

Experts: What Makes Jurors Believe Yours Is Right?

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Despite their outstanding expertise and your confidence in them, why do some experts fail to convince jurors of their opinion?

- Jurors use different criteria than you do to identify a persuasive expert.
- Litigators and experts take vital things for granted (that they are right, that the facts prove so); the jury does not.
- Experts have more in common (in education and motivation) with your trial team than they do with the jury and don't always bridge the gap.
- Persuading jurors takes more than just knowing the facts.
- Being a good witness is an expertise unto itself.

Jurors' Views on Experts

A recent TrialGraphix survey of jurors in the Northeast revealed that:

- 80% believe experts are moderately to very important at helping them make an important decision.
- 42% are "sick of experts."
- 51% ignore experts' opinions and make up their own minds when the experts disagree, reverting to common sense instead.

In general, when the substance is too complex for jurors to grasp, they pay more attention to the messenger (i.e., the expert's credentials, experience, professionalism, appearance, demeanor, etc.) than to the message.

Litigators' Blind Spots About Experts

Litigators' perceptions of experts can be distorted by two related psychological effects: the "halo" effect and the "devil" effect (E. L. Thorndike, "A Constant Error on Psychological Rating," *Journal of Applied Psychology*, vol. IV [1920], 25-29).

The halo effect creates an overall positive impression of someone based on the strength of one positive trait he or she may have. Your high esteem for your expert's knowledge, for instance, may cause you to judge him or her more positively on other traits that the expert may, in fact, not actually possess.

The devil effect causes the reverse. If an opposing expert seems lacking in a particular trait considered critical to your case, you may see that expert as being weak in general. Such an overall perception, however, can be erroneous.

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The halo effect has been studied in diverse arenas of human perception:

- “The halo effect (where one strongly positive characteristic leads the interviewer to rate the candidate highly across the board) is a fact of life for even the most sophisticated interviewer.” (*GSWconsultants*, November 6, 2002)
- On taste tests, consumers judge the quality of identical tomatoes to be higher overall if portrayed as organic or field-grown rather than glass-house in origin. (Alvensleben, R., and Meier, T. 1990. *The Influence of Origin and Variety on Consumer Perception*. *Acta Hort.* (ISHS) 259:151-162)
- If a product has a strong name brand, people may overlook its weaknesses: “I might not be able to get to sixty under six seconds ... but hey, it’s still a BMW.” (*The Truth About Cars*, Robert Farage, 2003)

How Experts Create Halo or Devil Effects on Jurors

When a juror cannot understand facts and arguments presented by themselves (known as the “central route of persuasion”), the juror looks for cues in the packaging of those facts and arguments (the “peripheral route of persuasion”), which the juror then associates with the messenger and messages.

“Central” (substance-based) examples:

- Facts and evidence jurors understand
- Theories jurors can grasp and use
- Information jurors can remember
- Opinions jurors can restate in their own words

Desired “peripheral” (association-based) traits in experts that create positive impressions:

- Conveys polished (not slick) demeanor
- Comes across as likeable
- Displays high degree of knowledge
- Appears self-confident (not arrogant)
- Uses length as strength (i.e., presents a lot of information, charts, statistics)
- Cites exhaustive review of relevant materials
- Possesses impressive experience
- Has hands-on experience – not only theoretical (treating physician vs. someone who only reviewed the file)

- Is a professor or researcher from a noteworthy institution rather than a professional expert
- Brings impressive pedigree (name recognition of educational and work background)
- Makes information relevant
- Dresses appropriately
- Uses respectable mode of transportation to and from the courthouse
- Shows clear graphic charts that make points that are easy to understand

The “Devil” Is in the Details

The more complex and less salient the testimony, the more jurors will rely on peripheral cues to form a halo or devil effect concerning the expert. Peripheral information can, in fact, enhance or override an expert’s actual assets.

What to Watch for in Experts:

- Are they likeable?
- Do they get to the point before digressing into details?
- Do they use short-hands with counsel that won’t work for jurors?
- Do they explain technical jargon unprompted?
- Do they respond to questions when attacked, without taking it personally?
- Do they look like jurors’ stereotype of their profession?
- Do they offer examples to demonstrate points?
- Are they personable?
- Do they have uncluttered demonstratives?
- Are they trying to control the trial or, instead, cooperating politely?
- Are they overly naive or – just as bad – cocky old hacks?
- Do they teach or merely show off?
- Why might jurors experience a halo or devil effect about the expert?

Perhaps Ralph Waldo Emerson was describing experts when he said:

“The angels are so enamored of the language that is spoken in heaven, that they will not distort their lips with the hissing and unmusical dialects of men, but speak their own, whether there be any who understand it or not.”

Experts, however, who are not understood, impressive or liked, cannot persuade.