

Sharpen Your Expert's Edge

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Expert witnesses can make or break your client's case. In this excerpt adapted from the authors' AAJ Press® book, get tips on how to prepare experts for trial so their knowledge strengthens the case from start to finish.

Trial is where experts are needed most. Their success or failure can significantly impact your client's case. As you gear up for trial, it's crucial to diligently review a myriad of points to ensure that your experts support your case theme and succeed in persuasively presenting their perspectives and opinions.

To that end, your preparation checklist should include:

- Assess whether your expert needs to testify.
- Discern why they are testifying. An expert is only useful if they add to your case. You are not required to place them on the stand.
- Evaluate how the expert's opinions help or hurt your case.



- Verify that your demonstrative aids assist the expert's testimony.
- Consider whether it is best to have your expert appear on the stand, by videoconference, or by prerecorded video.
- Determine the order of your witnesses and how the expert will fit into your structured presentation.
- Confirm the timing of your expert's testimony and arrival.
- Arrange a preparatory meeting or phone call the evening before their testimony.

Even if you have extensively prepared your experts throughout the litigation process, the most significant preparation phase is immediately before trial testimony. Reinforce the

importance of appropriate demeanor, and reiterate that they are the most reliable, dependable, and credible educator of the jurors. Remind them to avoid appearing condescending or overly sophisticated and review any potential negatives to your case so the expert can best address them.

When you confer with your experts, be sure to update them on any motions in limine or pretrial rulings that may have limited or affected the scope of their permitted testimony. Update them on any other important developments—the demeanor and style of the judge may have become clearer, or a new judge may have been assigned for the trial. All these factors may impact the timing of the expert's appearance or what you

need to tell the expert in preparation for their testimony.

Plan Your Timing

Determining when and how your expert will testify during trial is an integral component of your case tactics and strategies. This should be the result of months of decision-making. You may have conducted one or more focus groups, and as a result, you have learned how to best present your expert. You should also have decided when in the trial you will put your expert on the stand and how—whether live, by prerecorded video, or by videoconference.

At this juncture, you should have an in-depth and solid understanding

of your burden of proof and how best to sustain it. If possible, each witness should build upon the previous one. There should be a rhythm and reason for your witness lineup.

Here are some queries for determining the timing of your witness presentation:

- Does the expert help you prove negligence, liability, or damages?
- Is the expert also a treating witness?
- Does your expert support your damages claim, such as an economist, a vocational rehabilitation expert, an IME physician, or a treating doctor or surgeon? If so, when should you put on this expert?

For instance, if you need to put on an economist for future lost earning capacity losses, you generally cannot put that expert on the stand until the wage loss custodian, vocational rehabilitation expert, or life care planner has provided their testimony. If you have a treating physician testifying about your client's surgery or treatment, you must decide whether you should have them testify before your client does.

- Is your expert a rebuttal witness? There are jurisdiction-specific rules on when you must disclose a rebuttal witness during a case or trial.
- Is the witness being subpoenaed, and have you spoken with the subpoenaed witness and verified what they will testify about?
- If your experts are testifying by prerecorded video, have the videos been submitted timely to the court? There may be various objections to the video, and an edited version may have to be shown to the jurors or judge.
- Will the evidence that your expert

is referring to or relying upon be submitted or admitted before your expert's testimony?

Define the Expert's Role

Your expert's most important role is to support the case theory and enhance your presentation. After you have educated the expert, it is up to them to be the most important and credible teacher. Your expert must educate everyone involved in your case, including the judge and jurors.

All critical opinions and explanations should involve diagrams, models, definitions, and illustrations. These aids allow the judge and jurors to readily understand the relevance and importance of the testimony to your case and to remember the testimony later when deliberating.

Expert testimony opinions fall within three distinct categories: liability, causation, and damages. Your expert should understand their purpose and the category that their testimony fills.

It's helpful to go over some of your standard questions in advance of trial testimony. Here are examples of questions to review with your expert about their opinions. These questions may need to be altered depending on your jurisdiction's requirements, the case, and the expert's role:

- In giving your opinions in our case, I am going to ask you to assume the following definition for the standard of care for a specialist physician.

The standard of care for a physician who is a specialist is that of a reasonable specialist practicing medicine exercising skill, care, and diligence under like and similar circumstances, regardless of where they practice. A specialist in any branch of medicine has the same standard of care as all other specialists in that branch.

When providing your opinions,

are you able to only provide those opinions that you hold within a reasonable degree of probability or certainty?

- In giving your opinions in our case, I am going to ask you to assume the following definitions for the standard of care for a nurse.

A nurse has the duty to act as a nurse of reasonable skill, care, and diligence under like or similar conditions or circumstances. The standard of care is to do those things that a reasonably careful or prudent nurse would do and to refrain from doing those things that a reasonably careful or prudent nurse would not do. The required standard of care is the same throughout the United States.

Did the defendant breach the standard of care? Please walk us through how the standard of care was breached.

- In giving your opinions in this case, I am going to ask you to assume the following definition for foreseeability.

Medical professionals are expected to recognize certain symptoms of illness and injury and are expected to be aware of the associated risk of harm during the course of diagnosis and treatment. They are expected to be aware of the harm that a medical professional of ordinary skill, care, and diligence would foresee under the same or similar circumstances.

Medical professionals, however, are not expected to guard against a risk of harm that a medical professional of ordinary skill, care, and diligence would not foresee.

Did the defendant breach the standard of care? Please walk us through how the standard of care was breached.

- In giving your opinions in this case,



I am going to ask you to assume the following definition for proximate cause.

Proximate cause is an act or failure to act that in the natural and continuous sequence directly produced the death or injury, without which it would not have occurred. There may be more than one proximate cause of the death or injury.

When the negligent act or failure to act of one person combines with the negligence of another person to produce the death or injury, the negligence of each is a proximate cause. It is not necessary that the negligence of the person occur at the same time or place or that there is a common purpose or action.

With this definition of proximate cause in mind, were the defendant's breaches of the standard of care that you have identified a proximate cause of the death or injury of the plaintiff?

Prepare for Cross-Examination

An expert witness must be aware that their testimony will be scrutinized and challenged by opposing counsel. Throughout the preparation phase, address potential areas of criticism and develop robust responses.

A valuable strategy in mitigating the impact of potential challenges to your client's case is to preemptively address them during your direct examination. This approach, often referred to as

stealing the defense's thunder, can render subsequent cross-examination on those points redundant and ineffective.

The expert witness should be prepared to disclose their fees and time spent on the case. This is a common area of interrogation. If a substantial portion of their income comes from expert testimony, they should be transparent about the breakdown between plaintiff and defense cases. Ideally, this disclosure should be woven into their testimony to ensure a smooth narrative flow.

Opposing counsel may highlight the percentage of the expert's income from expert work versus from direct patient care, the time spent on expert matters versus working in their field, and the proportion of work done for plaintiffs versus defendants.

When dealing with an expert witness with practical and applied experience, or a "boots on the ground" expert, they might face scrutiny for not having published scholarly work directly relevant to the case. This could be construed by the defense as a lack of leadership or innovation in the field. Similarly, the expert might be criticized for a lack of public speaking engagements or academic positions.

An expert who has frequently published might be cross-examined on their wide array of research. The defense may attempt to portray them as a jack-of-all-trades, which may dilute their credibility on the case's specific subject matter. Alternatively, the defense may point out a lack of published work on

the case's specific subject matter, thus questioning their expertise in this area.

Instruct the expert to be assertive and concise during cross-examination and to not prematurely concede to any of the defense's core arguments. They should trust that any problematic points can be addressed and clarified during redirect examination. Your expert should be proud of who they are and believe in the positions they are advancing—and not allow defense maneuvers to diminish their expertise.

Leverage Trial Aids

Trial aids play an important role in enhancing the comprehension of complex concepts, particularly when presenting to jurors. Various demonstrative aids—including diagrams, 3D models, replicas, illustrations, charts, animations, and simulations—can be used to simplify intricate information.

The use of these aids significantly enhances the jury's understanding of technical data. The human brain often processes visual information more effectively when paired with verbal explanations than when processing text or verbal data alone. When a juror's comprehension of technical or scientific evidence may considerably impact the verdict, the use of demonstrative aids is pivotal.

Demonstrative aids are not limited to those created by artists, graphic designers, or videographers. In cases involving everyday objects, such as an epidural needle, hammer, or surgical instrument,

presenting actual objects as evidence can foster a tangible and relatable connection for the jurors. Allowing the jury to see and sometimes handle the object can further their understanding of its function or role in the case.

Models or replicas can be incredibly valuable in cases involving abstract concepts or objects that cannot be physically presented in court, such as joint implants, multilevel fusions, or cellular deconstruction. Miniature models, recreations, animations, or 3D models can make abstract or distant events seem immediate and understandable. However, the admissibility and usage of these aids depend on your specific jurisdiction's regulations.

These aids not only equip the expert witness with better tools for communication and persuasion, but they also help jurors grasp key points and arguments and lead to a more informed and fair decision.


Early preparation is crucial for creating detailed subject-matter oriented models or animations. Proper preparation ensures accuracy and admissibility. To have a successful product, the expert witness must be involved in the creative process.

While animations and recreations can enhance testimony and jurors' understanding, they should serve a purpose that advances the client's case—and they should not be used simply because they are available or appealing. An animation's power lies in its ability to attract attention, and when attention is intentionally and carefully controlled, it can be a persuasive tool. Your expert should assist in making the animation a success.

People often process illustrations and narration better than animation and text. Therefore, consider using a series of visuals to replace or support animations, or pause running animations to allow

for expert annotation and commentary.

Collaborating with an expert witness to develop more effective models, demonstrative aids, and graphics can significantly improve the presentation of complex information to jurors. It is essential to thoroughly understand the expert's knowledge and insights to create aids that accurately represent the facts of the case. Review the aids with the expert for accuracy and practice their effective use during testimony.

Expert witnesses are some of the most influential voices in the courtroom, but their impact depends on careful, strategic preparation. By fully understanding their role, leveraging the right tools, and anticipating challenges, you ensure that their testimony builds credibility with the judge and jurors and strengthens your client's case. 



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Expert witnesses play a unique and essential role at trial. Their testimony holds substantial sway, with jurors often placing material weight on their informed perspectives. However, the process of transforming their specialized knowledge into compelling and comprehensible expert testimony for the jury is far from straightforward.

Experts: Picking, Preparing, Perfecting is a step-by-step guide to finding, preparing, and optimizing experts for your case. This book arms attorneys with practical tools to work successfully with experts, including useful checklists provided throughout the book. Learn tactics for maximizing your expert's testimony, such as effective communication, preparation for depositions, and expert witness qualification.

The presence of expert testimony is more than a mere advantage; it's a prerequisite to establish the crucial aspects of your client's claim. This book will provide both new and experienced lawyers with the skills to get the most out of expert testimony and better serve their clients. Learn more at tinyurl.com/3z542nfc.

