

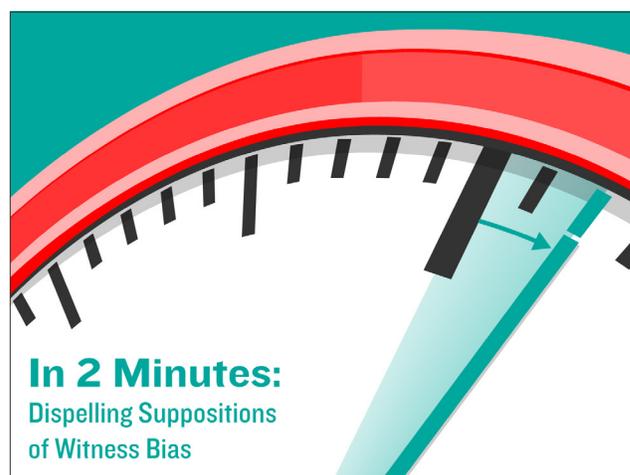


By James B. Stiff, Ph.D. | May 2017

The Science of Persuasion: Dispelling Suppositions of Witness Bias

Jurors, arbitrators, and judges all harbor suppositions that courtroom testimony is, to some extent, a reflection of a witness's own personal bias.¹ Fact finders recognize that a witness's personal interests, perspectives, and pressures serve to influence what type of information he will relay to them. In a corporate matter, for instance, jurors might conjecture that perhaps the witness is acting as a mouthpiece for the corporation. In a criminal matter, perhaps a jailhouse informant is testifying with an expectation that her own prison sentence might be reduced. Listeners assume that speakers are limited in their ability and/or willingness to provide a complete and accurate account of a situation.

There are many types of biases. When a speaker's background, experience, and training predispose him or her to view situations from a particular frame of reference, the speaker is said to have a *knowledge bias*.² For example, an examiner who worked for the Securities and Exchange Commission (SEC) for the past 30 years may be perceived by jurors as having knowledge that is limited to issues within the purview of the SEC. Similarly, a Wall Street investment analyst might be considered unable to provide



information for the jury, beyond what he learned during the scope of his position as analyst. Jurors may, thus, view testimonies from the SEC examiner and investment analyst as biased. The perspectives these witnesses proffered will be viewed as having limited value, since they were constrained by the boundaries of the witnesses' experiences.

When jurors conclude that a speaker is unwilling to provide a full and accurate account of a situation, the speaker is said to have a *reporting bias*.

In August of 2016, Jim Stiff and Paul Mongeau published the third edition of *Persuasive Communication*. The book is a comprehensive review of the theory and research on persuasive communication that spans more than 80 years of academic work in the fields of communication and social psychology. This research note is part of a series that briefly discusses topics related to the science of persuasion. It describes the practical implications persuasive communication techniques offer to lawyers practicing their craft.

An economist who always testifies for plaintiffs in product liability cases, for instance, is likely to be perceived as biased. Likewise, an engineer whose career has been spent working for a large oil company may be perceived as reluctant to relay information that might jeopardize the company. Indeed, jurors often ascribe descriptions like “hired gun” and “company man” to witnesses who appear to have reporting biases.

Although jurors may hold the suspicion that a witness testimony stems from self-serving motivations, the witness may not harbor such motivations at all. The question becomes, “How can counsel reduce jurors’ perceptions that given testimony merely reflects a witness’s bias?” Counsel can do so by having the witness relay to them that he is speaking freely, that is, he is unrestrained by outside pressures. Attorneys should ensure the jury is aware of the full extent of the witness’s expertise as per the subject matter on which he speaks. They should set forth the witness’s ability to consider opposing views. And, they should elicit testimony that indicates the witness is willing to accept his own shortcomings. Interestingly, research has shown that when a witness’s testimony is in violation or contradiction to expected testimony, it serves to enhance his credibility. Moreover, violations of these expectations are often memorable for jurors as they review testimony during deliberations. Here is a list of what a lawyer must convey in order to offset juror supposition of witness bias:

Expertise: When preparing an expert witness for testimony, ensure that she will have opportunity and ability to convey her qualifications. Moreover, she should relay to the jury her ability to provide objective assessment of an issue. When time is spent on training, credentials, experience, and awards, jurors are better armed to respond to suggestions of knowledge bias.

Impartiality: When an expert has a history of testifying in favor of one side (e.g., on behalf of oil companies in environmental cases, opposing antitrust intervention, or supporting plaintiffs’ claims for damages in personal injury cases), it is imperative to reveal that the witness reviewed the opposing side’s arguments, examined all the relevant evidence, and applied the appropriate industry standards or legal guidelines before reaching a conclusion on the issue. Evidence that an expert’s analysis conforms with industry standards is a powerful offset to the perception that the witness has a knowledge bias.

Freedom to Testify. When fact witnesses have a relationship with a party, it is important to convey that they are free to testify about the facts. Jurors often want to hear from fact witnesses because of their superior knowledge of the situation, but they often question whether such witnesses are truly speaking freely. Jurors must believe that a senior manager with 30 years of tenure in a company is not testifying as a “company man.” They must trust that the younger witness is not testifying in a certain manner because she is fearful of being fired or having her career derailed.

Willingness to step outside expectations. One effective strategy for combatting jurors’ notions that a witness has a reporting bias is for the witness to acknowledge a personal or professional shortcoming, or accept responsibility for an error (particularly, if it is not germane to the central issues in the case). Permitting witnesses to talk about how problems were identified, discussed, and resolved can go a long way in diminishing the perception that the testimony was scripted to convey only the most favorable impressions of the individual or company.

Use of these tactics will help to dispel juror suppositions about witnesses’ biases. Jurors can then

focus on the actual testimony, rather than on the suspected motivations behind the testimony. When the fact finders believe that witnesses are providing an accurate account of a situation, they can more accurately make judgements about the merits of the case and, ultimately, better perform their duty to ensure justice is served.

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