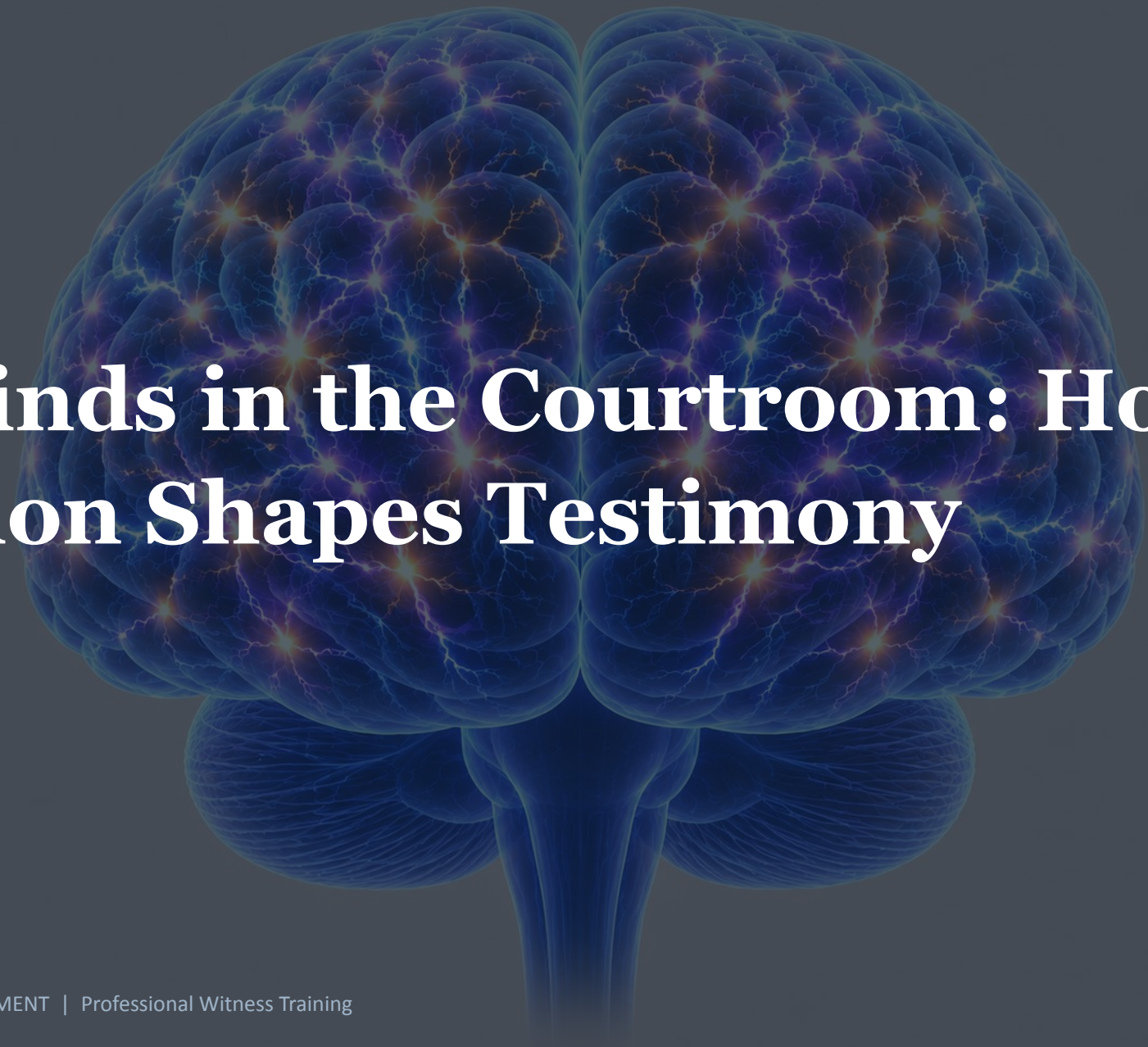
SESSION 2 OF 10

Two Minds in the Courtroom: How Cognition Shapes Testimony



Presenter



Dr. Justin LaPilusa, Psy.D., Q.M.E

Clinical/Forensic Psychologist; Trial Consultant • Immersion Today

WHAT YOU WILL LEARN

Ten Takeaways from This Session

Two Minds in the Courtroom: How Cognition Shapes Testimony

By the end of this session, you will understand why jurors' snap judgments about a witness are often made before a single fact is weighed — and leave with practical skills, strategies, and take-home tools for working with that reality instead of against it.

WHAT YOU WILL LEARN — Part 1 of 2

1. **Why Jurors Decide Fast, Then Explain Slow**
   Dual-process decision-making applied to the jury box

2. **Kahneman's System 1 and System 2**
   The two minds evaluating every witness, simultaneously

3. **Judges Are Not Immune**
   Anchoring bias in real sentencing decisions

4. **Framing Changes Memory**
   How question wording reshapes what a witness recalls

5. **The Six Biases Framework**
   Framing, anchoring, availability, primacy/recency, confirmation bias, and overconfidence

WHAT YOU WILL LEARN — Part 2 of 2

6

Availability, Primacy, and Recency

Why the vivid and the first-and-last moments dominate memory

7

Confirmation Bias and Overconfidence

Early impressions resist revision, and confidence gets mistaken for accuracy

8

The Story Model

Jurors build and test a narrative — they do not tally facts

9

Connecting Back to the Four C's

Using Competence and Character to shape what System 1 decides

10

Skills, Strategies, and Take-Home Tools

Practical drills and forms you can use in your next witness prep

OPENING

Two Verdicts, Same Evidence

How Can the Same Testimony Produce Two Different Verdicts?



Same facts, different frame — the words used to describe an event change the conclusion drawn from it



The mind that decides first is not the mind that explains the decision afterward



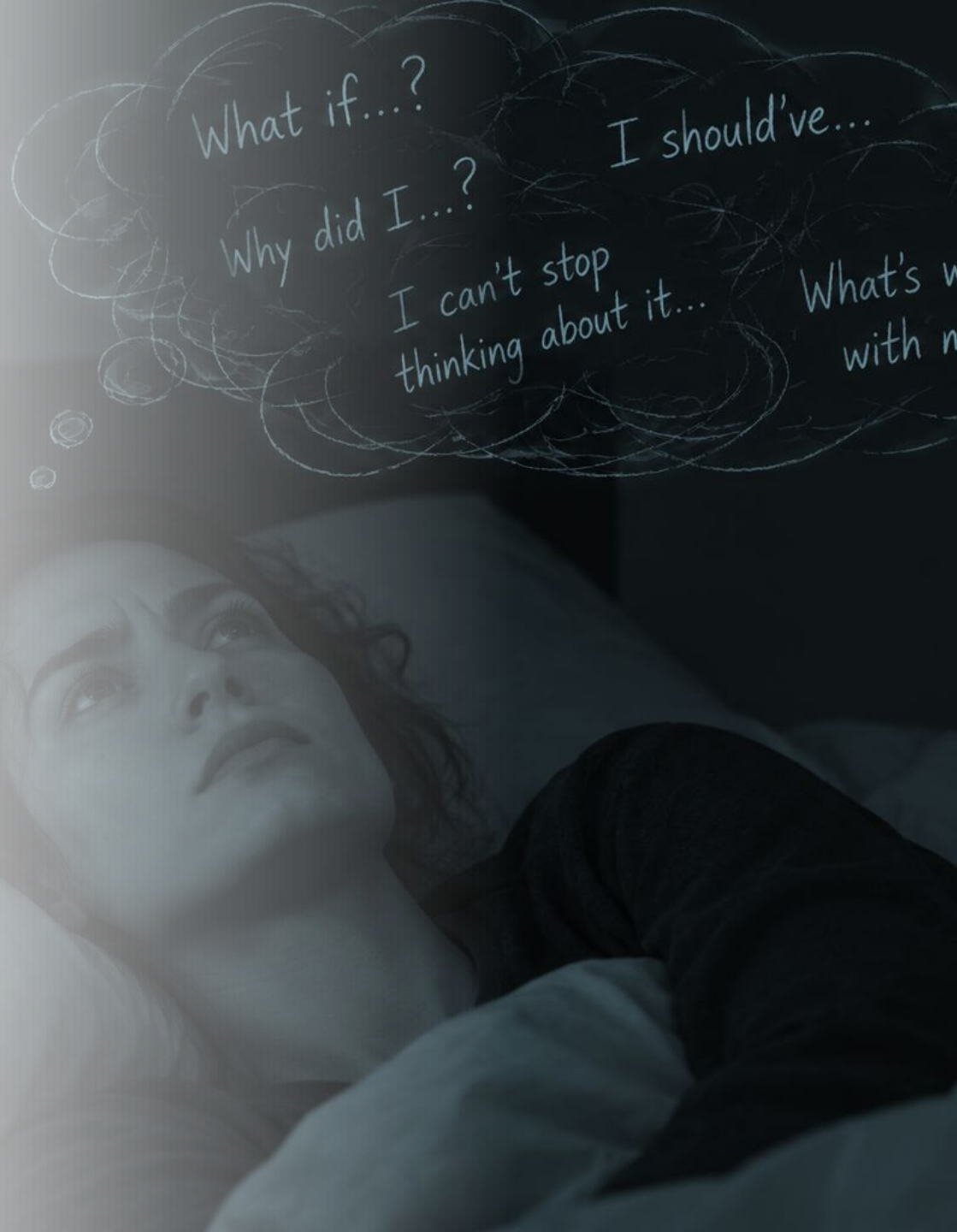
Numbers and word choice are never neutral — they anchor everything evaluated after them



No one teaches attorneys how the jury's mind actually processes testimony

"Nothing in life is as important as you think it is, while you are thinking about it."

— Daniel Kahneman



Dual-Process Theory (Daniel Kahneman)

System 1 — Fast Automatic, intuitive, emotional. Forms a judgment in a fraction of a second, with no sense of effort.

System 2 — Slow Deliberate, effortful, analytical. Rarely engages unless something demands it — and rarely revisits what System 1 already decided.

The jury's verdict is a System 1 product, defended afterward in System 2 language during deliberation.

≈100 ms

the exposure time needed for a first trustworthiness judgment to form from a face

— Willis & Todorov (2006)

Longer exposure barely changes the initial judgment — it mostly increases confidence in it.

DUAL-PROCESS THEORY (continued)

How the Two Systems Show Up in Testimony

Two places this plays out directly on the stand

Witness Recall and Accuracy

System 1 produces quick, intuitive impressions — efficient, but prone to bias, snap judgment, and filling memory gaps with plausible assumption. Accurate testimony requires deliberately engaging System 2: slow, careful reconstruction, not a fast, confident impression.

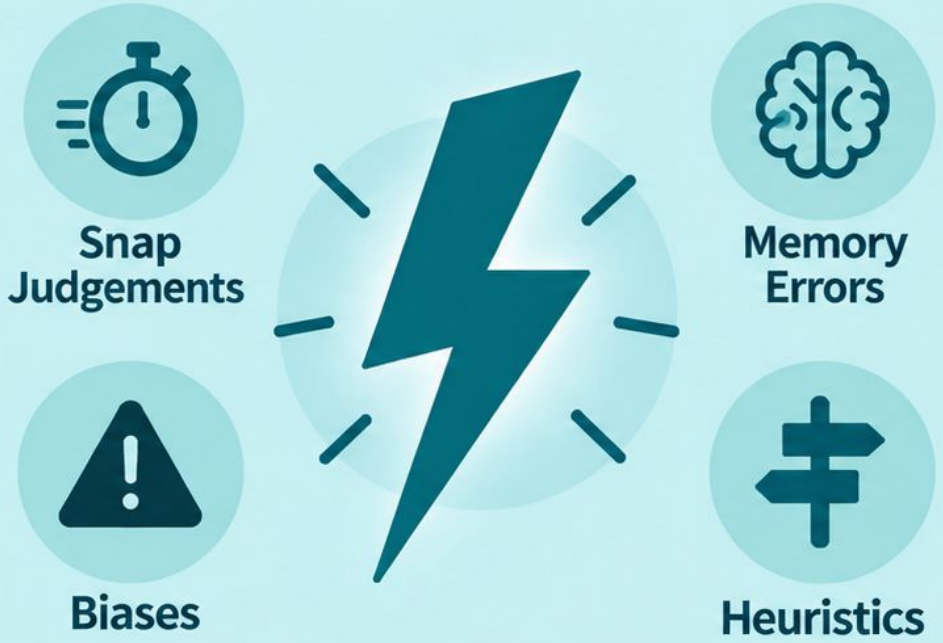
Susceptibility to Suggestion

System 1 can accept a suggestion embedded in a question — a leading question, a particular word choice — without deliberate evaluation, and the underlying memory can shift to match it. A witness who consciously slows down and examines what's actually being asked is far more resistant to that distortion.

How the Mind Works During Testimony

System 1

FAST | INTUITIVE | EMOTIONAL



System 2

SLOW | DELIBERATE | LOGICAL



Three Studies That Illustrate the Stakes

LOFTUS & PALMER

A Single Verb Changed the Memory

Changing one word in a question measurably changed what witnesses later recalled.

ENGLICH, MUSSWEILER & STRACK

Judges Anchored by a Rolled Die

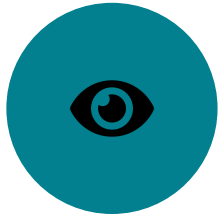
Trained sentencing judges, told the number was irrelevant, still sentenced longer after a high roll.

CHAPMAN & BORNSTEIN

The Number in the Complaint

The dollar figure a plaintiff's attorney requests correlates with the dollar figure the jury awards.

Six Biases in the Jury Box



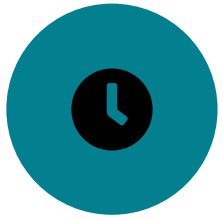
FRAMING



ANCHORING



AVAILABILITY



PRIMACY & RECENCY



CONFIRMATION BIAS



OVERCONFIDENCE



FRAMING

WHAT IT IS:

Presenting the same information through different language or narrative structure changes the conclusion drawn from it — without changing the underlying facts.

WHAT IT LOOKS LIKE IN THE COURTROOM:

- Word choice in direct and cross: "struck" versus "made contact"; "confronted" versus "approached"
- Which fact is foregrounded and which is buried in a longer answer
- Whether an act is framed, through language alone, as intentional or accidental

WHAT THE JURY DOES:

Treats a fact that feels self-evidently one-sided as objective — without recognizing it was constructed by word choice.



STUDY 1

The Verb That Changed the Memory

The setup:

Participants watched footage of a car collision, then answered: 'About how fast were the cars going when they [smashed into / hit / contacted] each other?' Only the verb changed between groups.

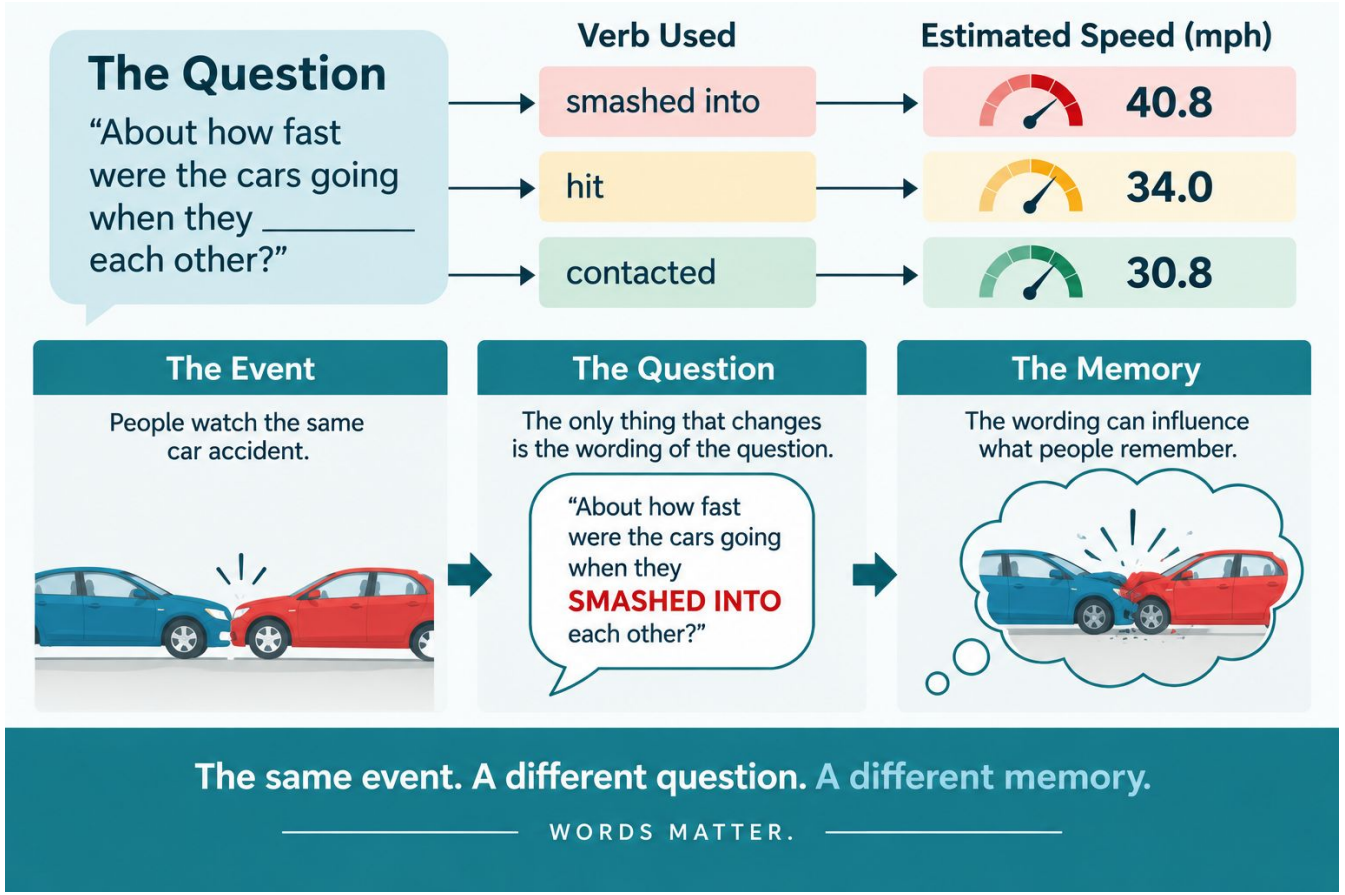
The finding:

The stronger the verb, the higher the estimated speed reported. A week later, participants who heard the stronger verb were also more likely to falsely recall seeing broken glass that was never in the footage.

Why it matters for testimony prep:

Question wording does not just shape an answer in the moment — it can reshape the underlying memory itself. This is exactly why the language used with a witness before testimony, and the language a witness uses about their own recollection, is never a neutral choice.

STUDY 1


The Question
"About how fast were the cars going when they _____ each other?"
Verb Used
Estimated Speed (mph)
smashed into
40.8
hit
34.0
contacted
30.8
The Event
People watch the same car accident.
The Question
The only thing that changes is the wording of the question.
"About how fast were the cars going when they SMASHED INTO each other?"
The Memory
The wording can influence what people remember.
The same event. A different question. A different memory.
WORDS MATTER.



ANCHORING

WHAT IT IS:

The first number or reference point introduced distorts every subsequent judgment — even after the anchor is discredited or acknowledged as arbitrary.

WHAT IT LOOKS LIKE IN THE COURTROOM:

- Opposing counsel's opening statement dollar figure
- The first characterization of severity — "catastrophic" versus "moderate"
- A leading question's embedded assumption, accepted before it is examined

WHAT THE JURY DOES:

Evaluates every later number and characterization as an adjustment from the anchor, rather than as an independent judgment.

LIVE EXERCISE

Your Best Estimate

Answer from your gut — no searching

BIRTH MONTH: JANUARY – JUNE

Question A

Is the percentage of African countries in the United Nations higher or lower than 10%?

Then type your best estimate of the actual percentage.

BIRTH MONTH: JULY – DECEMBER

Question B

Is the percentage of African countries in the United Nations higher or lower than 65%?

Then type your best estimate of the actual percentage.

Type your estimate in the chat (or poll) now. Gut answer, no searching — we'll compare the two groups in a moment.

STUDY 2

The Judges Who Rolled Dice

The setup:

Experienced criminal court judges were given a case file and asked to roll a pair of dice before recommending a sentence. The dice were rigged to show either a low or a high number. Judges were told explicitly, and knew independently, that the roll was random and irrelevant to the case.

The finding:

Judges who rolled the higher number recommended meaningfully longer sentences than judges who rolled the lower number — for the identical case file. Awareness of the anchor's irrelevance did not neutralize its pull.

Why it matters for testimony prep:

If a trained judge cannot fully discount a number they know is meaningless, a juror will not fully discount opposing counsel's opening number, the first characterization of an injury, or the first word used to describe a witness's conduct.

STUDY 2

RANDOM NUMBER

↓

ANCHOR

↓

CHANGES WHAT COMES TO MIND (Selective Accessibility)

↓

CHANGES HOW THE CASE IS INTERPRETED

↓

INFLUENCES JUDGMENT



STUDY 3

The Number in the Complaint Becomes the Number in the Verdict

The setup:

Mock jurors read an identical personal injury case, with only the dollar amount requested by the plaintiff's attorney varied between groups — including requests that were objectively excessive.

The finding:

Larger requested amounts produced larger awarded amounts — even when the request was objectively excessive. The first number named functioned as an anchor that later judgment adjusted from, not an independent starting point.

Why it matters for testimony prep:

The first number spoken in the room — in an opening statement, in a demand, in a witness's own estimate of a value or a distance — has a structural advantage over every number that follows it.

What These Three Studies Tell Us Together

- The anchor does not have to be relevant to work — irrelevant numbers and words move real decisions.
- Trained professionals are not exempt. Judges, told the anchor was meaningless, were influenced anyway.
- The first frame — the first number, the first verb, the first characterization — has outsized power over everything that follows it.
- For attorneys: the first number in the room and the first characterization of an event are not neutral choices — they are strategic ones.
- For witnesses: word choice under oath is not a style preference. It can become part of the jury's memory of the event.



AVAILABILITY

WHAT IT IS:

Judgments are shaped by how easily examples come to mind — not by their actual frequency or reliability. Vivid, recent, or emotionally charged information is recalled more easily, and treated as more likely or more important because of it.

WHAT IT LOOKS LIKE IN THE COURTROOM:

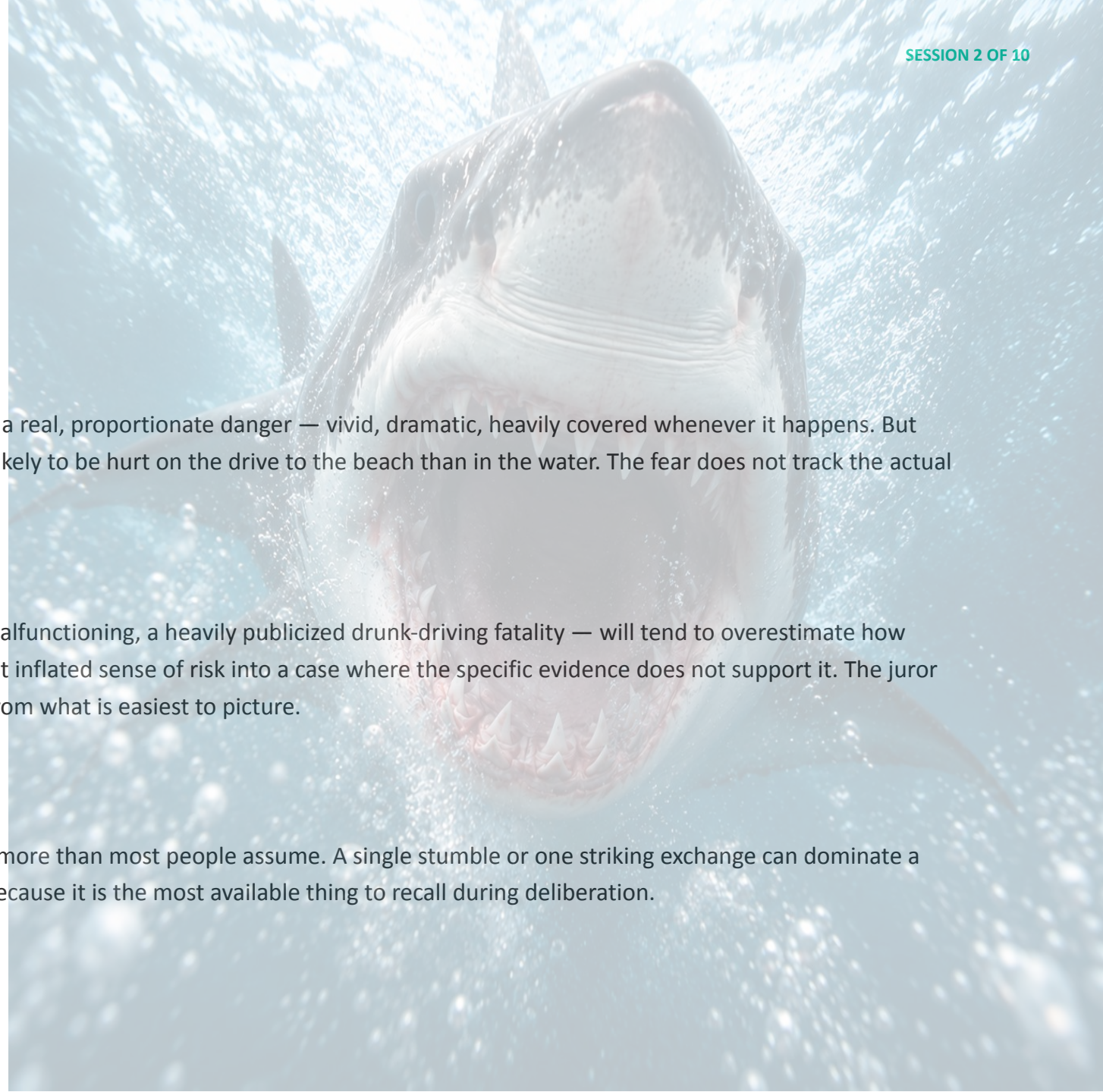
- A single vivid, dramatic detail — a graphic photo, one emotionally intense moment — is weighed far more heavily than dry, cumulative evidence
- A witness's own memory favors recent or emotionally intense moments over the less dramatic, more representative sequence of events
- Media coverage or a personal experience with a similar case makes one explanation feel more "available," and therefore more plausible

WHAT THE JURY DOES:

Treats how easily something comes to mind as if it were evidence of how likely or important it actually is.

AVAILABILITY IN ACTION

The Shark at the Beach



The everyday version:

Standing at the shoreline, the thought of a shark attack can feel like a real, proportionate danger — vivid, dramatic, heavily covered whenever it happens. But shark attacks are extraordinarily rare; you are statistically far more likely to be hurt on the drive to the beach than in the water. The fear does not track the actual odds. It tracks how easily an image comes to mind.

The courtroom version:

A juror who recalls a vivid news story — a viral video of a product malfunctioning, a heavily publicized drunk-driving fatality — will tend to overestimate how common that scenario actually is, and can unconsciously import that inflated sense of risk into a case where the specific evidence does not support it. The juror is not reasoning from what is in front of them. They are reasoning from what is easiest to picture.

Why it matters for testimony prep:

This is exactly why consistency across the whole testimony matters more than most people assume. A single stumble or one striking exchange can dominate a juror's memory of an otherwise solid hour on the stand, precisely because it is the most available thing to recall during deliberation.

PRIMACY & RECENCY

WHAT IT IS:

Information presented first and last is disproportionately remembered and weighted. Material in the middle is far more likely to be lost.

WHAT IT LOOKS LIKE IN THE COURTROOM:

- The opening seconds of a witness's testimony set the lens the rest of it is viewed through
- The final answer before a witness steps down disproportionately shapes the impression that is retained
- Long, undifferentiated middle testimony is the material most likely to be forgotten entirely

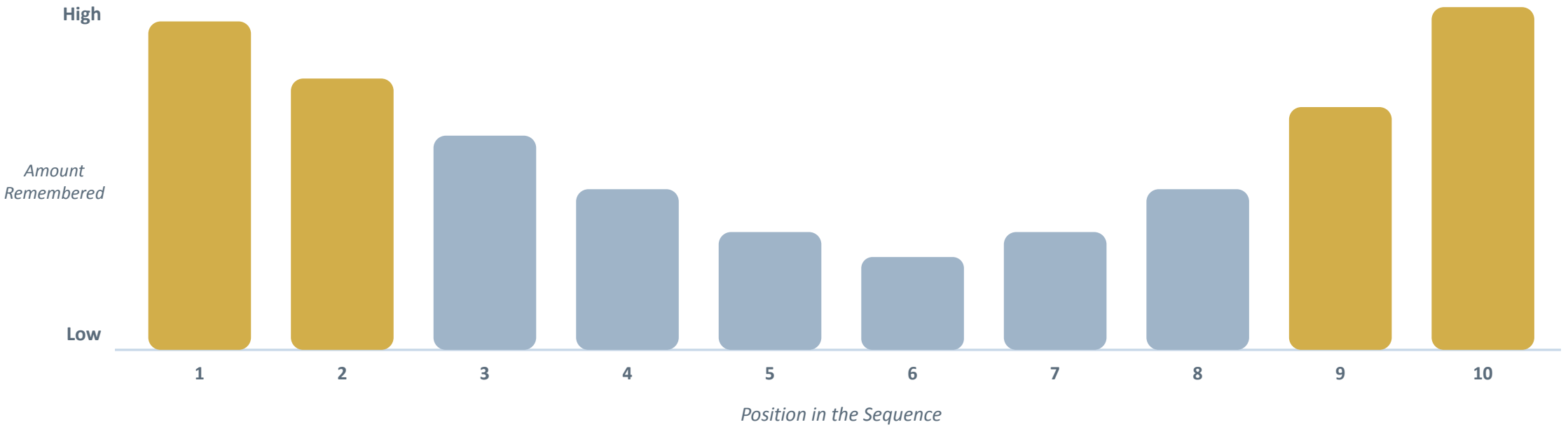
WHAT THE JURY DOES:

Retains an overall impression of the witness that is really an impression of their first and last moments on the stand.

PRIMACY & RECENCY IN ACTION

The Serial Position Curve

People remember information best at the beginning and end of a sequence — and are most likely to forget what falls in the middle.



PRIMACY EFFECT

Better recall of information at the beginning of a sequence — testimony's opening moments.

RECENCY EFFECT

Better recall of information at the end of a sequence — a witness's final answer before stepping down.

Illustrative curve based on the classic serial position effect in memory research (Murdock, 1962).

CONFIRMATION BIAS

WHAT IT IS:

Once a provisional judgment forms, people selectively notice and interpret new information in ways that confirm it — and discount or reinterpret information that contradicts it.

WHAT IT LOOKS LIKE IN THE COURTROOM:

- A juror forms an early impression of a witness, favorable or unfavorable, within the first moments
- Ambiguous behavior afterward — a pause, a glance away, a hedge — gets interpreted as confirmation of that first impression
- Genuinely new or contrary evidence is reinterpreted to fit the existing story rather than updating it

WHAT THE JURY DOES:

Experiences its own interpretation as "proof" — without recognizing that the prior judgment was doing the interpreting.



OVERCONFIDENCE

WHAT IT IS:

People are systematically more certain of their own judgments, memories, and interpretations than the evidence warrants — especially when relying on a quick, intuitive impression rather than careful analysis.

WHAT IT LOOKS LIKE IN THE COURTROOM:

- A witness reports high certainty about a recollection formed under stress, when confidence and accuracy are known to diverge under exactly those conditions
- A juror who forms a fast, intuitive read on a witness treats that read as settled fact, not as a hypothesis still open to revision
- Confident, unhedged testimony is often more persuasive than accurate, appropriately hedged testimony — a genuinely perverse incentive

WHAT THE JURY DOES:

Mistakes a witness's confidence for the witness's accuracy — two things the research shows are only loosely related.

How Jurors Actually Decide: The Story Model

Pennington & Hastie — juror decision-making is narrative construction, not fact tallying

S1

STORY CONSTRUCTION

Jurors build a narrative from the evidence as it is presented

What the evidence provides

S2

STORY EVALUATION

Certainty comes from coverage, coherence, and completeness

What you can help satisfy

S3

STORY COMPETITION

The more complete, coherent story wins — not the more accurate one

What shapes the contest

S4

STORY ANCHORING

The first coherent story told is the one later evidence gets fit into

What you can influence

STORY MODEL

Story Construction

Jurors do not receive a case as a list of independent facts

How it works:

Jurors organize evidence into a causal, chronological narrative as it's presented — not as a checklist to tally at the end. Gaps in the evidence are filled with plausible inference, drawn from the juror's own life experience and general world knowledge.

The practical implication:

Two jurors hearing identical evidence can construct different stories if their background inferences differ. A witness's job is not just to state facts — it is to help supply the connective narrative so the jury doesn't have to invent it.

STORY MODEL

Story Evaluation

Certainty comes from three properties — not from how many facts were presented

Coverage:

Does the story account for all the evidence presented? A story with unexplained gaps is discounted, even if every individual fact in it is true.

Coherence:

Internal consistency, plausibility given world knowledge, and completeness. A story that is internally consistent and matches how the world is expected to work is accepted with confidence.

The result:

A story with high coverage and coherence is accepted with confidence — regardless of whether it is the objectively true account. Truth alone does not win the evaluation.

STORY MODEL

Story Competition

When plaintiff and defense construct competing stories, jurors do not average them

How competition resolves:

Jurors select the single story that best satisfies coverage and coherence — they do not blend the two sides into a compromise account.

The implication:

A true story, told with gaps and inconsistency, can lose to a false story, told completely and coherently. The accuracy of your case theory is necessary, but it is not sufficient — it also has to be the more complete, better-told story in the room.

STORY MODEL

Story Anchoring and Practical Application

Primacy and anchoring give the first coherent story a structural head start

Why the first story has an advantage:

Because of primacy and anchoring, later evidence tends to get absorbed into the first coherent story presented, rather than evaluated as a fresh, independent narrative.

Why Session 1's Contextual Framing matters here:

This is exactly why understanding both sides' theory of the case, from Session 1, matters as much as it does. A witness who understands the plaintiff's story and the defense's story can testify in a way that reinforces the favorable story's coherence — instead of accidentally handing the opposing narrative the missing piece it needed.

Connecting Back: Working With System 1, Not Against It

C1 **Competence (Session 1)** gives the witness the coherent, complete story System 1 accepts without a fight.

C2 **Composure (Session 4, upcoming)** governs how stress itself becomes an anchor the jury reads as deception.

C3 **Character's verbal discipline (Session 1)** is the direct countermeasure to framing — precise, declarative language resists reframing.

C3 **Character's nonverbal signals (Session 7, upcoming)** are what primacy and recency are actually measuring in the room.

The Four C's were never just a checklist — they are how you shape what System 1 decides, before System 2 is ever consulted.

SKILLS AND STRATEGIES

From Insight to Skill: The Toolkit

Remedies: The Six Biases

FRAMING

Use neutral, literal, declarative language for events — not only for self-description.

ANCHORING

Don't let an extreme anchor stand unanswered. Address it directly, and get your own reference point in early.

AVAILABILITY

Balance a vivid, memorable detail with a clear, plainly stated account of the full, representative picture.

PRIMACY / RECENCY

Structure testimony so the strongest, most credible material opens and closes. Never end on your weakest point.

CONFIRMATION BIAS

Protect the first few minutes above all else — that is where the interpretive lens for everything after it gets set.

OVERCONFIDENCE

Calibrate certainty to the evidence. "I don't recall" delivered cleanly reads as more credible than a confident guess.

FOUNDATION SKILL | SYSTEM 2

Engaging System 2: The Slow-Down

Slowing down helps — when a process, not willpower, forces it

For witnesses:
Take the pregnant pause. Ask for the question to be repeated or rephrased. Slow, deliberate reconstruction engages System 2 before the answer leaves your mouth. Feel Your Feet and the 2-3 breath buy the time.

For attorneys and experts:
Build in a “consider the opposite” step: before settling on a number or a conclusion, state the strongest alternative account. Structured alternatives reduce anchoring and overconfidence.

For jurors:
Judges and lawyers can name common biases and ask jurors to deliberate carefully and consider alternatives. The effect is real but limited — it supplements witness preparation; it does not replace it.

SKILL 1 | FRAMING

The Camera Test

Say what a camera would have recorded — replace the label with the observable fact

LOADED CHARACTERIZATION		WHAT THE CAMERA RECORDED
"He attacked me."	→	**"He stepped toward me and grabbed my left arm."**
"I barely touched her."	→	**"I placed my hand on her shoulder for about a second."**
"She completely lost it."	→	**"She raised her voice and left the room."**
"It was a huge amount of paperwork."	→	**"About forty pages."**

Guardrail: Accuracy comes first. The goal is specific and literal — never softer, never harsher than what actually happened.

Practice: Daily Practice Workbook Exercises 4, 35, 38 (Avoid Soundbites, Use Fewer Words, Avoid Absolutes)

SKILL 2 | ANCHORING

Anchor Control: Set It, Answer It, or Decline It

The first number or characterization in the room becomes the reference point

For attorneys:
Put your own reference point in early — in voir dire and opening. If the other side anchors first, name it, test it against the evidence, and offer a better-supported number. Never leave an extreme anchor unanswered.

For witnesses:
Do not adopt a number or label that appears in the question. “I don’t know the distance” beats “About fifty feet?” — and never offer an estimate you cannot support.

Practice it:

Mock cross with embedded anchors: the examiner puts a number or label in every question (“the violent confrontation”; “about fifty feet”). The witness restates the question neutrally, then answers from memory. Workbook Exercises 11, 30, 37.

SKILL 3 | AVAILABILITY

The Representative Picture

Make sure the vivid moment is remembered inside the full sequence

The skill:
Pair every vivid detail with the plain, representative account around it. The jury will remember the dramatic moment — your job is to make sure they remember it in context.

How to do it:

1 **Find the headline.** Identify the single most vivid or damaging moment in the account.

2 **Place it in sequence.** State it once, plainly, between what led up to it and what followed.

3 **Stay steady throughout.** One stumble can become the memory of the whole hour — keep pace, tone, and posture consistent.

Practice it:
The 90-second timeline: the witness tells the full sequence in 90 seconds; the examiner asks only about the headline moment; the witness answers and links it back in one sentence. Workbook Exercises 26, 44.

SKILL 4 | PRIMACY & RECENCY

Strong Open, Strong Close

The first and last moments are what the jury keeps — keep the middle steady

The first 60 seconds:
Walk to the stand at a steady pace. Half smile. Say the oath clearly. Make the first answer short, declarative, and slightly slower than normal. The first answer is a first impression, not a warm-up.

The last answer:
Plan and rehearse it. End on your strongest point, with a downward pitch, then stop — never on a hedge or an apology. Attorneys: shape redirect so the final question invites the simplest, strongest answer.

Practice it:
Film the first minute and the last answer of every mock exam, then watch them as a juror would. Workbook Exercises 3, 7, 19, 20 (Pregnant Pause, Half Smile, Don’t Pitch Up, Pledge Cadence).

SKILL 5 | CONFIRMATION BIAS

Protect the Lens — and Reset When It Slips

Early impressions get confirmed. Make the first read a good one.

Before the first question:

Feel Your Feet, the 2-3 breath, and the half smile. Then make pauses look deliberate: a visible breath and steady gaze, then the answer. That reads as thought; a frozen stare reads as stalling.

The reset (if the start goes badly):

1 Notice it silently. 2 Take one 2-3 breath. 3 Return to the educator frame. 4 Give the next answer slightly slower.

Do not apologize or explain — sustained steadiness is the repair.

Practice it:

Rehearse a deliberately rough first answer in mock, then practice the reset. Workbook Exercises 8, 9, 22 (Feel Your Feet, Breathe, Don’t Freeze).

SKILL 6 | OVERCONFIDENCE

The Calibration Ladder

Match your words to what you actually know

“I know.” “I saw.” “It was.”	Direct, clear memory. Say it plainly, once.
“My best recollection is…”	Real memory with real uncertainty. Name the limit once, give the answer, stop — calibration, not a hedge.
“I don’t recall.”	No usable memory. A complete answer — no apology, no guess.
“I don’t know.”	Never knew, or no basis. Stop there.

Practice it: The certainty check — rate each mock answer 0–100% before verifying against the record, and track whether confidence matches accuracy. Workbook Exercises 26, 30, 37.

SKILL 7 | THE STORY MODEL

Map the Two Stories

Hypothetical: a warehouse supervisor is terminated three weeks after filing a safety complaint

ELEMENT	PLAINTIFF'S STORY	DEFENSE STORY	GAP A WITNESS CAN CLOSE
Initiating event	Supervisor files a written safety complaint	Supervisor misses two audit deadlines the prior quarter	**Exact dates — which came first?**
State of mind	Manager is angry about the complaint	Manager is concerned about performance	**What did the witness personally see and hear?**
Action	Abrupt termination, no warning	Termination after documented warnings	**Were the warnings given, signed, and dated?**
Consequence	Complaint silenced; others warned	Standards enforced consistently	**Does the record cover each story's key facts?**

Your turn: Which story has fewer unexplained gaps — and what single fact would close the biggest one? Where might your witness accidentally hand the opposing story the missing piece?

The Limits of Awareness



Knowing about a bias does not make you immune to it — the judges in the dice study knew the anchor was irrelevant and were influenced anyway



These are not failures of intelligence or diligence — they are default settings of normal cognition, not character flaws



Preparation can reduce exposure to bias. It cannot eliminate the underlying mechanism



A bias-free jury does not exist. The goal is a witness and a case theory built with the mechanism in mind

TAKE-HOME TOOLS

Your Take-Home Toolkit

Four one-page tools that turn today's findings into a repeatable prep routine

FORM 1

Cognitive Bias Quick-Reference

The six biases, what each looks like in testimony, and the one-line remedy — for the prep binder.

FORM 2

Story Model Case Map

Plaintiff's and defense stories side by side, with the gaps your witness can close.

FORM 3

Witness Language Audit

The Camera Test for transcripts: flag labels, absolutes, and unsupported numbers; rewrite each.

FORM 4

Mock Exam Bias Observer Sheet

A scoring sheet for the observer in mock cross: frames, anchors, first and last moments, recoveries.

Pair with the Daily Practice Workbook (44 exercises) for the witness's own reps between sessions.

DISCUSSION

Questions and Case Discussion

1. Which of the six biases shows up most in your own cases — and what have you done about it?

2. What is the first number or first characterization your side puts in front of a jury?

3. Bring a witness scenario — we'll map the competing stories together.

KEY TAKEAWAYS

What to carry forward from this session

1. Jurors decide with System 1 first and justify with System 2 second — plan for the mind that decides, not the one that explains
2. The first number, the first word choice, and the first story told are structurally advantaged, regardless of accuracy
3. Even trained professionals — judges included — are not exempt from anchoring
4. Jurors are not evaluating facts in isolation; they are building and testing a story, and the more coherent story wins
5. Awareness is not enough: practice the Camera Test, anchor control, strong open and close, and calibrated certainty — and use the Four C’s to shape what System 1 decides

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