



Six Steps to Successfully Sabotage Your Expert Witness

By J.R. Roberts

The decision to retain an expert witness is a critical component in any litigation. The effective use of the right expert can have a tremendous influence on your case. Whether you retain an expert as consultant with the protections afforded by FRCP 26(b) (4) or anticipate designating the expert for subsequent trial, your strategic selection and communication with your expert can have a significant effect at every stage of the case from acceptable settlement to actual trial. Conversely, the wrong choice can yield unfortunate results.

Over the past decade, I have been alternately bemused and shocked at the ways in which otherwise gifted trial lawyers for both plaintiff and defense have managed to snatch defeat from the jaws of victory.

The following strategies for self-sabotage are humbly offered up from one expert's point of view:

1. Postpone Your Decision

Many cases do not require an expert. However, once an expert becomes inevitable through fact pattern (or because your opponent has made the choice for you by their strategy to use an expert), retain and bring your expert in as early as possible. The sooner the expert is "on the case" the quicker they become thoroughly familiar with critical facts. This advantage can reveal elements of your case that you may not have considered earlier. Your expert should be able to give you an objective and detailed analysis of both the strengths and vulnerabilities you face specific to the area of expertise.

By waiting to choose an expert until the last minute, you also run the risk of being unable to retain the best candidate for your action. On several occasions in the last several months, I have been contacted by an attorney regarding a case, only to have to inform them that our conversation was about to become *exparte* as I had been retained by opposing counsel. Nor is it unusual for a client to contact me with a request to review extensive materials in an unrealistic timeline and often where experts on the other side have been in place for some time.

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2. Delegate Your Decision

Yes, your time is valuable, and certainly you may want to have an associate or paralegal prepare a short list of experts and their credentials for you to approve, but interview the expert yourself. You understand your client and your case better than anyone else. It is essential that you hire an expert with whom you can work well. By delegating the selection of your expert, you are allowing someone else to make critical judgments not only about qualifications, but such "intangibles" as ethics, persuasive and communication abilities, adaptability, and personality. The best expert in the world does you no good if you don't have "chemistry" with them in order to ensure that they represent you and your case in the manner that you (and the jury) require.

3. Hire the "Expert" Expert

The last Renaissance man died over 400 years ago. We live in an era of increasing specialization. Be wary of the expert who claims knowledge of too broad an area within his or her respective field. I recently spoke to a colleague who made the statement "security is pretty much the same for every environment". What nonsense. Security demands for a shopping mall are completely different from those required of a hospital, apartment complex, or office building. Make sure your expert has first hand and practical knowledge of the field. Look for familiarity with industry specific terms and language as well as any standards that may exist.

Be very careful when retaining the academic who may have no first hand or practical application of their expertise in the real world. A "theory" may be tailored to suit your needs, but if it does not enjoy use within the industry, expect a Daubert challenge.

Similarly, the expert who favors plaintiff or defense (look for a 75% or greater ratio in case stylings) is vulnerable to challenges for bias. Worse yet, such an expert may have become (consciously or not) an advocate, who's agenda will be obvious to the jury.

The ethical expert should inform you if a case falls outside their own area of knowledge, and in most cases, should be able to refer you to someone better suited to the particular needs of your action.

4. Use an Expert Referral Service

Referral services typically charge fees ranging from 30 - 100% above the expert's rate. Very often these companies simply provide what may be an outdated CV for an expert they have not vetted in any way. This system can also discourage or make direct communication with your expert time consuming and difficult.

The Internet provides unparalleled resources for finding even the most arcane and exotic of specialists in respective fields. Have your associate conduct an advanced search with specific language. The results will provide you with a rich choice of potential candidates at considerable savings.

5. Withhold Information/Limit Communication

What an expert doesn't know can hurt your case. A good lawyer doesn't ask the question to which they don't already know the answer. So it is with an expert. By withholding facts or materials that you think aren't relevant or may not advance your case, you run the risk of allowing your expert to be ambushed, surprised and embarrassed.

The experienced expert isn't interested in running up unnecessary bills to the client. They are concerned about having all required information, being kept informed about developments that may affect them, and having access to you. An open line of communication builds confidence for both the expert and the client. It also enables your expert to reach out to you with new ideas, discoveries and materials that provide for optimum performance at deposition and trial.

6. Don't Pay Your Bill

Res Ipsa Loquitor.

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About the author

With 25 years of experience, J.R. Roberts offers specialized security consultation and services in three specific arenas:



Expert Testimony: plaintiff and defendant in a wide variety of civil suits have retained Mr. Roberts to provide consultation, analysis, and testimony across the United States (for a partial list of representative cases and attorney endorsements, [click here](#)).

In matters concerning premise liability, crime foreseeability, private security guard training, and industry standards of care, J. R. Roberts can make a significant difference in your case. To schedule an initial free confidential discussion of the fact pattern of your case, or to obtain additional information, including rates and a current Curriculum Vitae, call our LAN Line at: (912) 927-4669.



Seminars and Training: As the former Director of Risk Management for Valor Security Services, Inc. J. R. wrote, developed, and implemented the training program for that company. He has lectured Nationwide for trade associations, property management firms, and fortune 1,000 corporations.

To discover how J. R. Roberts Security Strategies, can assist you in providing the very latest training For your employees on such critical topics as employee theft/shoplifting prevention, Liability, or Comprehensive Security Guard Training visit our seminars and training page, or contact our Savannah, Ga. office.

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