



**PRESENTING COMPLEX
SCIENTIFIC EVIDENCE TO JURIES:
YOU DON'T HAVE TO BE A ROCKET SCIENTIST**

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**The Effective Presentation
of Scientific Evidence**

Presented by

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Scientific Evidence: It Won't Matter That:

- You are a competent, experienced trial lawyer
- You understand the Science
- Your expert has outstanding credentials in the relevant area of Science
- The Science supports your case

IF

The evidence is not presented in a way that the Jury understands

The Devastating Cross-Examination



A Mayo Tale

- Patient died at home from Pulmonary Embolism 2 days post discharge after hip replacement
- Issue: whether use of Aspirin (instead of Warfarin) met the standard of care for post-operative anticoagulation therapy for prevention of DVT.
- Defendant Orthopedic Surgeon
 - INR of 1.5- 1.7
 - Elderly patients subject to falling
 - Risk of bleeding into joint or subdural
 - Use of other DVT prophylactic measures
 - SCD's after surgery
 - Early mobility
 - Aspirin therapy as an alternative to warfarin

Tale of Two Experts

Plaintiff's expert

- Thoracic, Cardiovascular surgeon from Harvard/ Mass General
- Literature supports use of Warfarin to achieve INR of 2.5 for DVT prophylaxis

Defense Expert

- Clinical Research Scientist Cornell Medical School
- Leader for his work on aspirin anti-platelet, anti-coagulation

Tale of Two Theories

- Patient's INR
 - Post op day 2= 1.2
 - Post op day 3= 1.4
 - Post op day 4 -patient discharged
 - Post op day 5 -patient died
- Defense theory – INR was on the rise at the time of discharge and would have been at or near therapeutic level at Day 5
- Plaintiff's theory –Warfarin tx would have prevented PE. INR would have been at therapeutic level sooner with Warfarin and Aspirin never achieved an INR that would prevent DVT.

Science Was on Plaintiff's Side

- Plaintiff's counsel, former nurse
 - excellent understanding of the mechanisms of action of Warfarin and Aspirin and bleeding times
 - cross-examined Defense Expert confidently, demonstrating her knowledge.
- Expert, testifying truthfully, gave damaging testimony undermining Defense theory and extrapolation of INR.
 - `Anti-coagulant vs. Anti-platelet
- Defense Counsel extremely concerned until....

She Blinded Them With Science



Verdict for Defense

Defendant Orthopedic Surgeon

- Likeable
- Excellent teacher
- Engaged the jury
 - Spoke slowly
 - Explained medical terms
 - Turned and talked to them while answering questions.
- Made Use of demonstrative Aids

Presenting the Scientific Evidence Happens Throughout the Trial Process and Must be Thoughtfully Done

Educating Your Judge

- Judges are no more adept at evaluating scientific evidence than jurors
- Opportunities for and modes of educating your judge
 - Science days/tutorials
 - Motions in limine
 - Daubert Motions
 - Summaries of expert testimony
 - The trial brief
- Why it Matters

Educating Your Jury on the Science

- Research on how jurors process scientific evidence
 - Jurors take the role seriously and try to really understand the science
 - Though they dislike repetition, it works
 - Jurors value clarity, not simplicity
 - When jurors don't understand your case they will decide on the basis of "peripheral processing"
- The CSI effect
- The importance of common sense

Notice the Jury



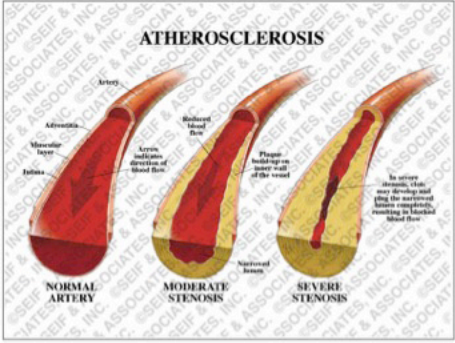
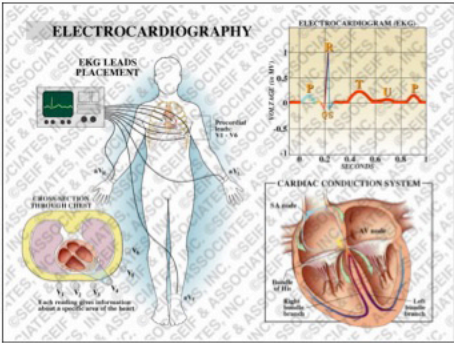
What Jurors React to Peripherally

- Hourly rate
- Testifying experience
- Credentials
- Demeanor and ability to communicate

How to Convey the Information

- Demonstrative Evidence
- Use a Variety of Modalities
- Develop Analogies and Choose your Language
- Rule 1006 Summaries
- Expert Treatise
- Test Drive

A Picture is Worth...



FACULTY BIOGRAPHY



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David Schultz is a trial lawyer and partner in Maslon's Litigation Group. He focuses his practice on high stakes litigation in the areas of product liability, healthcare, commercial contracts, civil and criminal fraud, and intellectual property. David has tried cases to verdict in state and federal courts throughout the country. He is board certified as a Civil Trial Advocate by the National Board of Trial Advocacy and as a Civil Trial Specialist by the Minnesota State Bar Association, and has taught trial advocacy at the National Institute for Trial Advocacy (NITA). David has developed an active appellate practice as well, having argued more than 50 cases before several federal circuits as well as the Minnesota Supreme Court and Court of Appeals. David is particularly adept in the analysis and elucidation of complex technical issues, a skill which he leverages for clients across all areas of his practice.

David's work on product liability cases is extensive, dating back to his time with the Minnesota Attorney General's Office where he defended the state in design and construction of highways, catastrophic aviation and railroad crashes, and toxic torts. In private practice, he has successfully represented a broad range of product manufacturers, from chemical companies that have been sued for toxic exposures to leading manufacturers of sophisticated medical devices.

In addition, David regularly represents physicians, clinics, hospitals and other providers in a wide range of matters including regulatory investigations and enforcement, licensing investigations and contested cases, professional liability litigation, credentialing and medical staffing, and civil and criminal investigations under the Federal False Claims Act and other fraud statutes. David also represents health maintenance organizations, insurers and third party payors in state and federal regulatory enforcement and investigative matters.

David has also developed a niche practice conducting government and internal investigations for corporations and public institutions. He has conducted investigations into matters involving state and federal regulatory compliance, Medicare/Medicaid billing practices and fraud (including unbundling, upcoding, certification, cost reporting, medical necessity, and duplicate payments), FDA civil and criminal regulatory violations, NIH grants, academic fraud, financial fraud, and sexual misconduct. His work in this area is further distinguished by time served in the Law Enforcement Section of the Minnesota Attorney General's Office as a white collar crime prosecutor and in the Solicitor General's Section as a civil trial attorney prior to his career in private practice.

David has represented clients in commercial and intellectual property litigation as well, including contractual disputes, trademark and patent infringement, and theft of trade secrets. Throughout his career, he has worked across a broad range of matters, all of which have enriched his experience and enabled him to provide an exceptional level of service in bet-the-company matters.

Areas of Practice

- Litigation
- Appeals
- Business Litigation
- Intellectual Property Litigation
- Tort & Product Liability

Education

- Stanford Law School; J.D., 1985
- Carleton College; B.A., magna cum laude, distinction, 1981; Honors: Phi Beta Kappa; Major: Political Science