

BY JAN MILLS SPAETH & ROSALIND GREENE

From the Mouths of Jurors

10 Things Jurors Don't Like About Expert Witnesses



Having had the opportunity over 35 years to talk directly with jurors in post-trial interviews, and to observe participants in mock trials and focus groups, we've received extensive feedback regarding expert witnesses. This article focuses on 10 of the most common complaints from jurors, and suggestions to counter these.

1. "The guy didn't believe his own testimony."

"How can he convince us when he can't convince himself?" "He was obviously bought." "He was lying through his teeth." Jurors watch experts closely to ensure they are committed to their own arguments. When they don't see conviction, jurors perceive experts as deceitful and unethical. Reported clues of this include poor eye contact, "shifty eyes," looking down at hands, looking at their attorney for answers, speaking softly, evasiveness, stammering, and hesitation. Juror suspicions also rise when experts overuse qualifiers such as "maybe," "it appears," "possible," "suggests," and "might be." Instead, strong, powerful speech from experts is persuasive, as is confidence and certainty.

2. "She just wouldn't answer the question!"

"She kept dancing around the issue." "She kept making excuses." "She would not say yes or no." When a "yes" or "no" question is pending, jurors want a direct response. Experts win points by first answering "yes," "no," "it depends," "perhaps" or something similar, *then*

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providing the explanation—not the other way around. Jurors otherwise lose patience and interest. Experts also can take a “no win” yes/no question and turn it around to reflect the truth. For example, “*Are you still testifying only for defendants?*” could be answered directly with, “*I have made it a practice to testify for both plaintiffs and defendants, depending upon my opinion.*” The answer needs to be direct so the jury gets quick closure and the expert retains credibility.

3. “We got it the first time, thank you.”

“*We’re not idiots.*” “*He didn’t have to repeat it 50 times.*” “*The guy was a condescending jerk. He talked to us like we were third graders.*” Unlike decades ago, more than two-thirds of selected jurors in Arizona now have advanced training or education of some sort beyond high school. A third or more will have college or university degrees. Experts will want to address the panel as if they are talking with high school seniors or college freshman students, not grade-schoolers. Using good exhibits and technology will help drive points home without overkill on the experts’ part.

4. “The guy just didn’t want to be there.”

“*He wanted to get his money and get out of there.*” “*He had this sullen look on his face.*” “*I saw him look at his watch at least three times.*” Jurors are quick to pick up on an impatient, reluctant, or annoyed expert witness. They notice sour looks, failure to look at the jury, unhelpful answers, tone of voice, and short, curt responses. Juror like experts who are patient, helpful, and pleasant. Experts need to be motivated to help jurors understand issues. Jurors like to learn. They are invigorated by this and feel better about the case and their involvement if they walk out of a courtroom with more knowledge than

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when they entered. Experts need to play an interested and involved role in this.

5. “She sure had a horse in that race.”

“*She probably wasn’t going to get paid if she didn’t win the case.*” “*She kept denying the obvious, then finally admitted it.*” “*I didn’t believe her much after that.*” Jurors expect expert witnesses to be strong but reasonable. When experts are too much of an advocate for a party, they lose credibility. An example is denying that an outcome is possible for 10 minutes before conceding it is possible. As one juror put it, “*You could see it coming, she couldn’t avoid it, but she was stubborn and wouldn’t admit it. It was so frustrating.*” Helping experts to recognize what needs to be conceded, and when, will be doing them and the jury a favor.

6. “He was obviously charging by the hour.”

“*He took four hours to say what could have been said in 20 minutes.*” “*He had no respect for our time.*” “*He just liked to hear himself talk.*” A rambling expert loses credibility with the jury. Expert witnesses need to be direct, specific and purposeful. While research has shown that experts who explain their positions adequately are favored over those with short, curt responses, every word still needs to count. A verbose witness with irrelevant responses is seldom appreciated. He also can be perceived as trying to impress versus educate.

7. “Her logic was weak.”

“*She didn’t have the facts to support her arguments.*” “*She wanted us to believe her just because she said so.*” “*She seemed nice, but I wanted proof.*” Friendly, likable, reputable experts will not overcome lack of evidence to support their testimony. As a group, jurors in the 21st century are analytical and skeptical, with high expectations of experts. Good credentials alone are not enough to persuade. In fact, most jurors report that a comparison of the experts’ resumes usually results in “a wash.” Jurors are more interested in research, logic and material that supports experts’ claims than they are in the experts’ credentials or unsupported opinions.

8. “He put us to sleep”

“*He was so boring I stopped listening.*” “*I kept trying to hide my yawns.*” “*I had to keep waking up the juror next to me.*” Granted, some of the material discussed by experts is not exciting or “page turning.” But even so, if jurors are not attentive, experts are not effective. A monotone delivery needs to be enhanced with changes in voice tone, gesture, facial expression, volume variation, and so forth. It also helps if attorneys ask frequent questions, limiting the expert’s answers to shorter responses. Jurors pay more attention to active and specific “question/answer” sessions than to open-ended questions with long-winded responses. Also, today’s jurors



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look for colorful, “entertaining” exhibits. Experts can interact with these exhibits to enliven their testimony. Taking advantage of today's technology and talented graphic artists can do much to retain jurors' attention, with even mundane material and a sluggish delivery.

9. “She was all about impressing us.”

“She talked about herself too much.” “She was egotistical, and wanted us to know who she is, and what she has done.” While it is critical to establish experts' credentials for juries, attorneys need to take the lead on this. Expert witnesses who are encouraged or allowed to provide long-winded orations on their own accomplishments can turn off a panel. If experts provide short, direct responses to

queries from counsel regarding their backgrounds, they will come across as cooperating versus bragging. Jurors are more likely to find expert witnesses credible if attorneys bring up impressive accomplishments versus experts doing so themselves.

10. “The expert and the other attorney needed boxing gloves.”

“He came looking for a fight.” “He raised his voice instead of improving his argument.” “He was too combative.” Experts can make the mistake of confusing persuasiveness with aggressiveness. As one juror put it, “*He was*

trying to win the battle, but was losing the war.” Experts can forget who their real audience is—the jury. They instead become focused on the opposing attorney, embroiled in a personal battle. Jurors appreciate experts who are respectful, polite and civilized. They especially frown on experts who are pleasant with their own attorney but turn nasty with opposing counsel. This contrast in demeanor pummels their credibility.

In summary, jurors like experts who are direct, helpful, respectful, informative, confident, and reasonable. A sense of humor and humility are also appreciated, as is strong support for opinions. **AZ**