

THE EXPERT UNDER STRESS OF TRIAL

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He is a true expert in his field. His research is original, his lectures are well attended, his consulting services are in demand, and his publications are frequently cited. He was cooperative while preparing the case, and the rehearsals were smooth. The attorney was confident he would make a great expert witness. But he was ineffective at the trial. How did he go wrong?

Consider what is asked of this expert. Faced with strangers who know nothing of his field of specialization, he must first prove his expertise, then make a simple explanation of a complex subject, and finally face a verbal adversary who seeks to counter everything he had to say. What stress this is for the expert!

However, the retaining attorney has several opportunities to support his expert's credibility as a witness. First, when selecting the expert, the attorney should check out his credentials and make sure that he can function in combat. The most profound thinker is not necessarily the most effective presenter. The expert must be comfortable with the confrontational nature of the trial. Notwithstanding his peer recognition and acceptance, he must be willing and able to perform in the forum with an audience of skeptics and enemies.

The second opportunity an attorney has to support his expert is during preparation of trial. The expert should be told to anticipate counter-arguments and envision alternative evidence. If possible, another expert could be retained to play the "devil's advocate." It is better for the attorney to exorcise the "ghosts" during direct examination than to explain away the adversary's evidence after he presents it. At this point it is the expert's responsibility to inform the attorney if he does not believe in the case and to reject the engagement.

Also in preparation for trial, the attorney should note the expert's jargon and be sure to clarify for the jury the meanings of acronyms and phrases that the expert uses glibly among his colleagues. The attorney can set the stage for the expert to convey the particular scientific concept behind "specular reflection," "intermolecular bond," "moment of inertia," "lift-to-drag ratio," or "rms error." The attorney should plan for the expert to explain, to sketch a diagram, to relate an analogy, or to give a familiar example, before he escapes into technical exposition using the jargon.

The third opportunity for the attorney to support his expert is when he is under the most stress -- on the witness stand. To the extent possible, the attorney should ask broad questions and let the expert expound and thereby gain credibility. Certainly a terse Q & A format is more efficient, but the appearance of an acted-out script is not desired. If the attorney has selected his expert and prepared with him, little steering should be required for the expert to deliver the testimony spontaneously and believably.

The attorney wants to show the expert's testimony as having independent scientific validity, aloof from the antagonists in the drama. The true expert will be secure with truth and thoroughness, even if this means points gained by the opposition. The attorney can highlight all information -- some tending to contradict his expert's position -- openly and objectively through his questioning of the expert. The attorney should let the expert mull, consider, and opine; that's what he does outside the courtroom.

When the attorney puts an expert in the witness chair, he has him intellectually naked. The attorney must provide the expert his cloak of respectability.

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