
(3) The testimony is the product of reliable principles and methods; and  
(4) The expert has reliably applied the principles and methods to the facts of the case. | **Rule 702. Testimony by Experts**  
A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:  
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(b) the testimony is based on sufficient facts or data;  
(c) the testimony is the product of reliable principles and methods; and  
(d) the expert has reliably applied the principles and methods to the facts of the case. |
| **Article 703. Bases of Opinion Testimony by Experts**  
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 him 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. | **Rule 703. Bases of an Expert's Opinion Testimony**  
An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect. |
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<th><strong>Louisiana Code of Evidence</strong></th>
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| **Article 704. Opinion on Ultimate Issue**  
Testimony in the form of an opinion or inference otherwise admissible is not to be excluded solely because it embraces an ultimate issue to be decided by the trier of fact. However, in a criminal case, an expert witness shall not express an opinion as to the guilt or innocence of the accused. | **Rule 704. Opinion on an Ultimate Issue**  
(a) **In General -- Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.  
(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone. |