

THE
JURYEXPERT

from Spring 2016
Volume 28, Issue 1

THE ART AND SCIENCE OF LITIGATION ADVOCACY
A PUBLICATION OF THE AMERICAN SOCIETY OF TRIAL CONSULTANTS



Tips for Preparing the Expert Witness

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WORKING WITH EXPERT WITNESSES can be difficult for even the most seasoned attorneys and trial consultants. Oftentimes, egos and expertise can get in the way of an expert's ability to deliver persuasive testimony, requiring attorneys and trial consultants to be creative when developing solutions that fit both the problem and the expert witness. As trial consultants, we have gained valuable information on how to prepare expert witnesses for trial from the jury research we have conducted. For instance, we know that the best experts are capable of conveying they are honest, respectful people who have a firm grasp on the issues they are asked to testify about. When experts convey their insights in a polite, yet knowledgeable, manner they can be an invaluable asset at trial.

Recently, we had the chance to interview Dr. Merrie Jo Pitera, our CEO and resident expert (no pun intended) on witness preparation. Over the last 25 years, Dr. Pitera has prepared hundreds of witnesses for depositions, trials and congressional hearings. She offered the following tips for preparing expert witnesses:

1. Identify the Problem(s)

The first step is to determine why you need to work with this expert. For a consultant, this means getting the inside scoop from the attorney and identifying the problem(s) early so that you can begin to develop a plan. There can be a variety of reasons why an attorney hires a consultant to prepare an expert. For instance, the witness may be defensive or arrogant, display distracting nonverbal behavior, unable to remain focused, or poorly answers routine questions. From our research, we know that jurors equate an expert's style of answering to their perceived level of honesty. This means that experts who fidget, use powerless speech[1], or over-volunteer information look as though they are being untruthful. While any one of these behaviors can seem small, anyone with years of experience knows just how quickly these issues can turn into a big problem for a witness and, potentially, the entire case. Because the attorney knows the expert best, it is important to get their take on the key problems/concerns. In the long run, this will save you a significant amount of time

and help you utilize your time effectively during your witness prep session. Moreover, the witness should be encouraged to start thinking about their testimony and do some self-evaluation in advance of the meeting so they are better prepared to tackle the issues when you meet. This is important since, typically, the time you have to meet with the witness is limited.

2. Preserve the Attorney-Expert Relationship

Clearly, the goal of witness preparation is to improve the expert in some way, whether it be focused on content, delivery, or presentation. Along the road to improvement there can be a few tough moments where someone has to give the witness unfavorable, or even critical, feedback. Having a consultant deliver the tough messages can help preserve the attorney's relationship with the expert. This is important since the attorney will be working with that witness later at trial and trust is the keystone to maintaining that positive relationship.

3. An Expert Witness is Only One Chapter

Jurors filter incoming information through their own sensibilities. These sensibilities are comprised of pre-existing attitudes, personal experiences, or inferences. From here, jurors fill in the gaps such that any information congruent with their predispositions will be assimilated, while information inconsistent with their experiences and attitudes will be ignored. Jurors are attempting to piece together a coherent story from a multitude of facts and tidbits, and it is important for a witness to understand the role he or she plays in developing that story. It should be made clear to the expert that they are not supposed to try and tell the whole story but, instead, to provide jurors with an important piece of the puzzle. It might be helpful to try to get an idea of how the witness views his/her role in the case and, if necessary, help reframe their role. Make sure the expert witness understands that if the case were a book they are only one chapter.

4. An Expert Doesn't Have to "Sound" Like an Expert

Oftentimes, when working with an expert witness, he/she believes it's important to "sound" like an expert by often using jargon and relying heavily on content-specific knowledge to define and explain concepts to the jury. From our jury research, we have found that these experts come across as arrogant and jurors have a difficult time relating to them. Jurors don't like when expert witnesses use verbose answers when a sentence will do. Coach your witness to teach a concept in the way a fifth grader could understand without sounding condescending. It is important for the expert to maintain this critical balance when talking with jurors. They should communicate their expertise without sounding too academic or condescending. The goal is to succinctly and clearly explain specialized knowledge so that every single person on the jury can understand. It's best if the witness prepares for testimony with the goal of speaking to a wide audience to ensure

that no one is left out. Additionally, it is helpful for the expert to understand the composition of the jury. They should know the demographic make-up of the panel and that oftentimes few, if any, of the jurors have advanced degrees. Moreover, when possible, the expert should become familiar with each juror's personal background and interests. This understanding will help the expert engage the jury and teach the concepts effectively. This is critical since, ultimately, jurors understand and better relate to the expert witness who delivers complex messages simply.

5. Answer the Question

One thing we hear consistently in our jury research is that witnesses are evasive and, oftentimes, never answer the question they were asked. While it can seem obvious, jurors want to hear an answer to the question the attorney posed. For jurors, even the toughest questions deserve an answer and they aren't very forgiving of expert witnesses who skirt around a question. In an effort to evade a question, some expert witnesses give long-winded and confusing answers, but as one juror suggested, "if I ask you what time it is, don't tell me how to make a watch." It's OK to Say I Don't Know

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7. Practice, Practice, Practice

The question and answer portion of witness preparation is the most important session because this will imitate what the expert will face at trial. Because unexpected and, at times, uncomfortable questions arise during cross-examination, witnesses have to be prepared to address a wide range of issues and practicing can help them feel confident in their responses.

8. Get the Headline Out First

The important part to remember when answering questions is to have the witness get the headline (aka theme) out first and then explain the details. This is important since jurors, like the rest of us, have such short attention spans. If the witness says the important part first, jurors are more likely to remember the main theme even if they stop listening after 30 seconds. However, if the expert saves their headline until the end, jurors may get lost in the process and not walk away with a firm grasp of the expert's testimony.

9. Assign Homework

Witness prep sessions are important, but to really help the witness take ownership of their testimony and make lasting change, assign “homework”. It’s important to not make it extremely difficult, unrealistic, or time-consuming. Instead, tell the witness to practice their themes out loud in front of the mirror as they get ready in the morning or on their way to work. If they tend to gesture a lot during questioning, have them practice conversations while sitting on their hands. If one of your suggestions is for a female witness to pull her hair back into a ponytail, because she keeps fiddling with her locks, assign her the homework of wearing her hair that way for two weeks before the trial so she becomes comfortable with it. Assigning homework ensures that positive behaviors become second nature and the witness feels comfortable with, what are sometimes, significant changes.

10. Be Realistic

While witness preparation can be extremely effective, a consultant won’t be expected to move mountains in two four-hour sessions. Be realistic about what changes can be made with the witness in the time you are given. Lifetime behaviors won’t be altered just because you talk about them for two hours. However, you can get witnesses to start thinking about their presentation differently and decrease some of their distracting behaviors while increasing helpful ones.

Conclusion

While it’s important to recognize that witness preparation cannot change major behavioral issues ingrained over a lifetime, it can help your expert rethink their testimony and make changes to their delivery which will foster a better connection with the jury. Maintaining a critical balance between educating the jurors without sounding condescending will help the expert develop a rapport with the panel which will strengthen his/her credibility. Moreover, the expert should focus on delivering his/her themes up front in order to combat jurors’ short attention spans. This will ensure that jurors walk into their deliberations with a keen understanding of the expert’s testimony. Additionally, it is important to encourage your expert to consistently practice their testimony since the more they practice the more comfortable and confident they will be when they finally take the witness stand. Finally, remind your expert that while it is important to be direct and answer the question, they are not expected to know everything. Jurors prefer a direct and honest witness to an evasive one. Witness preparation is an essential component of trial preparation. By implementing these tips, you will help your expert testify in a way that better resonates with the jury, and this testimony will serve as a critical asset at trial. [1]

If you liked these tips on preparing experts, you can read more at our firm blog. We have witness preparation tips [here](#), and [here](#), and [here](#).

Katie obtained her Master's Degree in Communication Studies from the University of Kansas where her studies focused on persuasion, conflict resolution, organizational communication and stakeholder theory. Both her education and tenure in the trial consulting field have supplied Katie with a broad range of research skills from jurors' attitudes and decision-making processes to content analysis and interviewing techniques. Moreover, Katie's extensive background in project management affords her a unique perspective when designing and implementing jury research projects. You can reach Katie at kczyz@litigationinsights.com and can review her other relevant blogs on Litigation Insights' website: <http://www.litigationinsights.com/blog/>.

Alyssa recently completed a Master of Science in Counseling Psychology from the University of Kansas where she gained valuable experience in social science research methodology and statistical analysis. Her background in the social sciences includes extensive writing and presentation skills along with experience in creating questionnaires. Her previous roles in teaching, research and counseling have provided Alyssa with a strong foundation for her work as a Jury Research Consultant. You can reach Alyssa at atedderking@litigationinsights.com and can review her other relevant blogs on Litigation Insights' website: <http://www.litigationinsights.com/blog/>.

[1] Powerless speech reduces the perception of a speaker’s power and leads to negative assumptions of the speaker’s authority. Powerless speech may include such mannerisms as hedges, hesitations, disclaimers, rising inflections and tag questions.