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# Maximizing Your Impact as an Expert Witness

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As an expert witness, your testimony can make or break a case. For this reason, attorneys are meticulous in selecting an expert they believe will strengthen their position and add optimal value. Law firms choose candidates based on reputation and track record in their respective fields.

The adversarial nature of litigation can put expert witnesses in a difficult or compromising position. You might face aggressive cross-examination from opposing counsel seeking to undermine your credibility or challenge your opinions. If they succeed, it may not only damage the underlying case but also impact your reputation in your field. When unfavorable, unfair, or even erroneous information reaches the internet about you, it can adversely affect your opportunity set. That is why expert witnesses must invest significant time to develop the skills needed to handle the pressure.

As Warren Buffett famously said, “It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.”

## Minutes

As a testifying expert witness in federal and civil courts over the past decade, I have completed 50-plus expert reports and led litigation consulting engagements on more than 200 cases. Here are some tips for expert witnesses at any career stage.

### **Best Practices for Expert Witnesses**

#### **Work Collaboratively with Attorneys**

Working closely with lawyers and building solid relationships with them is essential. This means actively participating in case strategy discussions, where appropriate, and providing expert opinions. Sometimes you might need to point out things they have missed or overlooked; be sure to do so professionally and tactfully. For example, I have shared my opinion with lawyers when I thought cases or particular arguments were not worth pursuing. While my business has expanded to include litigation consulting, I have always tried to offer salient points for consideration in cases and settlement negotiations. Communicating clearly and proactively throughout the engagement ensures you stay on the same page. I often end with, "I may be wrong, or you may disagree, but I always try to do the right thing by offering my thoughts, which are grounded in and guided by my experience."

#### **Manage Expectations**

Ensure your clients know what to expect regarding billing and the delivery of work. This includes providing realistic timelines for your work. Doing so helps avoid misunderstandings and keeps your client relationship smooth and productive. It also builds trust and reinforces your professionalism. Attorneys are busy. A simple phone update can go a long way toward their remembering you for their next case. My law partners have often cited our proactive approach as a key differentiator for long-

term collaboration. Managing client expectations helps deliver successful outcomes and underlines your contributions.

### **Communicate Clearly and Proactively**

Strive to communicate clearly. Keep the attorneys you work with, and other stakeholders, informed. This will help everyone work together more smoothly and ensure critical information is shared efficiently and promptly.

Stellar communication is not just about being responsive but also about being accessible and taking the initiative to provide updates, seek clarification, and address questions and concerns that may arise throughout a case. Such communication instills confidence in your reliability and helps maintain momentum within court-directed deadlines. Whether it's being reachable outside of business hours, or establishing clear protocols for emergencies, being easily accessible shows you are committed and vested in a successful outcome.

### **Prepare for Deposition and Trial**

Before you testify, take the time to understand everything about the case and the legal issues involved. Review all documents provided, especially complaints and rebuttal reports. These steps help build confidence and an ability to address the unexpected under pressure. Developing confidence from diligent preparation is critical for handling tough questions and maneuvering through tricky situations and traps during cross-examination.

It is also essential to leverage the expertise of the attorneys with whom you are working. Counsel can provide valuable insights and guidance that will strengthen your testimony. In addition, the more familiar you are with their strategic imperatives, the

better you can reinforce their core arguments and create value for a more compelling case overall.

Being relatable beyond just the technical aspects of your testimony is beneficial during deposition and trial. For example, I try when possible to leverage knowledge or anecdotes from my deep study of history, particularly of the life and wisdom of Abraham Lincoln. I often use stories or vignettes from President Lincoln strategically, such as deploying a yarn to connect with attorneys (on both sides), clients, judges, and juries. Things tend to go better when you can glean a smile or a laugh.

This skill is especially useful in cases where the inevitable tension of trials takes hold. In one case involving a major metropolitan school district, I referenced Abraham Lincoln's inability to put forth his best effort when he became convinced his client was culpable. I mentioned to an overly aggressive but frustrated opposing counsel that I wished he was more like the venerable Mr. Lincoln, because perhaps then he wouldn't have worked so hard to discredit me unduly, given our shared understanding of the facts outlined in my report.

### **Build an Honest Abe Reputation**

Establishing and maintaining a solid reputation is a complex undertaking, but at its heart lies honesty and ethics. Here, you can again make Abraham Lincoln your model. He practiced law in the proverbial Wild West, before we had extensive guidelines regarding legal ethics as we do today. Instead, Lincoln was forced to navigate the vast ethical gray areas that arise in representing clients on his own, constantly questioning what is moral and what is right.

Today, we have model ethical codes, such as the [American Bar Association's Model Rules of Professional Conduct](#), with which people new to

the expert witness field should become familiar. That being said, every case is different, laws evolve, and new gray areas constantly emerge. Therefore, adopting Lincoln's constant questioning and "honesty to a fault" attitude is a powerful tool in (1) building a stellar reputation and (2) doing what is ethical, just, and right.

### **Consider Alternative Strategies**

Exploring alternative strategies and tactics can be a tipping point for a case's success. While your technical expertise is undoubtedly essential, sometimes a fresh perspective or different approach can strengthen your testimony and, ultimately, the case. It can also help you uncover new avenues of reasoning that may not be immediately apparent.

For instance, my team worked on a case involving a private yacht manufacturing company, where a limited partner was accused of defaming the general partner through slander. The defendant sought to negotiate a buyout and settlement. While we had drafted our report from documented evidence and from interviewing our client, we knew the client could gain additional leverage if we substantiated the extent of the harm beyond the initial slander. To accomplish this, with permission of counsel, we assembled publicly available and relevant documents into an appendix, which corroborated the initial slander and also demonstrated that potential damages might go beyond that. We then opined on the need to quantify and include digital rehabilitation damages in the case.

We subsequently augmented our report through a private investigation. We conducted a survey campaign by reaching out to prominent residents, private clubs, and competitors within the boating community, which was the company's small and

finite market. We also interviewed boating and yacht enthusiasts. We tactfully explained that we were compiling an independent report and asked them to answer questions. We found that the slanderous comments had spread, and knowledge of the lawsuit was generally present in the relevant community.

We were later cited when an unexpectedly favorable settlement figure resulted from the leverage we provided in our comprehensive report. The defamation claims were also retracted.

### **Be Adaptable**

Flexibility can help you navigate the evolving dynamics of cases and expand your expertise into new areas. For example, at [Blue Ocean Global Technology](#), we started by focusing on internet defamation and then organically expanded to intellectual property, trademark infringement, and source code evaluation. Staying open to new opportunities and learning reinforces how you remain valuable and trustworthy in an evolving legal world.

### **Uphold Ethical Standards**

Always maintain high ethical standards in every interaction and decision to uphold your credibility and trustworthiness as an expert witness. My team and I conduct thorough due diligence before accepting a case. Occasionally, we decline cases that do not meet our ethical criteria.

As mentioned above, reputations are everything, and you must carefully consider accepting clients and collaborators who may bring more trouble than benefit.

Maintaining objectivity is also vital, as your name is on the line for your expert work. While collaboration is valuable, allowing someone to alter the conclusions of your work or final report can be

detrimental to your reputation down the road. Addressing such concerns up-front is crucial.

### **Conclusion**

As this article demonstrates, succeeding in your expert witness practice requires more than technical expertise. It demands integrity, adaptability, and an unending commitment to ethical conduct. This means delivering the best possible effort in all communication and work.

At the end of the day, your goal should be to go beyond simply educating the court. While that defines the responsibility of the expert witness role, you should also strive to promote fairness and justice. I often remind myself of wisdom, again, from President Lincoln: “Some things legally right are not morally right.” Always protect your reputation and think about your long-term opportunity set.

Expert witnesses who adopt these tips can take on cases with both competence and confidence, and while of course serving their clients first, they can also serve the legal system and society as a whole.

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