

How to Avoid Hiring the Wrong Expert Witness



The wrongful termination case should have been a slam-dunk. The plaintiff, a top-producing executive in the financial industry was fired for a list of petty problems. It was clear her colleagues were jealous of her success and wanted to scavenge her lucrative accounts. At trial, her industry expert had sterling credentials, decades of experience inside of the industry, and deep knowledge of hiring and firing practices. He provided an air-tight analysis and report. A multimillion-dollar award was given.

But then the expert imploded during fierce examination by defense counsel. He stumbled over simple answers. He looked confused. His shoulders slumped. Every piece of his report was rock-solid, every word of his testimony was true. But suddenly, the expert's behavior made his once-credible testimony suspect in the minds of the jurors. The cost: millions of dollars.

I have seen this happen more than you'd think. How can you ensure this doesn't happen to your case? It's all about what's not on an expert's CV.

HARD SKILLS VS. SOFT SKILLS

Hard skills – what your expert knows – are only the first step. To be successful with a jury, they must have finely tuned soft skills, including the ability to engage with jurors, and communicate complex ideas in an easy-to-absorb manner as well as handle the most challenging questions with aplomb.

INFLUENCING JURORS

Time and again, in juror debriefs, I hear them talk about who they liked, who they trusted, who they believed. I've heard jurors express their feelings about experts, saying things like, "I didn't believe a thing (that expert) said, he was too pompous."

Jurors naively admit that feelings about people are powerful determinants in their decision-making. Marketing experts know we buy on emotion and then justify with facts. In the courtroom, the same is true. Jurors are going to buy – or not buy – testimony based on emotion and then justify with facts.

THREE KEYS TO HIRE THE RIGHT EXPERT

#1 Body Language. More than 90 percent of communication is non-verbal. The jury judges your expert on everything from the top of their head to the tip of their toes. Is their posture open and welcoming? Do they make eye contact easily? Do they have nervous gestures like blinking, twiddling their fingers, wiggling, or clearing their throat?

#2 Language. Do they actively engage the jury? Or are they lecturing? Is their tone conversational or austere? Do they use comfortable, colloquial terms or insider lan-

guage? Are their sentences short and clear, or long and convoluted?

#3 Attitude. This may seem a little obtuse. But remember, jurors pick up on experts' unconscious signals. Are they open and honest? Are they comfortable? Do they give off an air of superiority?

A POLISHED PREPARATION

The final step is to take the time to ensure your expert conveys trust to the jurors with calm, comfortable, clear, concise answers delivered with conviction. I know from experience that if you skip this step you are flirting with disaster, like the case above.

TWO KEY AREAS OF FOCUS

#1 Practice. Consider the most treacherous questions opposing counsel will pose. In practice, the goal is to take the sting out of that onslaught and formulate the best possible answers. For example, hypotheticals can be quicksand. If your expert pauses too long, breaks eye contact, or ducks their head, the jurors might think they are being evasive. By practicing a firm, "I don't speculate," or "That's outside the scope of the work for which I was hired," the jury will see there's nothing to hide.

Consider the biggest challenge to their expertise. An insurance expert I worked with knew opposing counsel would hammer him on his use of the term "industry standard." Where was it written down? What authority set it up? To give him ammunition and confidence, we counted how many files he had handled in his years in the industry. There were over 15,700. When confronted with the challenge, he could reply, "I've handled more than 15,700 files and this IS the industry standard." The jurors had no doubt that he was an expert on the matter.

#2 Video feedback. Record your expert and take an unblinking look at how the jury will judge them. In everyday interaction we overlook things like nervous tics, ums and rambling sentences. The jurors won't. One minute of video is more instructive than one hour of coaching.

CONCLUSION

Soft skills do not show up on a CV. Evidence of them cannot be found in the pages of a well-prepared report. Much as you might want to think that the facts speak for themselves, it's really how your expert speaks about those facts that influences jurors. Take the time to assess their soft skills and prepare them to exude confidence.

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