

What Preparation Does Your Expert Need?

by David Cannon

Expert witnesses are, after all, “experts,” so do they really need to be prepared for trial testimony? Well, just because someone is an expert in his or her field, that person is not automatically expert at conveying information in an effective and educational manner to a jury. Think about a few of your college professors. Some were truly gifted at teaching difficult concepts in an exciting and novel way that held your attention and complemented materials you read for the class. These were the classes that you regularly attended because they were inspiring and fulfilling. You felt proud of yourself as you learned more about the topics at hand. You felt just a little bit smarter because of those professors. However, some professors did not seem to have this gift. They poorly explained difficult concepts and jargon, if they explained anything at all. Remember how quickly your mind wandered? Remember how laboriously they covered material in an uninspired manner, begging you to focus your attention on something, anything, outside of the classroom? Instead of organic chemistry, you thought about your weekend plans or where you were going to dinner.

Now, imagine that uninspired professor explaining an important or key concept that is vital to your case. How influential will he or she be to a jury? How soon will jurors be thinking about their weekend rather than paying attention to your expert? Is this a risk you really want to take?

This is just one example of what can happen when you put experts on the stand without appreciating how they may come across to a jury. Over the years, I have seen it all: the uninspired expert, the reluctant expert, the advocate at-all-costs expert, the bully expert, and, of-course, the highly effective expert. What kind of expert do you have? You really only know by conducting a dry run of his or her testimony and seeing it for yourself.

After conducting a dry run with your expert witness, you may conclude that the witness needs some assistance to bolster his or her ability to convey testimony to the jury. Following are some considerations for approaching the witness with suggestions.

Every Expert Is a Unique Challenge

Preparing expert witnesses comes with its own set of challenges. Over the years, I have found that some experts are eager to work with a consultant while others can be very resistant to the idea of witness preparation. Following are examples of two kinds of experts (one who embraces preparing for trial and another who does not), and how you can work with them to improve their performance.

The Reluctant Expert

I recently worked with an expert who had no experience in front of a jury. While he had offered many opinions in other cases, he had never before testified in front of a jury. When we met, he admitted that he had quietly hoped that the case would settle so he wouldn't have to testify at all. He was a pleasant man who presented like a lay witness because of his lack of familiarity with the trial process. Because he had no jury experience, much of the beginning of the session focused on demystifying the process. I educated him as I would a lay witness (e.g., orienting him to the courtroom and discussing tactics/tricks used in cross). My attorney-client then began a mock direct examination. The expert's responses were full of jargon and long-winded explanations. He did not seem to know where he wanted to go



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with his testimony without being prompted by very leading questions. He was going through his testimony much like an uninspired professor.

Thankfully, he was open to feedback and to the process of witness preparation. In a short period of time, the expert was able to make amazing improvements because of his openness to preparation. We asked him to document the three or four key points he was trying to make, and we worked with him to outline how he could go about getting these points across in his testimony. He now had a roadmap of what needed to be conveyed to the jury and how he would go about conveying that information. With the outline in place, we continued to practice by conducting dry runs of his testimony. He improved, but jargon continued to be a problem. I asked how he might be able to explain these concepts at a party where he was surrounded by people who wanted to know what he did for a living, but lacked his background. We discussed metaphors to help jurors understand his concepts in a manner that was more familiar to them. More practice resulted in continued improvement, but he was still having some difficulty getting his key concepts across in a manner that helped them to stand out. We decided to let him use chart paper to summarize his key points. He would briefly write out a concept and then explain it. Over the course of the preparation session, the witness went from a formal, impersonal, and boring presentation to that of a much more personable, informed, teacher. In a booster session a few days before the witness testified, he continued to show improvements in his ability to convey the information and in his self-confidence. The witness went on to perform very well in front of the jury, and he presented as being very natural and well-informed.

The “My Word is Gospel” Expert

One of the most challenging experts I have worked with had testified in many, many cases. It was clear that he considered himself an expert in his field, but he also considered himself an expert at testifying. My client had never worked with this expert before, but noticed some potential for him to come across too aggressively to a jury. She worried that he could appear unlikeable and come across as too “full of himself.” He was insulted when she told him that she liked for experts to work with her consultant, and she told me that he was very reluctant to meet. We were fortunate to be conducting a mock trial in this case, so we videotaped this witness’ expert opinion in a mock direct and mock cross exercise.

My client’s concerns proved to be well-founded; he did not come across well. Far from presenting as uninspired, he came across more like an aggressive used-car salesman. He was aggressive, defensive, and appeared to be too much of an advocate. We played his video to the mock jurors and had them evaluate the witness on a variety of dimensions (e.g., believability, likability, clarity, etc.). We also allowed mock jurors to offer open-ended opinions of the witness. Overall, the mock jurors did not like him and were very critical about much of his testimony. Mock jurors believed his opinions were unfounded and presented as “gospel.” Nevertheless, we were able to extract some positive statements and data to assist us in providing feedback to this witness.

This particular witness was very data-oriented and appreciated feedback that we provided from the mock trial. When working with witnesses such as these, it is important to be armed with data and diplomacy. Always acknowledge and reinforce the strengths first to build rapport, and build off of those strengths as you offer suggestions. First, walk through the data that shows what the expert did right. Consider pulling some quotes that describe him or her as prepared, organized, and knowledgeable (or whatever his or her strengths are). In this example, we explained how his years of experience had come across positively to the mock jurors. Then, armed with selective and constructive data, we showed where the mock jurors did not respond as positively. This helps to draw a line between being a confident and knowledgeable educator and being an aggressive “salesman” of one’s opinion. Stress the importance of outlining how the expert has had reached his/her opinions, rather than simply stating and aggressively defending them. This witness ultimately was very successful at walking through his methodology and helping the jury to understand exactly how he arrived at his opinions.

Tips That Apply To Most Experts

I recommend some closing points that will help promote clarity in an expert's opinion.

1. Don't advocate

Experts have a difficult task. Not only must they educate the jury about something about which the jurors know little, but their conclusions are often in stark contrast to those being proffered by opposing experts. Consequently, experts are met with a great degree of skepticism because jurors often view them as advocates for the party on whose behalf they appear in court. While the expert's opinions are important, the key in effective expert testimony is clearly walking the jury through the decision-making process that led to the expert's opinion. Don't be afraid to have your expert walk through opposing opinions and explain why those opinions are not supported. The clearer the expert's methodology is, and the more the jury understands what led to the expert's opinion, the greater the likelihood that the expert's opinion will hold up against an opposing view.



2. Keep it conversational

Remind experts that their role is to educate someone with little or no knowledge about their field. How might an expert handle telling someone at a party what it is that they do? Remind them that the use of jargon can be alienating. Address concepts simply and in ways that resonate with the jury. Metaphors are excellent vehicles to deliver difficult concepts in familiar ways.

3. Show and tell

Talk to your expert about graphics and models that may be used. Make sure that they are simple enough so key concepts are readily apparent the jury. Use graphics, chart paper, and models for key points of the testimony to help juror comprehension and retention. Once more, think back to some of the most effective instructors you have had, and those instructors likely used graphics and models to aide understanding.

In conclusion, jurors often interpret expert witness testimony with a grain of salt, so the way in which the expert opinion is communicated is vital. Don't make the assumption that an expert is an expert communicator in the courtroom.

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Editorial Exuberations

Spring is in full swing when it seems like the new calendars just went up on the wall. Our May issue is the biggest we've assembled yet both in size and in the range of ideas/perspectives incorporated. Thanks to your reading and suggestions we are continuing to evolve and expand. *The Jury Expert* is also on [Twitter](#) with daily links relevant to litigation and a few fun things to mull over your morning libations. Keep the feedback, ideas, and suggestions coming!

We are pleased to have a lengthy feature on the controversy about Generation Y and the prevalence of narcissism. We are publishing this issue on the heels of a heated debate in the blawgosphere on Generation Y in the legal workplace (see a summary of that controversy [here](#)). In a departure from our usual style of one author and several trial consultants reacting to the piece--in this case we have two articles (one saying narcissism is on the rise in our young people and the other begging to differ). Three experienced trial consultants with special interests in generational issues provide feedback on the articles and how this controversy relates to litigation advocacy and then both authors respond. This feature doesn't resolve the differences of opinion between the researchers but we hope it gives you a sense of how to use (or not use) generation and/or age in jury selection, case sequencing and narrative.

Our second academic feature is one of which we can all be proud. It's an exploration of just how the process of deliberating on a jury makes us better people and better citizens. How nice to hear something uplifting about the jury process for a change! Two past Presidents of the American Society of Trial Consultants respond to this article (ten years in the making) and then the authors follow-up with additional thoughts.

In addition, we have pieces on a wide range of issues from trial consultants: deception, juror stress, technology in high profile trials, questioning the child witness, using a simple mnemonic to aid you in organization in voir dire, and how to prepare expert witnesses. And of course, our favorite thing (two again this issue). It's a lot to ponder. Come back and visit the website and read to your hearts content! That's why we're here. Use us. --[Rita R. Handrich, PhD](#)



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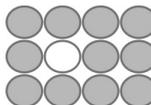
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