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Opinion Testimony: Lay, Expert, or Something Else?

by H. Patrick Furman

This article discusses opinion testimony of lay witnesses and expert witnesses. It provides an overview of lay opinion testimony and discusses the dividing line between lay and opinion testimony.

The dividing line between traditional experts and lay people is easy to draw analytically, but sometimes difficult to administer in practice. There are at least two reasons for this. First, regardless of whether a witness is an expert or a lay person, it often is difficult to separate "fact" from "opinion" and to separate "opinion" from "speculation." The commentary following Federal Rule of Evidence (F.R.E.) 701 notes that witnesses "often find difficulty in expressing themselves in language which is not that of an opinion or conclusion." Second, the growing number of witnesses who have special education, training, and/or experience, but who are not "experts" in the traditional sense, creates difficulty in administering the rule. This problem manifests itself most frequently in the testimony of police officers who have specialized training in an area—for example, roadside sobriety testing and driving under the influence (DUI) detection and accident reconstructions—but are not traditionally thought of as experts.

It is important to place witnesses on one side or the other of the lay/expert divide. Discovery and disclosure rules in criminal cases are different when it comes to expert witnesses, and require counsel to inform opposing counsel of an intention to call expert witnesses, as well as to provide certain data used by such an expert.[1] The advocacy techniques to qualify an expert witness and elicit his or her testimony also are different. Finally, the broad discretion typically granted to trial courts in ruling on the admissibility of opinion testimony reduces the likelihood of reversal on appeal, and increases the need to persuade the trial judge to rule in the client's favor.

This article begins with a brief review of basic considerations relating to lay opinion testimony: traditionally admissible lay opinions, the relevancy requirement, the ban on speculation, the foundation requirements, the "ultimate issue" issue, and some advocacy considerations. The article then focuses on the dividing line between lay and opinion testimony.

A Brief Review of Lay Opinion Testimony

Lay opinion testimony is governed by Rule 701,[2] which reads:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

The witness's testimony must be in the form of "opinions or inferences." Speculation is objectionable. There are a few cases addressing the distinction between fact and opinion, but case law on the distinction between lay opinion and lay speculation is almost nonexistent. The cases generally just re-state the rule that opinion is permissible, but speculation without an adequate factual basis is not.

> In a proper case, a competent observer may be permitted to state her estimate or opinion as to the age of another, and the estimate will be rejected as without legally sufficient probative value only if it is "surmise, speculation, conjecture or guesswork."[3]

Even when the topic is one that normally is within the purview of lay opinion, there must be an adequate foundation. "[W]hen no sufficient facts are shown upon which to base an opinion of the speed of the vehicle, the opinion is mere conjecture and speculation."[4]

The witness's testimony must be "helpful to a clear understanding of the witness's testimony or the determination of a fact in issue." *State v. Brown*[5] has been cited by a number of courts for its

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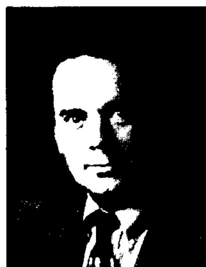

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discussion of the relevancy requirement of Rule 701. After noting the general principle that nonexpert witnesses generally are confined to testifying about facts and are precluded from offering opinions, the court noted: "[a]n exception to this general rule exists where testimony in an opinion form describes the witness's observations in the only way in which they can be clearly described."[6] The examples given in *Brown* were "that a footprint in snow looked like someone had slipped . . . or that a substance appeared to be blood."[7] *Brown* itself allowed testimony from a lay witness that a particular burn looked like it had been made by a cigarette.

The witness's testimony must be "rationally based on the perception of the witness." Experts may rely on facts made known to them in a variety of ways; lay witnesses may opine on topics as to which they have some direct knowledge. Opinion testimony by lay witnesses must be "predicated upon concrete facts within their own observation and recollection—that is, facts perceived from their own senses, as distinguished from their opinions or conclusions drawn from such facts."[8] The Colorado Supreme Court held that, "for an opinion of a lay witness to be 'rationally based on the perception of the witness,' it must be based on personal knowledge."[9] Accordingly, it held that a review of two police reports did not form an adequate foundation to permit a witness to testify about the person who was the subject of those reports.

Finally, a lay witness's opinion may not be "based on scientific, technical, or other specialized knowledge within the scope of Rule 702." Before addressing this distinction in detail, it may be helpful to remember that many types of lay opinions have long been deemed admissible.

A lay opinion that a person is under the influence of alcohol has been deemed admissible since well before the adoption of the Federal and Colorado Rules of Evidence.[10] Lay testimony about drugs has been treated like lay testimony about alcohol, with a finding that such testimony does not require any specialized training or knowledge, at least as long as the testifying witness has some familiarity with drugs.[11] Other lay opinions that have been deemed admissible without much discussion of whether they actually might be expert opinions include those relating to:

- the speed of a car[12]
- a defendant's sanity[13]
- a defendant's capacity to form specific intent[14]
- a testator's soundness of mind[15]
- whether a sexual encounter was consensual[16]
- whether a person's language and behavior were indicative of jealousy and abusiveness[17]
- whether the use of a deadly weapon was justified by safety considerations[18]
- the motivation or intent of another person.[19]

Distinguishing Lay and Expert Opinion

Rule 701 draws the distinction between lay and expert testimony in two clauses. The Rule begins with the phrase "If the witness is not testifying as an expert. . . ." The Rule concludes with a ban on opinions that are "based on scientific, technical or other specialized knowledge within the scope of Rule 702." This latter phrase was added to the federal rule in 2000 in response to the decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,[20] and to the Colorado rule in 2003 in response to the opinion in *People v. Shreck*.[21]

Additionally, there is significant case law concerning the proper boundary between lay opinion and expert opinion. As already mentioned, because experts are treated quite differently from lay witnesses—for discovery, with regard to the bases on which they can form an opinion, as to instructions, and for purposes of payment—placing a witness on one side or the other of this boundary can be important.

The problem of distinguishing between lay and expert opinion can arise with any witness who has training or education beyond that of the "average" person. The way in which it occurs most frequently in criminal cases is with the testimony of police officers who have received, at the least, basic training in various aspects of law enforcement, and may have received advanced training in one or more specific areas of law enforcement.

In *People v. Stewart*,[22] the Colorado Supreme Court noted the difficulty involved in categorizing a police officer's opinions as expert or lay. In fact, the Court noted that the "application of Rule 701 to police officer testimony has generated equal measures of confusion and controversy."[23] The Court noted that "police officers regularly, and appropriately, offer testimony under [C.R.E.] 701 based on their perceptions and experiences."[24] To the Court, the distinction between lay and expert opinion is that "when an officer's opinions require the application of, or reliance on, specialized skills or training, the officer must be qualified as an expert before offering such testimony."[25] Officer testimony becomes objectionable when what is essentially expert testimony is improperly admitted under the guise of lay opinions.[26]

Stewart involved a police officer testifying about a traffic accident without being qualified as an expert. The officer had received 240 hours of instruction in investigating traffic accidents, including eighty hours of "intense technique in accident investigation."[27] Defense counsel was concerned that the officer would be used as an expert, despite the fact that the disclosures and procedural requirements relating to expert witnesses had not been satisfied, and asked for an offer of proof as to the officer's testimony. The prosecution responded that the officer would describe "what he did in the accident investigation."[28] On this basis, the trial court concluded that the officer would not be testifying as an expert.

The Supreme Court held this ruling to be error, concluding:

> [W]here, as here, an officer's testimony is based not only on her perceptions and observations of the crime scene, but also on her specialized training or education, she must be properly qualified as an expert before offering testimony that amounts to expert testimony.[29]

The Court went on to hold harmless the erroneous admission of the officer's testimony.

Stewart cited with approval an article "urging courts to be vigilant to preclude manipulative conduct designed to thwart the expert disclosure and discovery process."[30] The Court also reviewed federal court decisions drawing the lay/expert line. The Eleventh Circuit has held a detective who deciphered drug "hieroglyphics" in a telephone directory properly offered expert testimony in describing how he had decoded the information, while noting that other courts considered the interpretation of drug ledgers to be expert testimony.[31] The Eleventh Circuit distinguished the other cases by finding that the police officers in those cases relied on previous experience, while the police officer in the case at bar did his deciphering in front of the jury. The Ninth Circuit has held that law enforcement agents offering testimony that the defendant's conduct was consistent with that of an experienced narcotics trafficker could not testify as lay witnesses.[32]

Post-Amendment Cases

C.R.E. 701 was amended—in 2003, after the decision in *Stewart*—and now conforms to the 2000 amendment to its federal counterpart. The language that was added to both is contained in subsection (c), making it clear that a lay opinion cannot be based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

The *Stewart* Court took notice of the change to the federal rule and noted that the amendment to F.R.E. 701 was not intended to alter the admissibility of lay opinion testimony; it merely was designed "to eliminate confusion between Rules 701 and 702 and to clarify the distinction between lay and expert testimony.[33] "Indeed, the amendment serves more to prohibit the inappropriate admission of expert opinion under Rule 701 than to change the substantive requirements of the admissibility of lay opinion."[34] The amendment was designed "to eliminate the risk that the reliability requirements set forth in Rule 702 will be evaded through the simple expedient of proffering an expert in lay witness clothing."[35]

The State v. Brown *Opinion*

The federal amendment was based, in turn, on two U.S. Supreme Court decisions[36] and the Tennessee Supreme Court decision, *State v. Brown*.[37] The *Brown* court held that:

> [t]he distinction between an expert and a non-expert witness is that a non-expert witness's testimony results from a process of reasoning familiar in everyday life and an expert's testimony results from a process of reasoning which can be mastered only by specialists in the field.[38]

The Court in *Brown* noted that a lay witness with experience could testify that a substance appeared to be blood, but that a witness would have to qualify as an expert before he could testify that bruising around the eyes is indicative of skull trauma. That is the kind of distinction made by the amendment to Rule 701. At the same time, *Brown* found that the testimony of a nurse, who was never qualified as an expert witness, that a burn "looked like" a cigarette burn was admissible, because it fell into the category of testimony that "describes the witness's observations in the only way in which they can be clearly described."[39]

The People v. Rincon *Opinion*

People v. Rincon[40] addressed, in some detail, the boundaries of lay opinion testimony under the new version of C.R.E. 701. The defendant was convicted of manslaughter and assault, and appealed on various grounds. The defendant questioned the reliability of the victim's identification of him as the perpetrator in a photographic array. One of his arguments on appeal was that the trial court erred "in allowing a police officer, who had not been qualified as an expert witness, to testify about the likelihood of picking offenders out of photo arrays.[41] *Rincon* relied heavily on *Stewart* and reiterated that when opinions "require the application of, or reliance on, specialized skills or training, the [witness] must be qualified as an expert before offering such testimony."[42]

In *Rincon*, a police officer was asked to testify about his experiences with people who were picking photographs out of photographic lineups. He testified that it often takes longer for people to identify a photograph than a live person, and that some photographs simply do not depict features well. The court of appeals acknowledged that the officer had experience with lineups that an ordinary citizen does not have, and this distinguished the officer from a lay person.

However, the court concluded that "the opinion the officer expressed was one which could be reached by any ordinary person."[43] Specifically, the court deemed it to be simple common sense to conclude "that witnesses are sometimes unable to pick a person out of a photo array when an incident occurred quickly or when some of the person's features are not depicted therein. . . ."[44] Because the officer was testifying to "the result of a process of reasoning (namely, use of common sense and logic) familiar in everyday life" the trial court did not err in admitting the opinion under C.R.E. 701.[45]

The People v. Veren *Opinion*

In another post-*Stewart* decision, *People v. Veren*,[46] the court of appeals addressed "qualified lay" opinion that possession of large amounts of "pseudoephedrine is indicative of a person's intent to use such a product as a precursor in the manufacture of methamphetamine."[47] The testimony was offered through a police officer who had received basic training and specific training relating to drug manufacture and precursor drugs, and who had been on the beat for four years.

The court parsed out the limits of the officer's lay opinions as follows. Although a statute specifically provides that pseudoephedrine is a precursor drug, the officer could not testify that possession of large amounts of the drug was indicative of an intent to manufacture methamphetamine, because "the amount of pseudoephedrine required to manufacture methamphetamine is not within the common knowledge of ordi-

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nary citizens, but rather requires specialized knowledge."[48] Similarly, testimony that the combination of drugs seized from the defendant commonly was used to manufacture methamphetamine, and testimony about the actual process of manufacturing methamphetamine, both should be characterized as expert testimony on the same basis.

The People v. Atencio *Opinion*

In another 2005 drug case, the court of appeals addressed the issue from the other side, and rejected defendant's claim that a police officer should not have been allowed to testify as an expert that the quantity of cocaine found on the defendant was consistent with someone distributing cocaine.[49] The officer had two years of experience as a narcotics investigator for a regional drug task force and also had attended numerous specialized training programs concerning the use and distribution of narcotics. The court qualified him as an expert, which is a determination within the broad discretion of the trial court, and allowed him to testify that a typical user consumes up to three grams per day and that four ounces of a controlled substance was an amount consistent with distribution, rather than with personal use.

Other Cases

Some cases suggest that an opinion that normally would require an expert witness may be admissible through a lay witness if that witness has a strong factual foundation for the opinion. In *People v. Baird*,[50] a police officer was allowed to testify that when the defendant stabbed him, the sword would have hit his heart had he not been wearing his body armor. The court noted that there was ample other testimony on this issue, so the lay/expert distinction was not particularly important. The court also noted that the witness properly testified that the sword was very sharp, that it came near the officer's heart, and that the force of the blow was sufficient to push the officer backward. It does not require a great leap of logic or any special expertise to reach the conclusion that such a blow might well have hit the officer's heart.

The most recent Colorado appellate pronouncement on the issue was *People v. Malloy*.[51] Using a plain error analysis, the court of appeals held that the trial court did not err in allowing a police officer to testify about the most common ways to use methamphetamines without having been endorsed as an expert witness. Due to the loss of the pipe and lighters seized from the defendant, the court ruled that the items could not be characterized as drug paraphernalia, but that the arresting officer could describe them and testify as to how they are used to smoke methamphetamines. After testifying that he had training in connection with the manufacture and identification of methamphetamines and other drugs and how they are used, the officer described the most common methods of using methamphetamines.

The court declined to decide

> whether the officer's testimony was lay or expert testimony, that is, whether it depended on a process of reasoning familiar in everyday life or on a process that can be mastered only by specialists in the field[,]

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because the defendant did not object at the time the testimony was offered. In the absence of an objection, the court employs a "plain error" test. Plain error is obvious, substantial, and grave error

> that seriously affects the substantial rights of the accused and so undermines the fundamental fairness of the trial itself as to cast serious doubt on the reliability of the judgment of conviction.

The court found no plain error, because: (1) the officer was qualified to offer this testimony; (2) the defendant did not claim that he was surprised by the testimony; and (3) the defendant put on a witness who talked about the ways in which methamphetamines are used.

Other formulations of the dividing line between lay and expert opinion testimony have been suggested. According to the commentary following F.R.E. 701, the testimony must be "scrutinized" to determine whether it is "based on scientific, technical or other specialized knowledge within the scope of Rule 702." The Tenth Circuit has held that:

> [t]he proper inquiry concerning expert evidence is simply whether the jury is able to understand the evidence without the specialized knowledge that is available from the testimony of an expert witness.[52]

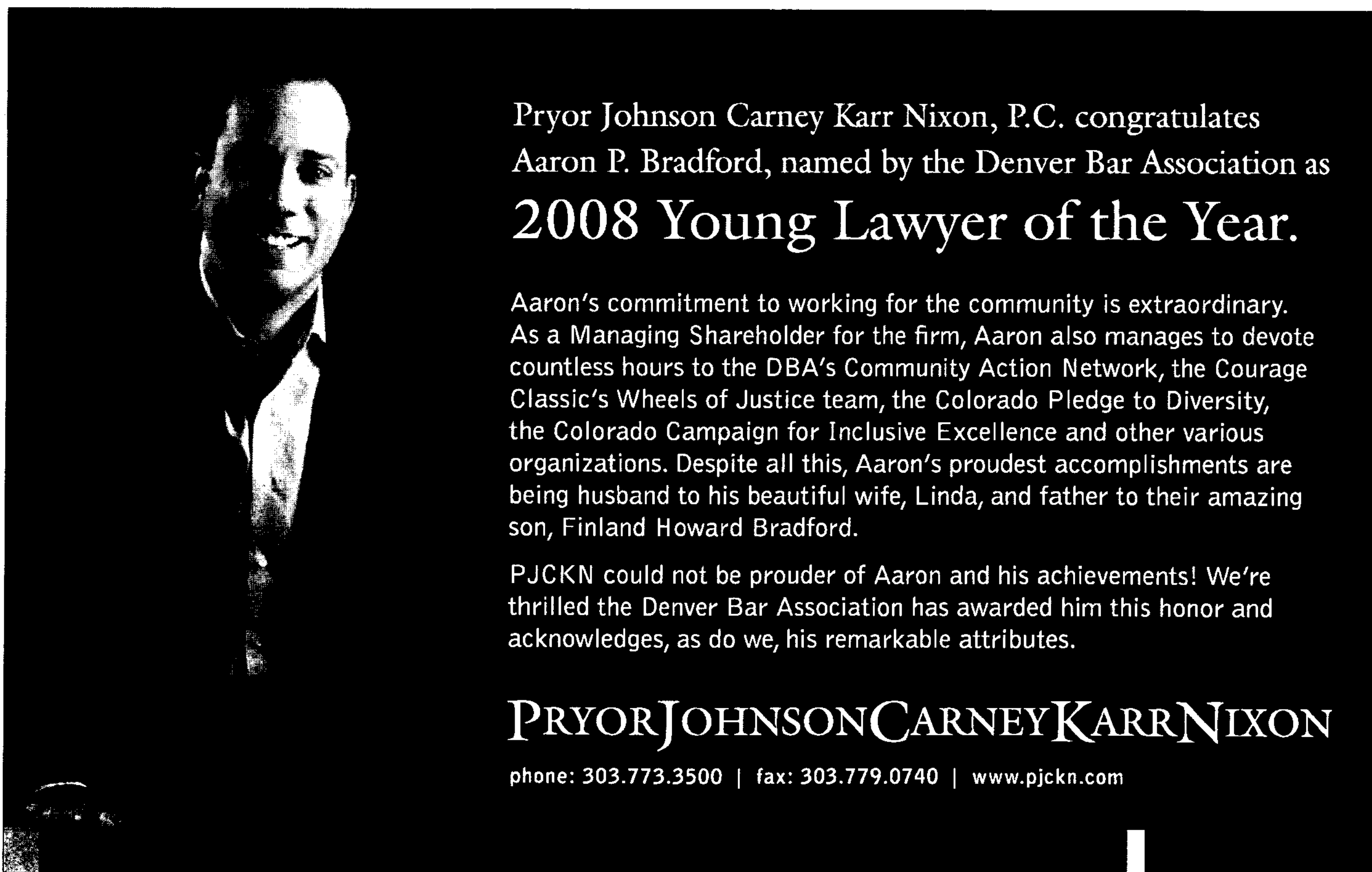
The same Circuit subsequently held that "a person may testify as a lay witness only if his opinions or inferences do not require any specialized knowledge and could be reached by any ordinary person."[53] One commentator has stated that "opinion testimony should only be considered lay and not expert opinion if the average person, having been in the same position as the witness, could provide the testimony."[54]

Roadside Sobriety Testing

One recurring situation in which the courts must draw this line is the administration of roadside sobriety tests by a police officer who suspects a driver is under the influence of alcohol or drugs. *United States v. Horn*[55] is one of the most thorough evaluations of the propriety of having police officers testify about the performance of roadside sobriety tests and the meaning of those performances. The opinion reviewed a number of scientific studies of the accuracy of roadsides and the relationship between a person's performance on roadsides and his or her specific blood or breath alcohol concentration. The court also reviewed the treatment given to such testimony by a number of state courts. For purposes of a discussion of lay and qualified lay opinion testimony, *Horn* can be summarized as holding that a police officer can testify as a lay person as to his or her observations of a defendant performing standard field sobriety tests (SFSTs), but such opinion must not include claims of a scientific basis unless the officer is qualified as an expert.

The ruling that a police officer can testify as a lay person as to his or her observation of a defendant performing standard roadside sobriety maneuvers is unremarkable. "There is near universal agreement that lay opinion testimony about whether someone was intoxicated is admissible if it meets the criteria [of Rule 702]."[56] The officer may testify about his or her training in the administration of such tests, but may not, unless qualified as an expert, testify about scientifically based claims of accuracy.

Horn limited such testimony by holding that the officer "may not bolster the lay opinion testimony by reference to any scientific,



technical or specialized information learned from law enforcement or traffic safety instruction."[57] The court addressed this limitation more specifically by holding that the officer

> may not use value-added descriptive language to characterize the subject's performance of the SFSTs, such as saying that the subject "failed the test" or "exhibited" a certain number of "standardized clues" during the test.[58]

The court precluded such testimony on the ground that studies of the reliability of roadsides had reached significantly different conclusions about the reliability of the tests.

Horn went on to discuss certain specific roadside tests in detail, and also examined the link between the "horizontal gaze nystagmus" test and blood alcohol concentration. These parts of the ruling are of particular interest to lawyers handling DUI cases, but the analysis in *Horn* should be applicable whenever the proposed witness has training beyond that of an average lay person, but is not an expert in the traditional sense of that word, and the testing done by the witness is based on both common sense and science.

The "Qualified Lay Witness"

As the above cases demonstrate, there is a recurring problem facing trial lawyers and judges with respect to how to categorize witnesses, such as police officers, who have training beyond that of the ordinary person, but who are not experts in the traditional sense. Although the *Stewart* decision predated the amendment to C.R.E. 701, it did consider the federal amendments, which are identical to the subsequent Colorado amendments, and the decision remains persuasive and frequently cited authority for the acknowledgement that there is difficulty in describing the dividing line, and for the proposition that witnesses fall on one side of the line or the other. The distinction between lay and expert opinion is that "when an officer's opinions require the application of, or reliance on, specialized skills or training, the officer must be qualified as an expert before offering such testimony."[59] Officer testimony becomes objectionable when what essentially is expert testimony is improperly admitted under the guise of lay opinions.[60]

In short, there is no middle ground. A witness who offers an opinion is doing so either as a lay witness or an expert witness. Rule 16 requires both the prosecution[61] and the defense[62] to provide additional discovery in connection with expert witnesses. To avoid discovery issues at trial, counsel who plans on calling a qualified lay witness should either endorse that witness as an expert or seek guidance from the trial court as to whether the witness will, in fact, be deemed to be an expert by the court. Good advocacy suggests the same conclusion. Given the fact that it is relatively easy to qualify a witness as an expert, and the fact that jurors may well give more weight to the testimony of a witness who has been so qualified by the court, it makes sense as a matter of persuasion to qualify and use witnesses as experts whenever possible.

Conclusion

The rules of evidence create two categories of opinions, those of lay witnesses and those of expert witnesses. Because the two types of witnesses are treated differently for both discovery and trial purposes, it is incumbent on counsel to make the distinction clearly and early in a case. Although there always will be some gray area around the dividing line between these two types of witnesses, there nonetheless is a line, and counsel should observe the distinction with his or her own witnesses and require opposing counsel to do the same.

Notes

1. Crim.P. 16(I)(a)(1)(III) and (II)(b). A discussion of the precise contours of the discovery obligations is beyond the scope of this article.
2. F.R.E. 701 and C.R.E. 701 are substantively identical. Federal interpretations are not binding on state courts. *People v. Newton*, 966 P.2d 563, 577 (Colo. 1998). However, such interpretations are persuasive. *People v. Warren*, 55 P.3d 809 (Colo.App. 2002).
3. *People v. Fierro*, 606 P.2d 1291, 1294 (Colo. 1980), *quoting Gallegos v. People*, 489 P.2d 1301, 1302 (1971).
4. *Chancellor v. Sippel*, 495 P.2d 556, 558 (Colo.App. 1972).
5. *State v. Brown*, 836 S.W.2d 530 (Tenn. 1992).
6. *Id.* at 550.
7. *Id.*
8. *United States v. Skeet*, 665 F.2d 983, 985 (9th Cir. 1982), *quoting Randolph v. Collectramatic, Inc.*, 590 F.2d 844, 847-48 (10th Cir. 1979).
9. *Lombardi v. Graham*, 794 P.2d 610 (Colo. 1990).
10. *People. v Souva*, 141 P.3d 845 (Colo.App. 2007); *People v. Norman*, 572 P.2d 819 (Colo. 1977); *Vigil v. People*, 416 P.2d 361 (Colo. 1966).
11. *People v. Graybeal*, 156 P.3d 614 (Colo.App. 2007); *Souva, supra* note 10.
12. *Chancellor, supra* note 4 at 558, *citing Rigot v. Conda*, 304 P.2d 629 (Colo. 1956).
13. *People v. Osborn*, 599 P.2d 987 (Colo.App. 1979); CRS § 16-8-109.
14. *People v. Rubanowitz*, 673 P.2d 45 (Colo.App. 1983).
15. *In re People in the Interest of Hill*, 198 P.2d 450 (Colo. 1948).
16. *People v. Hoskay*, 87 P.3d 194 (Colo.App. 2003).

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17. *People v. Hulsing*, 825 P.2d 1027 (Colo.App. 1991).
18. *People v. Collins*, 730 P.2d 293 (Colo. 1986).
19. *People. v. Jones*, 907 P.2d 667 (Colo.App. 1995).
20. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
21. *People v. Shreck*, 22 P.3d 68 (Colo. 2001).
22. *People v. Stewart*, 55 P.3d 107 (Colo. 2002).
23. *Id.* at 123.
24. *Id.*
25. *Id.*
26. *Id., citing United States v. Peoples*, 250 F.3d 630, 641 (8th Cir. 2001); *United States v. Figueroa-Lopez*, 125 F.3d 1241, 1244-46 (9th Cir. 1997).
27. *Stewart, supra* note 22 at 122.
28. *Id.*
29. *Id.* at 124.
30. Joseph, "Emerging Expert Issues Under the 1993 Disclosure Amendments to the Federal Rules of Civil Procedure," 164 F.R.D. 97, 108 (1996).
31. *United States v. Cano*, 289 F.3d 1354 (11th Cir. 2002).
32. *Figueroa-Lopez, supra* note 26 at 1246.
33. *Stewart, supra* note 22 at 123.
34. *Id., citing United States v. Garcia,* 291 F.3d 127, 140 n.8 (2d Cir. 2002).
35. *Id., citing* F.R.E. 701 advisory committee notes (2000).
36. *Daubert, supra* note 20; *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).
37. *Brown, supra* note 5.
38. *Id.* at 549.
39. *Id.* at 550.
40. *People v. Rincon*, 140 P.3d 976 (Colo.App. 2005), *cert. denied* Jan. 12, 2006.
41. *Id.* at 981.
42. *Id.*
43. *Id.* at 983.
44. *Id.*
45. *Id.*
46. *People v. Veren*, 140 P.3d 131 (Colo.App. 2005).
47. *Id.* at 139.
48. *Id.* at 139.
49. *People v. Atencio*, 140 P.3d 73 (Colo.App. 2005).
50. *People v. Baird*, 66 P.3d 183 (Colo.App. 2002).
51. *People v. Malloy*, 178 P.3d 1283, (Colo.App. 2008)
52. *U.S. v. McDonald*, 933 F.2d 1519, 1522 (10th Cir. 1991).
53. *Lifewise Master Funding v. Telebank*, 374 F.3d 917, 929 (10th Cir. 2004), *citing Doddy v. Oxy USA, Inc.*, 101 F.3d 448, 460 (5th Cir. 1996).
54. Kaye *et al.*, *The New Wigmore: Expert Evidence* § 1.7 at 40 (2004).
55. *United States v. Horn,* 185 F.Supp.2d 530 (D.Md. 2002).
56. *Id.* at 560.
57. *Id.* at 533-34.
58. *Id.* at 533.
59. *Id.*
60. *Id., citing United States v. Peoples*, 250 F.3d 630, 641 (8th Cir. 2001); *Figueroa-Lopez, supra* note 26 at 1244-46.
61. Crim.P. 16 I(a)(1)(III).
62. Crim.P. 16 II(b)(1). ■

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CBA members who are interested in reading a law-related book and writing a review for publication in *The Colorado Lawyer* may contact Leona Martínez at leonamartinez@cobar.org for guidelines and deadlines. Please provide an abbreviated résumé or self-description, stating your areas of expertise and interest. The titles listed below were available at press time:

- *2008 Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple*, by Sharon D. Nelson *et al.* (ABA, 2008); 137 pp.
- *Access to Government in the Computer Age: An Examination of State Public Records Law*, Martha Harrell Chumbler, ed. (ABA, 2007); 209 pp.
- *The Bramble Bush: Classic Lectures on the Law and Law School*, by Karl N. Llewellyn (Oxford University Press, Inc., 2008); 177 pp.
- *Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases*, Marvin Ventrell and Donald N. Duquette, eds. (Bradford Publishing Co., 2005); 719 pp.
- *Colorado Civil Pretrial Handbook*, by Mary Price Birk (Bradford Publishing Co., 2008); 455 pp.
- *Copyright's Paradox*, by Neil Weinstock Netanel (Oxford University Press, Inc., 2008); 218 pp.
- *Guide to TTAB Practice*, Vols. 1 and 2, by Jeffery A. Handelman (Aspen Publishers, 2008).
- *Patent Appeals: The Elements of Effective Advocacy in the Federal Circuit*, by Mark Simon Davies (Oxford University Press, Inc., 2008); 284 pp.
- *School Administrator's Guide to the Family and Medical Leave Act*, by Carl C. Bosland (Rowman & Littlefield Education, 2007); 571 pp.
- *The Science of Settlement—Ideas for Negotiators*, by Barry Goldman (ALI–ABA, 2008); 167 pp. + glossary and bibliography.
- *Trial Manual for Defense Attorneys in Juvenile Court*, by Randy Hertz *et al.* (ALI–ABA, 2008); 732 pp.
- *Water Rights Handbook for Colorado Professionals*, by Peter D. Nichols *et al.* (Bradford Publishing Co., 2005); 130 pp.