

## **Likeability key to good expert witnesses**

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When trial consultant Paul Jepsen is advising attorneys on how to find the right expert witness for their case, he suggests thinking about what it would be like to meet that person for the first time at a cocktail party or to sit next to them at an airport gate.

“There are just some people that people are comfortable with, they like to be around. Some people have that and some people don’t,” said, Jepsen, who works at Decision Quest in Minneapolis. “For experts it’s much easier to find somebody that has that capability, that attractiveness, and teach them the expertise then find someone with the expertise and teach them to be likeable.”

Too often, said Diane Wiley, the founder of the National Jury Project in Minneapolis, attorneys pick their witness based on how long their curriculum vitae is, and not how effective they will be as a witness.

A good expert builds his or her testimony, starting out with an introduction to complex matters and slowly moving to a more detailed conclusion. The jury is just along for the ride. They don’t feel like the expert told them what to think, but instead the expert’s opinion was the only logical conclusion.

But a bad expert witness can derail a case by getting bogged down in jargon and leaving the jury exasperated and confused.

“When I work with attorneys they will tell me, ‘Well, our expert has a Ph.D. from Harvard and theirs only went to state school.’ I tell them, ‘That doesn’t matter with a jury,’” said Wiley.

### **Communication is king**

To find a good expert, Wiley recommends talking to colleagues and visiting with perspective witnesses to get a feel for how well they communicate. A good witness is a good communicator. The expert who can best explain things to the jury in terminology they will remember back in the deliberation room is the one you want, she said.

“The jury will look at both explanations and the only way you win with a jury is when they remember what your [experts] said. If they get overloaded by technical terms they forget what was said,” Wiley said. “There are many cases where I end up thinking the expert didn’t persuade anybody, but the jurors used the explanation [the expert] gave to bolster the feeling they had of who was right and wrong.”

Jepsen suggests trying to make the testimony more like a conversation. He recommends building in conflict into the testimony, such as having the expert correct the attorney. That interruption in the flow can be what the jurors remember, he said.

There are some simple tips attorneys can use with experts to increase the chances their explanation will stick in the jurors’ minds. For example, tell the expert to use words like “jaw” instead of “TMJ joint.” If the expert uses an acronym or a three syllable word, ask him to explain what that means in a follow up question.

“In real estate it’s about location, for expert witnesses it’s simplify, simplify, simplify,” said John Gilleland, a jury consultant for TrialGraphix.

Wiley has seen experts get defensive when their credentials or opinions are scrutinized by opposing counsel. Arguing reduces credibility with the jury. Witnesses have to understand what the other side is going to do and then not get flustered, she said.

Jepsen agreed. "You can win the battle, but lose the war. It's worth a lot to work with the cross much more than with the direct," he said. "[The cross] is where you usually get in trouble."

Visual aids can be useful because an expert is often more comfortable operating like a teacher in a classroom. But don't get carried away. Wiley once worked with a witness who wanted to use 150 Power Point slides. She was able to whittle that number down to 20. The key is to identify what the jurors need to know and then eliminate the extra details that will only distract them. The minutiae may be impressive, but if it doesn't add to the case, cut it.

"Jurors don't want to feel stupid," Wiley said. "If you get too deep with the testimony you make it impossible for people to understand why it's important and their eyes glaze over. This happens. We interview jurors afterwards and they tell me ... 'I had no idea what that guy was talking about.'"