



E73 Tips for the Courtroom: How to Get the Most Out of the Expert Witness

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After attending this presentation, attendees will be better prepared to select the expert witness to assist and advise them as legal counsel for their clients' cases. Attendees will learn from an experienced judge and practicing forensic pathologist, the value of the expert witness to provide technical advice to legal counsel concerning the facts and theories to be anticipated from the opposing counsel. After discussing the case with an expert, counsel will be better able to construct effective pleadings and focus counsel's attention on the relevant issues in the case. Attendees will also learn ways to locate and select the most qualified experts available. The presenters will also discuss the value of preparing the expert rather than coaching the expert so that the expert is testifying objectively and truthfully.

This presentation will impact the forensic science community by equipping lawyers to work with the expert witnesses. Lawyers will become aware of the value of the multifaceted role that an expert plays by contributing vital input in the initial stages of their cases and the importance of selecting the best expert to address the main issues in the case. Lawyers will learn of the ethical responsibilities to provide objective and unbiased testimony to the court regardless of affiliation or remuneration.

Attorneys should select and obtain experts in the early stages of the litigation process in order to reserve the best expert for the specific case and so that the expert can assist and advise counsel as to major issues of the case as soon as possible. Professional organizations may be excellent sources for obtaining qualified experts; however, counsel must proceed with caution and evaluate the requirements for membership in those organizations. Attorneys should carefully evaluate each expert's credentials such as education, professional licenses, academic and teaching appointments, publications, experience in their field of study, previous expert testimony, professional disciplinary actions, criminal record, any relationship to the parties, and any financial interest in the outcome of the case.

The scientific expert witness has a role as an educator both for the attorney's education as well as to assist the jury in understanding the scientific issues of the case. To be effective, this should occur during preparation for trial and not in the courtroom. It is difficult to test expert testimony at trial without advance notice and preparation. The courtroom is where the attorney, with the expert's help, educates the jury, not where the attorney encounters difficult scientific questions for the first time. The experts should explain facts based on information and knowledge available without entering into an advocacy role. Experts educate attorneys about their field of technical or professional expertise involved in the case.

In this presentation, forensic pathology is the scientific field used to illustrate best practices in preparing for the courtroom and selecting and effectively utilizing the expert. Experts may have limitations due to their field of expertise. Forensic pathologists, for example, may have possible limitations on their ability to be experts such as when they are estimating time-of-death, questions related to toxicology, or other related scientific fields. Experts should not be encouraged to stray outside their field of expertise.

Attorneys should also consider the importance of the demeanor of the expert, such as the expert's professional image, ability to communicate effectively to the jurors, skill and effectiveness with demonstrative evidence, ease in a courtroom environment, and the ability to not appear too relaxed so as not to project disrespect or a "hired gun" image. The expert should be polite and candid as well as appearing confident in responses and displaying patience and competence. The expert cannot speculate. Both attorneys and experts should avoid mispronouncing medical and legal terms. Attorneys should discuss with their experts the legal meanings of such terms as *reasonable medical certainty*, *beyond a reasonable doubt*, and *preponderance of the evidence*.

Attorneys should provide all facts of the case to their expert to avoid "ambush" by the opposing counsel. Experts enable counsel to be able to pose the critical questions to opposing experts in confronting contested issues of a particular case. A well-prepared expert is also better able to perform in the courtroom since he/she can analyze and organize the facts in a way that jurors can comprehend. Counsel should conduct a simulated cross-examination to optimally prepare the expert witness. Counsel should explain anticipated trial procedures, schedules, as well as trial technique and strategies to get the most out of the expert.

Expert Witness, Courtroom Preparation, Medical Testimony