



# Anatomically correct

## Teaching anatomy and injury to jurors



Cooper

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I sat in the gallery next to a law clerk, watching another lawyer's opening. "There was supposed to be a PowerPoint slide showing vertebrae and disk material but apparently it is not working. So I'm going to draw something..." The lawyer turned to some butcher paper. He bumbled around for 15 minutes, drawing and talking. The clerk leaned over and whispered, "I know *less* about the spine now than I did before this explanation."

### Personal injury

We can get so far into the trees that we forget the forest. While proving liability, wage loss, the impact on a person, one can overlook the injury itself. But a personal-injury case is ultimately about the injury. We need the decision makers to understand that injury. Some injuries are more visible than others. Some are difficult to see. No matter what the injury, we need to understand it in a way where we can explain it – and its impact on our client – to others.

### Know the anatomy

Say the incident injured your client's knee. Even if you've handled a hundred knee cases, it is helpful to refresh yourself. Fortunately, there's Google. Pull up images. If doctors are talking about wear in all three knee compartments, make sure you know what that means.

### Don't "over know" it

You don't want to get up in front of a jury and jump into talking about the medial, lateral, and patellofemoral compartments. Just like you don't use legalese or cop speak (your client did not exit the vehicle – she got out of her car.) Some lawyers have tremendous medical knowledge. But that knowledge comes at a price. Intentionally ("Let me show you that I know big words,") or unintentionally, lawyers who know medicine well tend to lapse into medical speak.

How do you avoid this? Practice talking about the anatomy in front of friends or family members. Ask them to interrupt you every time you use a big word. You can reference the words if you feel the need, but explain them and explain why you are referencing them. "There are three areas of the knee doctors focus on when looking at wear. They call these compartments. There's one on the inside of the leg. There's one to the outside. Both of these are where the upper leg bone, the femur, meets the lower leg bones. They are called the medial and lateral compartments. Then there's another compartment behind the kneecap, called the patellofemoral, where the kneecap and upper leg bone, the femur, come together." Use a knee model at the same time.

Medical doctors are used to speaking to other medical professionals. You need to break it down for the jury. When your expert is on the stand, don't be afraid to interrupt every time the expert uses a big word. "When you say patella, is that the same thing as kneecap? The round chunk of bone that you can kind of move around if you loosen your leg?" Note that every juror will reach down and try to move the kneecap at this point.

### Select your visuals well before trial

Good storytelling requires good visuals – just ask any preschooler. You cannot cull these from Google Images the night before opening. Talk to your expert about what they want to use. Most can bring a model, tools, and other kinesthetic demonstratives to pass to the jury. In many cases, a storyboard or animation is helpful – particularly for surgeries. Custom graphics take time and planning. You need time for the graphics group to prepare it for you and to have the expert determine it is accurate.

### The expert as teacher

The best expert direct exams involve getting the expert up off the stand: the expert as teacher. After qualifying the expert, ask the expert if it would be helpful to show the jury aspects of the relevant anatomy. Have the expert use a combination of models, images and butcher block paper to teach the anatomy: how that anatomy affects daily activities, and how it relates to the injuries your client suffered.

Some experts are better than others. It is best to meet beforehand to go over what you plan on doing. Don't be afraid to back up and go over terms or issues during the expert exam. "What does that mean to a layperson?" and, "what is the significance of that?" are two of the best questions to use during an expert exam.

At the top right of every expert direct exam outline, I type in bold, "**Be Curious.**" Because you might already know it – and the expert definitely does – but the jury does not. You cannot appear as the smartest person in the room and do an effective expert exam.

### Case redemption

Returning to our case discussed at the beginning, the lawyer got feedback about his opening and corrected during the case. Using the expert as professor, the jury learned anatomy and the importance of the spine. The verdict reflected their understanding of the injury.

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