



## Good Counsel

### Flexible Expert Prep

MICHAEL BRUSCA

**F**or expert witnesses to present well at trial, you need a cogent direct examination that flows smoothly and conveys complex information simply. But preparing an expert can cause conflict—you may want information communicated one way, while the expert may be more comfortable relating it differently. Forcing an expert to do things “your way” can create awkward disconnects between what you want the expert to say and the actual testimony.

For example, in a medical malpractice case, you want the expert to clearly undermine anticipated defenses regarding specific comorbidities. But the expert is medically trained to look at a person’s entire clinical condition, whether relevant to the case or not. He or she may start testifying about irrelevant health conditions that could confuse jurors. Here are a few ways to minimize this potentially disastrous problem.

A few weeks before trial, send the expert a list of the opinions you need in the order that you plan to offer them. Agreeing on the order is key so the expert is comfortable

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with how the information will be presented. Be receptive to your expert’s suggestions—after all, he or she is the one testifying and may have an idea that’s better than yours.

During trial prep, draft the direct examination with the expert present so he or she will know what to expect and will be ready to tell the jury why his or her opinions are credible. For example, in a pressure wound case, you might ask, “What education do you have that makes you knowledgeable about pressure wounds?” Do the same with training, work experience, and other qualifications.

Next, draft questions with the expert’s help based on the opinion outline. Simple, open-ended questions such as “What else did you find?” or “Why was that important?” will cue your expert to answer without leading or switching the order.

This process is, admittedly, a grind. It takes time, attention to detail, and—most important—flexibility. However, it usually ends with a confident expert and a direct that flows as seamlessly as two people talking at a coffee shop.

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### A Good Plan

JENNIFER LAWRENCE

**H**aving a litigation plan from the time you meet your client until the end of a case is important—but you also should be willing to adjust your initial plan and its different steps during the course of litigation. These simple considerations can point you toward a stronger plan.

**More than a checklist.** All litigation plans contain certain common tasks, such as researching the defendant or retaining experts to review the case before filing. Styles vary from attorney to attorney and from case to case, but it is essential that the plan’s steps incorporate the litigation’s overall goal and do not merely exist so you can “check things off the list.”

**Mine your resources.** Throughout litigation, you will uncover information that will affect your case strategy. One way to learn that information early and avoid potential land mines is to reach out to external resources, including AAJ’s Litigation Groups and list servers. These resources offer document libraries from similar cases and

the chance to connect with colleagues who have faced the same defendant or defense in another case. By reaching out, the insurmountable battle becomes surmountable.

**Each step affects the next one.** The plan that you develop and your research at the onset of the case form the core of the discovery process. Interrogatory responses and documents received from defendants then provide the basis for your expert witnesses’ opinions. Organization that also allows for spontaneity lets you best represent your client, whether it be deviations from a deposition outline or dealing with unexpected discovery documents.

**Loop in your client.** Finally, make sure to tell your clients, in detail, what you are doing, how long it will take, and the next steps. From an ethics and practical standpoint, you must maintain open communications with clients, which means explaining—in lay terms—not only the risks and benefits of any actions but also the reasons behind them.

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