

THE EXPERT WITNESS IN ACADEMIA

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Abstract

This paper relates how the activities of the expert witness contribute to overall effectiveness in the academic assignment. It defines the term "Expert Witness" and presents the qualifications, functions, and specific duties entailed. The characteristics of a successful expert witness are presented and discussed. Based on these discussions, the experience as an expert witness is related to the academic assignment, as well as providing some insight as to its merit as a professional and scholarly effort.

Introduction

Does serving as an expert witness enhance one's effectiveness in the academic assignment? Is being an expert witness a scholarly activity? Is service as an expert witness a professional activity? These questions are periodically asked concerning candidates for tenure and promotion at universities across the nation, particularly in technical disciplines. The answer is "yes."

Many universities require that professors demonstrate effectiveness in their academic assignment plus achievement in scholarly or professional areas for tenure or promotion consideration. Generally, some methodology for quantifying these achievements is developed to evaluate the effectiveness of such achievements in teaching. Such considerations as service to the students and university provide further information concerning overall effectiveness in the academic assignment. The evaluation of scholarly or professional achievements, however, can be much more difficult to quantify.

For the person who is active in publishing, a long list of articles in refereed journals may provide a basis for evaluation. A person who is active in professional organizations at local, state and national levels may provide a list of positions held as a basis for evaluation. Probably the most difficult professional activity to evaluate is that of the expert witness or consultant.

This paper relates how the activities of the expert witness contribute to overall effectiveness in the academic assignment. In other words, how does being an expert witness make a better teacher. The process of quantifying these contributions initially requires a definition of the term "expert witness" and an understanding of his specific duties. Based on these discussions, the experience as an expert witness is related to the academic assignment, as well as providing some insight as to its merit as a professional and scholarly effort.

The Expert Witness

WHAT IS AN EXPERT WITNESS ?

It is common knowledge that a "witness" is someone who possesses firsthand information concerning the facts about a particular event. There are two kinds of witnesses commonly used in litigation today -- "lay" witnesses and "expert" witnesses. A lay witness is a person who has physically observed the event or events in question and is allowed to relate only what she/he actually saw, heard, felt or even smelled. She/He is not allowed to relate what others have said or even her/his opinion on the subject.

Regarding "expert" witnesses, "If something can break, bend, crack, fold, spindle, mutilate, smolder, disintegrate, radiate, malfunction, embarrass, besmirch, infect or explode, there is someone, somewhere

who can explain how and why" (Poynter, 1987, p. 11). When such people are invited to participate in legal proceedings they are called "experts" and may come from virtually any discipline as appropriate to the given situation.

The expert witness is allowed to express an opinion on any relevant issue within the scope of his/her expertise. It is not necessary for her/him to have been present when the event occurred and she/he most probably was not. Further, an expert witness is called to the witness stand not only for what she/he concludes (based on the facts in the case), but for what she/he knows about general practices that can illuminate the matter at hand. It is presumed that the expert is an impartial, disinterested party whose only objective is to explain how and why the event occurred.

The expert must first investigate the facts of the case, and then she/he must explain the technical details to the attorney. Later the expert explains or teaches the subject to the judge and jury. Until the time of trial, the expert acts as a consultant and in many cases as a researcher. When depositions are requested or the trial begins, the expert becomes an "expert witness."

QUALIFYING THE EXPERT WITNESS

For a person to qualify as an expert witness, she/he must have something unique to contribute to the case. Such qualifications may be academic or operational, local or national, general or specific. Such a qualification may be based upon an individual's background, experience or knowledge. Most cases involve difficult questions; therefore, extreme competence is desired. Initially, according to Poynter (1987, pp 18-19) the attorneys judge the expert's ability based upon such public qualifications as:

- Education, training or practical experience;
- Professional and technical expertise;
- Job position and function;
- Recognition by professional associations (awards);
- Publications: books or articles;
- Licenses or registrations held;
- Memberships in professional societies;
- Accomplishments; and
- Research in the field.

Additionally, the attorneys, judges and juries will consider the courtroom rapport, performance under duress (cross examination), delivery and confidence in their evaluations of the expert witness.

WHAT ARE THE FUNCTIONS OF THE EXPERT WITNESS?

According to The Expert Witness Handbook expert witnesses provide four types of services.

1. "They investigate the particular case at hand, research everything available on the subject, run tests, and then analyze and evaluate their findings." (Poynter, 1987, p. 15). In general, this is work based on research and entails theory, analyses, interpretation, explanation and demonstration.
2. "They evaluate the merits of a potential claim and may document the work completed in a written report on their findings. They also express their opinion about the cause of the problem and the merits of the claim." (Poynter, 1987, p. 15).

3. "They recommend certain aspects of litigation strategy." (Poynter, 1987, p. 15). For example, experts may suggest a redirection of the suit or they may suggest other areas for investigation or testing. In many instances, they may know the opposing expert and can project the arguments that he or she may use. These recommendations alone make the expert a valuable asset to the attorney.
4. "They testify in depositions and at trial to explain and then defend the technical conclusions they have reached." (Poynter, 1987, p. 15).

In addition, the expert must explain to the attorney (and later to the judge and jury) such things as:

- the scientific and technical issues involved;
- issues concerning practice in the trade;
- the meaning of certain terminology or jargon; and
- damage issues--estimating the lost value or profits caused by the defendant's wrongful conduct.

The function of the expert witness or consultant relating to litigation of aviation cases, for example, has become very research-oriented. Even the most trivial assertion must be thoroughly researched for viability and factual basis. In some cases, the data are relatively easily researched and an opinion rendered. With the sophistication of many aircraft accidents, however, extensive research of the available literature, data and known facts are often not sufficient for a clear-cut opinion based on presentable, indisputable facts. In such situations, tests must be developed and performed to obtain sufficient documentation to demonstrate the facts of the case. In many cases, actual flight tests must be performed to obtain the data needed to properly present the case. Tasks such as these are usually left to the expert to develop, implement and document the results.

CHARACTERISTICS OF AN EXPERT WITNESS

Assuming a person has the appropriate experience and education, what qualities or abilities are desirable to be a valued expert? Poynter (1987, pp. 16-17) lists seven characteristics which appear to be applicable:

1. "Inquisitive." A person should want to know why things happen, enjoy doing library research and running tests. Access to reliable and current sources of information is a necessity. The ability to absorb and evaluate what is learned is the hallmark of a good investigator.
2. "A writer." The ability to express thoughts clearly and put them in writing is frequently required.
3. "A good speaker." The ability to think under duress and being able to express an opinion, responding quickly to defend a position, is a strong asset. The expert must respond to the pressure of cross-examination by thinking clearly and being articulate.
4. "A teacher." The expert must show counsel, the opposing side, judge and jury why his findings are correct. He must be a good performer and must be able to persuade his audience. He must be creative to provide a fresh prospective on the case to the attorney.
5. "Mediagenic. There is a difference between honesty and believability." Truth and knowledge of the subject are not sufficient to convince his audience. The expert must be believable to be convincing.

6. "Able to reason." Experts must be able to deduce correct inferences from hypothetically stated facts or from facts involving scientific or technical knowledge.
7. "Credibility." This comes from expertise in the specific subject, qualifications such as a degree or title, integrity, knowledge and speaking or teaching ability.

Analyzing the characteristics above versus those required to be an outstanding teacher, one finds them to be much the same. In fact, one could observe further that the difference between an average teacher and an outstanding one might very well be described by those very characteristics. The person educated to teach may already have some of them, but others may have to be learned or developed. Experience is sometimes a most valuable aid in such learning or development.

The characteristic of inquisitiveness is most likely one with which a person is born. However, a teacher who is mildly curious may have his interest peaked by investigating the facts of a case. Often, this is just enough to bring out the natural inquisitiveness possessed and inspire greater investigative activity. This may also broaden the background or data base from which a teacher may enhance his classroom presentations.

A teacher is often requested to provide written presentations through his participation in departmental or school management activities. Grant proposals, new course development and a host of other such activities require written reports. The techniques of report writing for a legal investigation may provide a useful tool in such activities. Sometimes, the case at hand may provide the basis for a paper to be published. Occasionally, publication is encouraged, especially if representing the plaintiff's case. For the expert working for the defense, such publication is difficult to get approved. The information obtained is considered to be proprietary and, as such, must be approved not only by local counsel but by the legal staff of the persons or company represented. Normally, however, the material may be used in the classroom as investigative data.

Some teachers are not really good speakers, and they tend to falter under the press of questions from the audience (students). The courtroom environment creates a pressure all its own, and the expert must be very precise in what he says. Once he masters the thought process under such circumstances and develops the clarity of presentation necessary to be successful, that process and presentation technique will carry over into the classroom. The result is that greater spontaneity is achieved in answering detailed questions. Further, it will be applied in discussions with peers and management.

Honesty and believability are both required of the teacher. Any experience which enhances credibility is a real asset. Like a good salesman, the teacher must not only present the material, but must make it believable by the students as well. The expert witness must quickly learn techniques which enhance this salesmanship characteristic. This is also carried to the classroom and other academic activities.

The ability to reason is one which can be enhanced by practice. The application of reasoning and deduction to the legal case can further be carried to the classroom, staff meetings, committee meetings and personal advising to the individual students. This is especially useful when advising the student who has not decided what his/her goals are.

Above all, the teacher must have credibility. This implies not only academic qualification, but real-world experience. Serving as an expert witness, properly executed, keeps the teacher closer in contact with the field and newer, more current techniques and equipment. These may be directly related to the students.

Conclusion

Participation in the research required of a legal investigation will broaden both the technical and general knowledge of the educator and provide a better feel for the real-world environment which faces his/her students. This could lead to more effective course development or modification to keep abreast of current needs in the industry. It can stir his/her interest in the subject matter involved and expand upon whatever level of inquisitiveness he possesses. The opportunity is presented to improve his/her written presentations and often can lead to publication. The rigor of the courtroom encourages him/her to improve the speed of his/her thought process, spontaneity of response and improve the clarity of his/her oral presentation. Through studying and analyzing the facts of a case, the reasoning process is exercised, leading to greater productivity in problem solving. Further, each case worked provides another case history, another real failure analysis and the opportunity to present the eventualities of such malfunction or malpractice.

Frequently, an educator will have the education and experience to serve as an expert witness, but may be considered only adequate as far as teaching is concerned. By learning and exercising the skills required of the expert, the educator can improve his teaching ability. This, in itself, will then further improve his performance as an expert witness. The research activities provide a broader base of personal knowledge and contact with real-world problems, providing current examples for use in the classroom. Thus, a synergistic response is obtained in which the activities in each area of endeavor enhance the performance in the other.

The activities of the expert witness require research and entail theory, analysis, interpretation, explanation and demonstration. Thus, exercising the skills required of the expert witness meet the general requirements of professional activity, and, can often lead to scholarly publications. Accordingly, activities of the expert witness should, on their own merit, support tenure/promotion candidacy.

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