Opinion Testimony, In General

- The general rule is that witnesses are supposed to state the facts as they know them to be and leave inferences to the judge and jury.

- Opinions are sometimes specifically allowed under the rules, such as opinion as to credibility when impeaching a witness.

- Other than where such exceptions apply and as discussed in this class, opinions of witnesses are generally improper and should not be testified to in court.
Law Witness’ Opinions

- In spite of the general rule discussed on the last slide, lay witnesses can testify to their opinions if:
  - They are rationally based on the perception of the witness.
  - The opinion is necessary or helpful to the clearly understand what the witness is saying.
  - The opinion is not based on scientific, technical or other specialized knowledge of the witness.
    - If you want to testify in that regard, you need to be qualified as an expert...
- In any case, before an opinion is to be allowed, one must make sure to first lay the foundation to make such the circumstances, under which the witness came to form this opinion, are on the record.
Lay Opinions - Examples

- The following are some examples of opinions that may be allowed from lay people because they can be determined based on normal observations from lay people:
  - Whether someone was drunk
  - How old a person “looked”
  - Approximately how fast a car was driving
  - What the weather was like at the time
  - Whether a person was angry, upset, emotional, etc.
Expert Opinions

- Where a witness seeks to testify as to an opinion that requires scientific, technical or other specialized knowledge, the witness first must be qualified as an “expert” in the field by the court.

- This includes:
  - Interpretation of scientific data like DNA results;
  - The medical or mental diagnosis of another person;
  - Opinion as to whether something was properly repaired;
  - Etc.
Basis for Allowing Expert Testimony

- For an expert to be allowed to testify as to an opinion that a lay person would not be allowed to give, these factors must be met (FRE Rule 702):
  - The witness has an expert knowledge, skill, experience, training, education, etc., in the area;
  - The testimony is based on sufficient facts or data;
  - The testimony is a product of “reliable principles and methods”; and
  - The witness has applied the principles and methods reliably to the facts of the case.
Procedure in Introducing Expert Testimony

- First, the party calling the expert will introduce the relevant training or experience that establishes the special knowledge or skill possessed by the witness.
- Next, the expert has to establish how s/he knows of the relevant facts in this case.
  - Having done a personal examination of the relevant facts is not necessary. An expert can render an opinion based on having read reports about what happened in the case.
    - Though, in that case, the judge must be careful that the jury knows that the expert isn’t speaking from first hand knowledge. (Rule 705)
- Then, a party can seek to have the witness qualified as an expert.
  - The other party can challenge this - the judge makes the decision.
Expert Testimony - Ultimate Issue

- An expert may generally give an opinion even if it goes to the ultimate issue of the case.
  - E.g., “I think the doctor was negligent during the surgery.”

- However, in a criminal case, an expert witness may not opine whether or not the defendant had the requisite mental state to be guilty of the crime.
  - This is an issue for the jury alone.
Court Appointed Experts and Compensation

- A court can appoint a witness by itself if it feels that such is necessary to help decide an issue.
  - The parties will usually be involved in choosing the expert,
  - However, ultimately, it’s the judge’s decision

- Expert witnesses may be, and usually are, compensated by the party who calls the expert.
  - This is especially true since many experts have to spend a lot of time investigating issues in the case before testifying.

- The expert’s compensation, however, may not be tied to the actual testimony given or the result of the case.