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## Presenting your expert as a teacher

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Alexandra Rudolph is a trial consultant at DOAR Litigation Consulting (<http://www.doar.com/>) in New York City who specializes in focus groups, shadow juries and witness preparation.

Rudolph recently spoke with Lawyers USA's Aaron Krivitzky about how to increase the effectiveness of your expert witnesses by presenting them to the jurors as "teachers."

*Q: Why do you want to present your expert witness as a 'teacher'?*

**A:** The purpose of calling an expert witness is to have jurors better understand your case. The first thing every attorney should consider is that the direct examination of the expert should be oriented towards teaching the jury about the case.

Attorneys want to re-frame the formality of the courtroom's proceedings into an informal conversation, where your expert appears as a 'teacher' for a jury. We're conditioned to learn from teachers and attorneys need to take advantage of – and not resist – this natural tendency.

I've seen far too many cases where highly qualified experts completely lost the jury in technical language, and the jurors were therefore completely unresponsive to their testimony. Jurors can't support a case they don't understand.

The key in prepping experts is presenting them in a way than can be best understood, adopting different techniques for different types of experts.

*Q: How do you frame your expert as a teacher?*

**A:** Remember that, for the jury, it's all about credibility. In deciding which side they think has the facts right, they subconsciously are ranking the credibility of the attorneys and each of their respective witnesses.

Credibility comes from "explainability", and the less explainable a story is, the less it teaches the jury.

Our brains organize information best in the form of narratives; just as you want to be telling the jury a story, so too should your expert be telling a specific part of that story ... one that requires superior knowledge to analyze and interpret but not to understand.

In your own preparation, ask yourself 'What do I want the jury to learn from this witness?' and make sure all of these answers are communicable in laymen's terms.

If your expert is a professor, give him a chalkboard to draw on; if he's a scientist, get him graphs and displays to use. Just as you don't want the jury to work real hard, don't make it difficult for the expert to speak about his own expertise.

*Q: What are some common mistakes made by attorneys with experts?*

**A:** Often what lawyers think is important to the jury isn't actually important to the jury. The reverse is also true.

For example, lawyers care – sometimes too excessively – about credentials. Credentials can alienate the expert from the jury and thus damage her credibility. The only people who care about credentials are people with credentials!

This is not to say that you don't need to demonstrate that your expert is qualified to be an expert; I'm suggesting that attorney should not place too much stock in credentials. In the average juror's mind, two opposing PhDs ostensibly neutralize each other.

Another common mistake made by lawyers is failing to prepare the expert witness on the basic facts of the case. While attorneys may only be interested in the expert's opinion on a crucial technical issue, jurors tend to care how much the expert knows about the specific case they're testifying for.

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If it appears that an expert is sufficiently polished in his expertise, yet he doesn't know the facts of the case, he will definitely lose juror credibility.

*Q: Which characteristics, in expert witnesses, make good teachers? Which qualities make poor teachers?*

A: Jurors are impressed by experts who have first hand involvement in and knowledge about the case.

Did they evaluate the patient? Did they personally do the lab tests? An expert who seems distant and removed is less reliable.

Jurors dislike experts who make them feel stupid, or experts who have a stoic, unfriendly in-court personality.

You really want to bring out the part of the expert that the juror can relate to. Don't let them be dehumanized by the formality of courtroom procedure. Remember that jurors go into court thinking lawyers are going to talk down to them and that experts are arrogant. Do everything to avoid these stereotypes.

*Q: How can one maintain the teacher image during cross-examination?*

A: It is critically important that your expert does not appear as a hired gun. If, on cross, everything he or she admits to is only positive for your case, they will look like a hired gun and they will lose credibility. Teachers are supposed to be unbiased, and your expert should appear as such.

Allow them to admit some truths that aren't good for your case; it will actually increase their objectiveness in the jurors' minds. The expert should be unflappable – acting, speaking and performing as the same person on cross-examination that he or she was on direct examination.

*Q: When there's a great teacher on the other side, what are some strategies for impeaching him or her?*

A: If you have to deal with a great expert on the other side, sometimes the best strategy is to get in and out of there really fast!

It is also possible, if you have previous depositions, to try to impeach them with their own words. Listen to see if they say anything that contradicts what they have previously said. Having a technological trial consultant with you in the courtroom can make it easier to bring up documents in a timely and dramatic fashion. I believe this to be a worthwhile investment for attorneys.

Also, the use of silence can be particularly effective; if you ask a question and they give an answer, remain silent. As is our natural tendency, they will continue to talk in order to fill the gap. Allow experts to trap themselves by talking too much.

Another strategy is to ask really obvious questions and provoke the expert into getting annoyed or defensive. If he or she gets frustrated on the stand, he or she will look like a hired gun for the other side.

– Aaron Krivitzky

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