

Finding and Effectively Using an Expert Witness

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In the summer of 2016, author Simek had the pleasure of joining a Pennsylvania Bar Association panel comprised of both testifying experts and judges to explore how to find and effectively use a good expert.

It seemed to author Nelson, sitting in the audience, that she was hearing a series of rapid-fire tips so she endeavored to jot them down, in no particular order, to offer the collective wisdom of the panel. Here are some of the many valuable tips she heard:

- It's important to find an expert who will be cool under fire, as they must survive cross-examination with their credibility intact – this is the most dangerous moment in litigation
- It can be helpful to watch a video deposition of the expert (if available) to see how cool under the fire the expert is – or is not
- It is important that the expert's testimony be concise and to the point
- The expert should avoid technical or obtuse language
- Body language is always significant – no smirking or looking sarcastic
- A great trait for an expert to have is to use analogies that summon up pictures for a jury, e.g. "It was the size of a soccer ball" or "It weighed as much as a 5 pound bag of sugar."
- Lawyers need to train their experts – many don't testify all the time
- Lawyers should comprehensively know their expert's CV
- Make sure the expert knows it is ok to say "I don't know"
- Make sure the expert knows it ok to pause after a question is asked to collect his/her thoughts
- Encourage the expert to tell a story and encourage the expert to think of his/her role as a teacher
- Urge the expert to use TV and sports analogies likely to be familiar to a jury
- If you want your expert to treat you with respect, you must do the same – make sure the expert is promptly advised of case developments, especially those which impact the expert's calendar

- Don't assume the expert is always available to you – the expert has other clients to manage too
- Don't write the expert's affidavit or report – a good expert will not sign an affidavit or report which does not reflect the expert's opinion – and you don't want “an expert for hire” – that always shows and hurts your case
- It is ok to ask if your expert could phrase something differently – but if the expert is uncomfortable with the change, try to understand why – a good expert is probably right and being careful to stick to the strict truth
- Research your experts on social media to avoid surprises – there are some who are quite unprofessional on social media – and the other side will find anything which reflects badly on the expert
- Be familiar with their writings (books and articles and, if they are speakers, what they speak on – the other side may well cite the expert's own words in a cross-examination)
- Watch out for experts who just want the business and will tell you anything – make sure the expert's CV matches your need for testimony. Mismatches are common – and never turn out well
- Clearly establish your expert's credentials in court
- Be familiar with your expert's prior testimony in cases
- Make sure the expert is properly attired – professional and not casual
- Make sure you rehearse with your expert – make questions easy to understand – there have been cases where there were so many double negatives that the expert had no idea what to answer
- Follow the wise advice of your expert, e.g. if your expert has said “avoid asking about whether a computer virus could have resulted in child pornography being downloaded” – then avoid it – your expert is trying to keep you away from a cesspool, so try not to jump in with both feet.
- Provide all the relevant information you have to the expert – it won't go well if the expert is confronted on the stand with information you had and didn't share – happens all the time
- If your case involves technology, don't assume you know how technology works – knowing a little bit can be more dangerous than knowing nothing

Understand that this is a mish-mosh of tips, colorfully presented by judges and experts who had been on the front lines and had the stories to prove it. The tips

are by no means comprehensive, but they sure offered a lot of practical and often overlooked advice!

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