

Expert Witness: Effective Courtroom Testimony

By Steve Ashlock

It is important to look, sound, and act the part to be a convincing and effective Expert Witness.

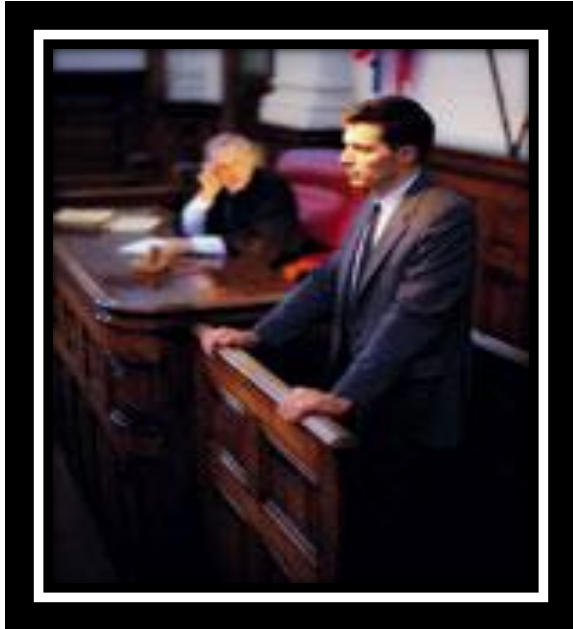
It's not enough to have the right evidence; an Expert Witness must be able to present evidence persuasively without confusing the jury.



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Looking the Part



As an Expert Witness, you must first look like an Expert. This starts before you ever leave home. Here are some simple tips to exude professionalism through your appearance. Begin with a well-tailored business suit, a pressed shirt, and non-descript tie (for males). Ladies, keep the jewelry small and simple. Think professional when choosing your courtroom wardrobe. Darker colors are best for suits with lighter colored shirts. If you are not accustomed to wearing a suit, it will show if you feel uncomfortable. If you are squirming, your unconscious behavior may undermine your testimony. I suggest you wear your suit a couple of times before your courtroom appearance. Keep your pockets pinned or sewn closed. This keeps your hands out of your pockets and keeps you from loading pockets with bulky items that jingle. If you need reading glasses, have them readily accessible.

Stand with your shoulders over your hips with feet shoulder width apart. Place your hands comfortably at your side, not in your pockets. Walk with a purposeful stride. When sitting, place your buttock into the back of the seat. This will keep you from slouching and will force your body to sit up with a slightly forward lean. Don't cross your legs above the knees.

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Answering Questions on the Witness Stand



As an Expert Witness, you are establishing your credibility from the moment you stand up and proceed to the witness box to take the stand.

After you have been sworn in and seated, take a moment to make sure that the microphone is positioned comfortably in front of you so it will not be necessary to lean in to be heard. When speaking, hold your chin up so it is parallel with the floor. To avoid being soft-spoken, be sure to

open your mouth and push the air from your diaphragm. You want to be heard the first time you say something and not have to be asked to repeat yourself.

You will be required to state your name. Since you say your name so frequently, it often sounds hurried and inaudible. Slow down. It is best to place a small pause between your first and last name.

Speak clearly. Fully pronounce your words. Be careful to avoid slang, lazy speech (dropping the “g” in “ing”, etc.), and regional speech (over yonder, purty good, ya’ll, etc.). Also, watch out for filler words, such as, um, ah, okay, right, you know, etc. These words are used when you are thinking about what you will say next.

Learn when to differentiate between an authoritative and conversational voice. Both have importance in your testimony. Knowing when to use which voice will make a huge difference in the delivery of your testimony. There is a fine line. Jurors need to be educated without being talked down to. Therefore, when presenting your evidence, it is best to use your authoritative voice which is perceived to be more trustworthy.

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In contrast, jurors respond better to a conversational voice when asked for a detailed explanation, because subconsciously it is perceived more likeable and friendly. You can avoid the boredom of a monotone voice by the use of voice flexion. This makes your words easier to listen to and more intriguing. To increase drama, add meaningful gestures to emphasize and anchor your words.



Look directly at the counsel when asked a question. When you answer the question, you may speak to the jury. As you speak, take a moment to acknowledge the jurors, one by one. Eye contact keeps you in control. Do not stare or glare, but confidently look at each one for about four seconds each to establish a connection. This lets them know that you are being truthful in your testimony and respect their valued judgment.

The key to answering a question is to fully listen to what is being asked before responding. Then only respond to what was asked. Never interrupt. This is viewed as an aggressive behavior. Additionally, answering a question too quickly gives the appearance of being too anxious or over rehearsed. Neither response will show you in your best light.

You do not need to respond immediately. It is okay to take a few seconds to gather your thoughts before you speak. Calmly think about how you will respond before you say the first word. While you are reflecting on what to say, gently lean back in your chair. When you are ready to respond, lean slightly forward to speak.

Your answer needs to have enough information to fully cover the question asked, but keep your reply objectively concise and to the point. Do not ramble on in a lengthy explanation or venture into other areas you were not asked about. The opposition is waiting for you to open a new door!

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When speaking about something technical, try to avoid using industry jargon and inside terminology. If your answer requires you to do so, take a moment to explain what the terminology means. If possible, paint a picture in the jurors' minds. This gives them something to relate it to.

The cross-examination can be very tricky and quickly make you appear to be feeble-minded.

There are two types of questions often asked to catch you off guard, whereby attempting to discredit your testimony.

1. **Ambiguous Question:** This type of question is designed to have a double meaning. Therefore, no matter how you answer it, it can be turned around and used against you. The solution is to request clarification or ask for the question to be rephrased before attempting to answer.
2. **Two-Part Question:** This type of question is usually asked because the person asking it is knowingly aware that one part of the question is obviously true and the other part is obviously false. Therefore, if you attempt to answer both parts of the question at the same time, you will be caught in a "Catch 22". The solution is to answer only one part of the question. Select which part of the question you would like to answer, then simply state, "Since this is a two-part question, let me answer the (first/second) part". Do not automatically start to answer the other part of the question when you finish the first part. Let the other part of the question be redirected to you.

Once you have deciphered which type of question you are being asked, thoroughly think through your answer before speaking, and then answer with confidence.

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Presenting Effective Evidence



Compared to the trickiness of answering questions, presenting your findings may be the easiest part of your testimony. Being well-prepared and well-rehearsed will give you the necessary edge to confidently handle any unforeseen situation.

Make sure to proofread your documents and exhibits. Be prepared with your response to any anticipated questions. Respond naturally, not rehearsed. Even though you have practiced through the rough spots, timing is crucial to

make it all work together. Do a complete run through. Practice in front of a mirror or videotape yourself.

If you are using audio or visuals, come early to verify that the courtroom will support your electronic devices and the necessary equipment will be available. You should know your material so well that in a worst case scenario, you would be able to explain your evidence without the aid of any electronic assistance.

Claim your territory. If you are using exhibit boards, turn them backwards so the jurors cannot see what is on the boards until you want them to. Otherwise, they will be looking ahead at the boards and not paying attention to your testimony. When you finish with each board, leave it standing. Do not turn it back around.

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Since you are telling a story, keep the jurors focused on what you are presently doing. Lead into each exhibit. Create interest by talking about the exhibit before you show it, and then reveal it. Make your point. Never make your point before you show the exhibit. By creating drama as you go, you add suspense along the way. The jurors will anxiously hang on every word. Curiosity will make them wonder what

will happen next.

Your body language is a tattle tale, good and bad. Research shows that appropriate gestures are persuasive. Expand your gestures away from your body. Avoid symmetrical positions; instead of using two-handed movements, use one hand. Maintain a balanced stance. Plant your feet firmly on the ground. Keep your feet pointed straight forward, shoulder width apart, with your weight equally balanced. This will assist in avoiding nervous habits, such as foot tapping, leg swinging, rocking, shifting, etc.

Posturing can make or break your testimony. Your posture is a dead giveaway to your true inner feelings! Your body will subconsciously go into automatic pilot and express behaviorisms that undermine your testimony. When you feel uncomfortable, the body wants to pull away and turn slightly sideways. This shows intimidation and anxiety. When feeling comfortable, the body movements are open, expansive, casual, and relaxed. This shows power and confidence.

Furthermore, the direction your body leans says multitudes before you even open your mouth. Leaning forward shows persuasion when delivering evidence. An upright position is noncommittal, meaning you are detached or neutral to what is being said. Do this when under attack by the opposition during cross-examination. By leaning away, you are showing skepticism. You are reserving your thoughts through hesitation in your communication. Do this when you need a spare moment before speaking.

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Suggested Types of Evidence



The public has become accustomed to watching a crime be solved in 60 minutes through the magic of TV land. The courtroom is not Hollywood. Do not be pressured to produce and perform a masterpiece theater for the entertainment of the jurors. It is best to keep your exhibits simple, straightforward, and logical. Keep in mind that the average juror has a tenth grade equivalence. Your exhibits should be simple to avoid confusion.

There are countless methods used for exhibit displays. Some of the most common are maps, timelines, chronologies, graphs, flow charts, schematics, diagrams, documents, photos, video, animated graphics, and exhibit boards. Let your visuals make the point for you. Whatever method you select, do not simply show the facts. Each exhibit needs to illustrate a clear story. Design visuals that need you to interpret them. This can be accomplished by leaving out the nonessential descriptive data which you can easily fill in verbally.

Consider your budget. Just because your exhibit is low tech or low budget does not mean it will be less effective or less persuasive. Think outside the box. Be creative, but not too lavish or showy. When an exhibit is over-produced it loses its reality and relativity.

The two basic ways of thinking are linear and holistic. Linear thinking is processing information one thought at a time, holistic thinking is processing information simultaneously. Most people have a better understanding when information is layered through linear thinking in a logical manner.

The object of an exhibit is to prove a particular point through your evidence. It needs to have a high impact, highlight your interpretation, and illustrate a story. No matter how big the case may be, limit your exhibits to five key elements. To figure out which points to illustrate, determine what must be known in order to achieve a verdict.

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Stating Opinions and Conclusions

Personal opinions have no place in the courtroom. Be objective and keep to the facts that you know. You are there as an expert in your profession. If asked your opinion, simply state, “In my professional findings, I have concluded”.

No matter what is said, remain calm and consistent, especially during cross-examination. The opposition’s attempt to un-nerve you and discredit your testimony will happen during cross-examination. Beware, if the opposition is unable to discredit your testimony, do not be surprised if they go after you personally to discredit your credentials. If you are not prepared for a personal attack, you can easily be blind-sided and knocked off course. Therefore, be familiar with your responses that may be challenged. Be able to deliver a reply without faltering or looking away. Answer head-on without flinching.

Credibility comes through believability. To be believed as an Expert Witness, you must look the part, speak the part, and act the part. The more you practice, the more you practice the more proficient you will become.

Stevee Ashlock is the owner of The Trial Experts. In addition to trial consulting, she is an author and keynote speaker.