Forensic Analysis Expert Witness Testimony:
Defending Your Expert Report and Expert Testimony
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Focus of Today’s Presentation

In this webinar, we will discuss the following topics:

• Types of forensic analysis assignments
• Steps in a forensic analysis assignment
• Common mistakes to avoid
Types of Forensic Analysis Assignments

A forensic analyst may be asked to provide expert testimony in the following types of engagements:

- Business interruption
- Breach of contract
- Interference with business opportunity
- Intellectual property infringement
- Shareholder disputes
- Family law and marital dissolution
- Eminent domain and condemnation
Types of Forensic Analysis Assignments

Types of engagements (cont.):

- International expropriation
- Taxation matters (income tax, estate and gift tax, property tax, transfer pricing)
- Bankruptcy
- Lender liability
- Other torts and contract breaches
The Forensic Analyst Should Understand the Subject Dispute

- Does the plaintiff claim a breach of contract?
  - Customer (purchase) or supplier agreement
  - Noncompete or nonsolicitation agreement (individual or institutional)
  - Nondisclosure agreement
  - Employment or performance agreement
  - Joint venture agreement
  - Intellectual property commercialization agreement
  - Construction agreement
The Forensic Analyst Should Understand the Subject Dispute (cont.)

Does the plaintiff claim a tort?

- Intellectual property infringement
- Condemnation, eminent domain, expropriation
- Interference with business opportunity
- Shareholder oppression
- Breach of fiduciary duty
- Fraud and misrepresentation
The Forensic Analyst Should Understand the Subject Dispute (cont.)

- Does the plaintiff claim taxation or regulatory noncompliance?
  - Income, gift, estate tax or property tax
  - ERISA compliance
  - Fair lending law compliance
  - SEC disclosures
  - Family law statutes
  - Dissenting shareholder appraisal rights statutes
  - Fraudulent transfers
The Forensic Analyst Should Develop this Understanding Through Inquiry

- By questioning the client’s legal counsel
- By reading the complaint and answer (or corresponding documents)
  - consider the most current amendments
  - ask client’s counsel for explanation, if necessary
- By asking for copies of appropriate statutory authority, judicial precedent, and administrative rulings
- By asking what finder of fact shall decide the dispute
  - Federal, state, or local court
  - Arbitration or other tribunal
  - Bench or jury trial
  - Other fact finder presentation
The Forensic Analyst Uses this Knowledge of the Legal Dispute to Understand the Assignment

What is the ultimate opinion the analyst has to render?

- a business value
- an intangible asset value
- a fairness opinion
- a solvency opinion
- a GAAP compliance opinion
- an other regulatory compliance opinion
- a contract compliance opinion
- a lost profits or economic damages opinion
- a transfer price (arm’s-length price)
- a royalty rate
- other
The Forensic Analyst Uses this Knowledge of the Legal Dispute to Understand the Assignment

These assignment considerations affect

- what professional standards apply
- the analyst’s competence
- the type of analysis and report

The legal considerations/instructions affect

- the format of the expert report
- the required qualifications for the expert
- the “type” of expert the analyst will be qualified as
- other experts you may work with
- the acceptable (and the unacceptable) analysis approaches, methods, and procedures
The Forensic Analyst Should Understand His/Her Role in the Matter

Will the analyst be a - ?

- Consulting expert or
- Testifying expert?
(This factor affects communications, workpapers, reports, etc.)

Will the analyst be presented as a - ?

- Valuation expert
- Damages expert
- Causation expert
- Accounting expert
- Fraud expert
- Tax expert
The Forensic Analyst Should Understand His/Her Role in the Matter (cont.)

- Will the analyst’s work and conclusions rely on other individuals?
  - Consulting experts
  - Testifying experts
  - Fact witness
  - Causation experts
Steps in a Forensic Analysis Assignment

There are nine steps in the typical forensic analysis assignment:

1. The lawsuit is filed.
2. The need for experts is assessed.
3. Experts are interviewed and selected.
4. Discovery begins.
5. Expert reports are prepared.
6. *Daubert* motions may be filed.
7. The expert prepares for trial.
8. The trial takes place.
9. Post-trial arguments and briefs are prepared.
Steps in a Forensic Analysis Assignment—Step 1

**Step 1—The Lawsuit Is Filed**

- The lawyer should engage the expert as early as possible. If possible, the experts should be engaged before the litigation is filed.
- Once litigation is filed, the forensic analyst timetable is controlled by the litigation timetable. Lawyers typically expect the analyst to be available for consultation, questions, and conferences. Expectations and timing should be discussed at the earliest possible moment.
- If the expert is engaged early, he or she can assist the lawyer with settlement negotiations. The expert can advise the lawyer with regard to realistic expectations.
Steps in a Forensic Analysis Assignment—Step 2

Step 2—The Need for Experts Is Assessed

- Litigation matters often require different types of experts, e.g., an industry expert, a valuation analyst, a damages expert, a causation expert, a legal expert, etc.
- The role of each expert should be defined clearly. If your expert opinion will depend on another expert’s analysis, engagement should be discussed.
- The forensic analyst should be comfortable with the other experts—and with the types of opinions they will provide.
Smell Tests to Consider before Accepting the Forensic Analysis Engagement

- **Who is interviewing you and making the hiring decision?**
  - the subject matter lawyer
  - the litigation lawyer
  - an individual client
  - a client committee

- **Who is driving the hiring process?**
  - the litigation lawyer
  - someone else

- **Will there be a client lawyer hand-off from subject matter lawyer to litigator?**
  - how involved is the litigator?
  - what is your chemistry with the litigator?
Smell Tests to Consider before Accepting the Forensic Analysis Engagement (cont.)

- The interview process is a two-way street. How comfortable are you with the client? the client’s legal counsel? the client’s case?
- Any interviews or conversations with the client only are not covered by attorney/client privilege or attorney work product.
- How available will the data be? Who will provide the data?
- How involved and informed is the client?
- Who will be your principal contact during the engagement?
Smell Tests to Consider before Accepting the Forensic Analysis Engagement (cont.)

- Is the interview process based on a checklist?
- How does the client’s lawyer define your role in the litigation?
- Are you comfortable with that definition?
- How fee sensitive is the client?
- How will you get paid? How is legal counsel paid?
Steps in a Forensic Analysis Assignment—Step 3

Step 3—Experts Are Interviewed and Selected

• In selecting a forensic analyst, legal counsel will often focus on the following:
  - Education—degrees and special training?
  - Relevant professional credentials
  - Relevant forensic analysis experience
  - Relevant industry experience
  - Experience with the type of subject business, intangible asset, etc.
  - Experience with the type of dispute
  - Prior testimony experience
  - Expertise—understanding of issues
  - Prominence and eminence—presentations and publications
  - General presentation skills
  - Withstanding cross-examination skills
  - Conflict check
Steps in a Forensic Analysis Assignment—Step 4

Step 4—Discovery Begins

- It is always difficult to obtain all desired information in a litigation.
- In some cases, the client may conceal information that is not favorable to the legal position.
- Litigation can encourage some parties to be less than truthful at all times.
- The analyst may assist legal counsel in preparing a full list of items desired in order to prepare the analysis and report.
- Expert information to “dribble in” through:
  - depositions
  - interrogatories
  - requests for admission
Steps in a Forensic Analysis Assignment—Step 4

Step 4—Discovery Continues

• Lawyers may petition the court to force the other side to turn over relevant documents. This process can take time.

• If the forensic analyst believes that information not provided could have a material influence on the analysis conclusions, this fact should be disclosed in the expert report.

• If new information comes to light subsequent to issuing the expert report, the analyst should reserve the right to review the analysis conclusions and to revise the report.
Guidelines for Working with Client’s Legal Counsel

- Client’s lawyer is not your lawyer
- Client’s lawyer has an obligation to the client—not to you
- Client’s lawyer does not have to tell you the truth
- Client’s lawyer does not have to—and will not—disclose to you all aspects of the case, e.g., -
  - negative documents
  - negative deposition testimony
  - negative prior/other expert reports
- Client’s lawyer should make all of the legal decisions. You should request legal instructions, directions, and research, if needed.
Guidelines for Working with Client’s Legal Counsel (cont.)

- Client’s lawyer will push you to reach a favorable opinion. You should hold your ground.
- Client’s lawyer will push you to write/rewrite a favorable expert report. You should hold your ground.
- Client’s lawyer will push you to offer favorable testimony. You should hold your ground.
- Only you can defend your analysis, report, and testimony.
- You always know more about your subject expertise (e.g., valuation, damages, transfer price) than the client’s lawyer. You must educate the subject lawyer regarding your area of expertise.
Steps in a Forensic Analysis Assignment—Step 5

Step 5—Expert Reports Are Prepared

- Reports prepared for litigation should follow applicable AICPA and other professional standards. Different standards apply in different situations. The CPA preparing a business valuation should comply with SSVS1. The CPA performing a damages analysis should comply with SSCS1.

- The forensic analyst should receive instruction from the client’s legal counsel as to the format of report required. In some cases, a narrative report is required. In other cases, a report is not required.

- The forensic analyst should (1) select and apply generally accepted analysis approaches, methods, and procedures and (2) apply them in a generally accepted manner. Litigation is not the venue for a de novo methodology.
Steps in a Forensic Analysis Assignment—Step 5 (cont.)

Step 5—Expert Reports Are Prepared (cont.)

- The analyst should adhere to (1) recognized professional practices and standards and (2) relevant professional guidance related to the subject matter.

- Expert reports may be prepared in accordance with Federal Rule of Civil Procedure 26(a)(2). Rule 26(a)(2)(B) states:
  
  Written Report. Unless otherwise stipulated . . . disclosure [of expert witness testimony] must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained . . . to provide expert testimony. . . . The report must contain:

  (i) a complete statement of all opinions the witness will express and the basis and reasons for them;

  (ii) the data or other information considered by the witness in forming them;
Steps in a Forensic Analysis Assignment—Step 5 (cont.)

Step 5—Expert Reports Are Prepared (cont.)

iii. any exhibits that will be used to summarize or support them;
iv. the witness’s qualifications, including a list of all publications authored in the previous 10 years;
v. a list of all other cases in which, during the previous 4 years, the witness has testified as an expert at trial or by deposition; and
vi. a statement of the compensation to be paid for the study and testimony in the case.
Steps in a Forensic Analysis Assignment—Step 5 (cont.)

Step 5—Expert Reports Are Prepared (cont.)

- Professional guidance for reports may be found in the following sources:
  - Professional standards—issued by the AICPA, IBA, NACVA, ASA, and other professional organizations
  - AICPA practice aids
  - Authoritative textbooks
  - Articles published in professional journals
  - Presentation materials from conferences and webinars
Steps in a Forensic Analysis Assignment—Step 5 (cont.)

Step 5—Expert Reports Are Prepared (cont.)

- The forensic analyst should perform adequate due diligence and obtain adequate supporting data to form the expert opinion. Such support can come from the following sources:
  - Management interviews
  - Industry research
  - Economic research
  - Data on guideline companies
  - Transactional data
  - Cost of capital and other inputs from recognized publications (Morningstar, etc.)
  - Royalty rates from recognized sources (RoyaltySource, KtMine, etc.)
Steps in a Forensic Analysis Assignment—Step 5 (cont.)

Step 5—Expert Reports Are Prepared (cont.)

- The forensic analyst should carefully review the report. The forensic analyst should have a colleague review the report. This independent review can identify questions or inconsistencies that the forensic analyst may not have noticed.
- If new information becomes available subsequent to the issuance of the expert report, then the analyst should reserve the right to revise the report based on this new information.
- Forensic analysts may also be asked (1) to review the opposing expert’s report and (2) to prepare a rebuttal report.
Expert Report Preparation Guidelines

- The report should be easy to use. It should be well-outlined and tabbed (if voluminous).
- If the report is too bulky, have two volumes: one with the narrative and one with the exhibits.
- Include all of the documents you specifically relied on. The client’s legal counsel may not like this procedure. But, this is your report.
- Include a list of all of the documents you considered.
- Include sufficient exhibits to recreate your analyses from start to finish.
Expert Report Preparation Guidelines (cont.)

- All analyses should be described. All data sources should be referenced. There should be no mystery variable.

- The report should emphasize the use of “generally accepted” practices and procedures (including citations, if possible).

- The client’s legal counsel may review your draft report. However, avoid the inclusion of legal arguments. Your report is not a legal brief.

- Avoid the impression of advocacy in the report. Your report is not the lawyer’s closing argument.
Expert Report Preparation Guidelines (cont.)

- The report should have a consistent theme. All narrative, analyses, and exhibits should lead to an obvious conclusion. The report theme is carried over to your deposition testimony and trial testimony.
Step 6—Daubert Motions

- In the current litigation environment, Daubert motions are frequently filed.
- The forensic analyst should (1) plan on a Daubert motion being filed and (2) be prepared to defend his or her qualifications and analysis.
- In some cases, a Daubert hearing may be held prior to the actual trial. This is less common than a Daubert motion.
- Federal Rule of Evidence 702, Testimony by Experts governs expert testimony in federal cases. State courts may apply different standards.
Step 6—Daubert Motions (cont.)

- FRE Rule 702 states:
  If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

- It is the trial judge’s job to decide who is qualified to testify on a particular point. The trial judge has “gatekeeping” authority.
Step 6—Daubert Motions (cont.)

- *Daubert* requires the trial judge to make an assessment of “whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.”¹

- *Kumho Tire Co.* expanded the gatekeeping requirement to include nonscientific expert witness testimony.²

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Step 6—*Daubert* Motions (cont.)

- The four common *Daubert* challenge questions:
  1. Has the theory or technique been scientifically tested?
  2. Has it been reviewed by other practitioners? Has the methodology been published in professional journals having peer review standards?
  3. What is its known rate of error? Has the expert’s profession established standards to control its use?
  4. Is it generally accepted by members of the relevant scientific community?

- A “*Daubert* motion” is a motion to exclude expert testimony based on these four criteria. The motion is made before the trial commences. It asks the judge to rule as to whether certain evidence (expert testimony) can be presented.
Steps in a Forensic Analysis Assignment—Step 6 (cont.)

Step 6—*Daubert* Motions (cont.)

- In some cases, a separate *Daubert* hearing may be held prior to the trial.

- Whether a *Daubert* motion is filed, or a pretrial *Daubert* hearing takes place, there are several steps the expert can take to defend against such a challenge:
  - An analyst with the relevant education, including degrees and continuing professional education, will more likely be accepted by the court.
  - An analyst with relevant professional credentials will more likely be accepted by the court. Having many credentials is not as important as having *relevant* credentials. For a forensic analysis engagement, for example, the CPA/CFF credential is relevant.
Step 6—Daubert Motions (cont.)

- An analyst who has been in the forensic analysis profession a long time will be more likely to be accepted by the court.
- An analyst who spends a good portion of his or her time on forensic analysis assignments will be more likely to be accepted by the court.
- An expert who has regularly performed the particular type of analysis, or who has previously analyzed companies in the same industry, will be more likely to be accepted by the court.
- An analyst who has been published in professional, peer-reviewed journals will be more likely to be accepted by the court.
- Most importantly, is the analysis in compliance with generally accepted practices and procedures? Or, is the analysis methodology de novo?
Deposition Preparation and Testimony Guidelines

- Client’s lawyer will want to prepare you before the deposition. Conduct this session a few days before the deposition.
- Use the day before the deposition to study your file and your report.
- Have a colleague also prepare you for the deposition.
- Organize all of the workpapers before the deposition.
- Your report is your best friend during the deposition. Consult your report whenever you need to.
Deposition Preparation and Testimony Guidelines (cont.)

- You can (and may have to) bring other files to the deposition. Opposing counsel can see (and copy) whatever you bring.
- You are the only person sworn to tell the truth during the deposition.
- You may be asked hypothetical, irrelevant, or factually incorrect questions. Don’t count on your client’s lawyer objecting to these questions.
- There is no judge in attendance at the deposition. So, the lawyers may act like unruly children when the teacher has left the classroom.
- Unless the deposition is videotaped, dress comfortably for the deposition.
Steps in a Forensic Analysis Assignment—Step 7

Step 7—The Expert Prepares for Trial

• In some cases, depositions are taken prior to trial. Depositions may be taken in person, by audio recording, or by video recording.
• The forensic analyst should be prepared to answer deposition questions clearly and concisely.
• The forensic analyst may assist the client’s lawyer in preparing deposition questions for the opposing expert.
• The forensic analyst may be asked to be present at the deposition of the opposing expert to assist the client’s lawyer with follow-up questions.
Steps in a Forensic Analysis Assignment—Step 7 (cont.)

Step 7—The Expert Prepares for Trial (cont.)

- The forensic analyst should prepare thoroughly for trial testimony.
- Preparation may vary depending on the type of trial—i.e., bench trial or jury trial.
- The analyst should review the entire work paper file prior to trial. The analyst should have the work paper files well organized. This will ensure that needed documents can be located quickly.
- If depositions were taken, the analyst should review the transcripts—both his or her testimony and the opposing expert’s testimony.
Steps in a Forensic Analysis Assignment—Step 7 (cont.)

- **Step 7—The Expert Prepares for Trial (cont.)**
  - It is not uncommon for opposing counsel to subpoena copies of all work papers prepared during the engagement.
  - Before any expert report is issued or testimony is given, the analyst should ensure that the work paper files are organized and complete.
  - The analyst should also ensure that any extraneous documents or data are removed from the file prior to receiving a subpoena. Once a subpoena is received, the file should be copied “as is.”
  - The analyst should be aware that any notes and files brought to court may be inspected by opposing counsel.
Steps in a Forensic Analysis Assignment—Step 7 (cont.)

Step 7—The Expert Prepares for Trial (cont.)

- The forensic analyst should review the proposed testimony with the client’s legal counsel. There should be no surprise questions or answers.
- If errors in the expert report are discovered prior to trial, the forensic analyst should bring them to the attention of the client’s legal counsel.
- Especially in a jury trial, the analyst may be asked to prepare exhibits for trial. Exhibits (and other demonstratives) should be reviewed with the client’s counsel.
- If allowed, it is helpful to sit in on the testimony of other fact witnesses, expert witnesses, and the opposing expert.
Trial Preparation and Testimony Guidelines

- Read, re-read, and re-read your report, your deposition, opposing expert’s report, and opposing expert’s deposition.
- No one in the courtroom should know your analysis and your report better than you do.
- You do not have a lawyer representing you at the trial.
- Your report is your best friend—and only friend—during your testimony. Refer to it whenever you need to.
- During your testimony, you are the only person sworn to tell the truth in the courtroom.
Trial Preparation and Testimony Guidelines (cont.)

- You are there to educate the finder of fact (judge or jury). You are not there to argue your client’s case. You are not there to argue against opposing counsel.
- Treat the opposing counsel like your next potential client.
- Use demonstrative exhibits to make important points or to illustrate complex analyses.
- Educate client’s lawyer enough so that you can use the re-direct examination to clarify confusion or to expand your testimony.
- When possible, return to the theme of your analyses and your conclusions.
Steps in a Forensic Analysis Assignment—Step 8

Step 8—The Trial Takes Place

- In a trial, the plaintiff always goes first.
- It is important to know if the trial is a bench trial or a jury trial. In a bench trial, it is the judge who will decide the case. In a jury trial, it is the jury who will decide.
- Judges usually have little background in valuation or forensic analysis. Judges often believe that they know more than they do about the subject matter.
- Juries often are already bored by the time the forensic analyst takes the stand. It is important to keep the jury’s attention.
- If possible, the analyst should look toward the judge (or jury) when answering questions.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

- Step 8—The Trial Takes Place (cont.)
  - When taking the stand, the analyst should have the expert report and all necessary work papers.
  - The analyst should speak clearly and slowly enough for the court reporter to properly record the testimony.
  - Comments should be addressed to the judge (or jury in the case of a jury trial).
  - The analyst should be concise and should not elaborate unnecessarily. However, the analyst should give complete answers.
  - The analyst should avoid using technical jargon. If jargon must be used, it should first be defined.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

Step 8—The Trial Takes Place (cont.)

• The analyst should be polite and should not appear arrogant.
• The analyst should be patient and should not get irritated by repetitive questions and delays.
• The analyst should clearly state his or her qualifications to testify in the matter at hand.
• The analyst should not become defensive or argumentative.
• The analyst should not get excited, but should remain calm.
• The analyst should admit mistakes. Don’t try to cover up an error. If opposing counsel points out an error, the analyst should simply address the error, correct it, and explain how the correction affects his or her conclusion.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

Step 8—The Trial Takes Place (cont.)

- The analyst should not answer ambiguous or confusing questions. The analyst should clarify the question first.
- The analyst should answer the question asked and should not provide extraneous and unnecessary information.
- The analyst should not let opposing counsel rush him or her. There is no time limit to answering a question. First, the analyst should think about the question. Second, the analyst should think of a clear, concise answer. Third, the analyst should answer the question.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

Step 8—The Trial Takes Place (cont.)

- When helpful, the analyst should not hesitate to read from the written report. The analyst should not hesitate to refresh his or her memory.
- The analyst should always tell the truth and should demonstrate a conviction in the fundamental truth of the conclusions and opinions.
- The analyst should not feel obligated to respond to short quotes from his or her report taken out of context. It may be appropriate to read several paragraphs from the report into the record to clarify the quote.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

Step 8—The Trial Takes Place (cont.)

• If opposing counsel points out inconsistencies with the analyst’s prior work (testimony, articles, etc.), the analyst should not hesitate to admit that his or her opinion has changed over time.

• If the analyst is confident that he or she performed a correct analysis, do not hesitate to admit to any procedures that were not performed. The analyst should just explain why these particular procedures were not necessary.

• The analyst should not answer any leading questions, either during direct or cross examination. The analyst should ask the lawyer to rephrase the question before answering.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

**Step 8—The Trial Takes Place (cont.)**

- If the analyst does not know the answer to a question, say so. The analyst should not guess at an answer.
- The analyst should be careful in answering hypothetical questions. The analyst should preface the answer with, “Based only on the assumptions you are asking me to make, . . .”
- If the client’s counsel objects to a question asked by opposing counsel, pay careful attention. This objection could alert the analyst to a possible problem area.
Steps in a Forensic Analysis Assignment—Step 8 (cont.)

- Step 8—The Trial Takes Place (cont.)
  - The analyst should always remember that he or she is not an advocate for the client. The analyst should try not to give the slightest impression of being an advocate. The analyst’s role is to assist the trier of fact. The analyst’s testimony must appear unbiased.
  - Following cross-examination, there may be redirect examination. The analyst should use this opportunity to correct any misconceptions or clarify any earlier answers that may leave the trier of fact with the wrong impression.
  - In some cases, the analyst is asked to provide rebuttal testimony. In other cases, rebuttal testimony may be provided by a different expert.
Steps in a Forensic Analysis Assignment—Step 9

Step 9—Post-Trial Arguments and Briefs Are Prepared

• The analyst may be asked to assist the client’s counsel in the preparation of post-trial arguments and/or briefs.
• The analyst may be asked to review briefs prepared by the client’s counsel.
• In this step, the strength of your forensic analysis can be emphasized and the weakness of the opposing side’s analysis can be pointed out.
Common Mistakes to Avoid

The following list includes common mistakes made by forensic analysts when providing expert testimony:

• Appearing as an advocate—the analyst’s job is to assist the trier of fact, not to advocate for the client.

• Presenting an inaccurate curriculum vitae—whether information is missing or incorrect information is included, this will give the analyst the appearance of trying to deceive.

• Lack of knowledge regarding specific type of engagement—an analyst may have general forensic analysis experience, but may not have the particular experience needed for the subject assignment.
Common Mistakes to Avoid

Common mistakes (cont.):

- Multiple report errors—while it is not uncommon for a report to contain a mistake or two, a report full of mistakes will undermine the forensic analyst’s testimony. It gives the appearance of “sloppy work.”

- Use of too much boilerplate—the expert report should be tailored to the assignment. A report full of irrelevant boilerplate is a distraction. The analyst may spend a lot of time explaining on the stand why such irrelevant information is in the report.
Common Mistakes to Avoid

Common mistakes (cont.):

- Appearing insincere or dishonest—even a small lie, or an evasive answer, can give the impression that the analyst is not forthright.
- Appearing arrogant or sarcastic—especially in a jury trial, this can make the jury “tune out” the analyst’s testimony, no matter how complete and convincing it is.
- Including extraneous notes or documents in work paper files—the analyst should review files carefully before issuing the expert report and again before testifying. Only those items relied on in the analysis should be included.
Common Mistakes to Avoid

Common mistakes (cont.):

- Having a large outstanding balance owed by the client prior to trial—can give the impression that the payment of the fee is contingent on the outcome of the trial.
- Volunteering too much information—the analyst should answer questions, clearly, completely, and concisely. The analyst should not elaborate.
Conclusion

- Providing expert testimony in court can be a challenging and rewarding experience for analysts who are qualified and properly prepared.
- It can be a stressful and terrifying experience for analysts who are not qualified and are not properly prepared.
- This webinar has discussed the steps in providing forensic analysis and expert witness services.
- Several “to do” lists and common mistake lists were discussed. But, those lists were not exhaustive.
Questions
Thank You!