# CHECKLIST IN PREPARING FOR EXPERT TESTIMONY AT TRIAL

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A. General Considerations for Use of Expert Witnesses

1. Who is an expert and what is expert testimony

    a. Standard

    b. Difference from lay opinion testimony

2. Why use expert witnesses

    a. Satisfy your burden of proof

    b. Rebut evidence – expert or otherwise – by opposing party

3. When should an expert be consulted and retained

    a. Ethical considerations

    b. Early in litigation

    c. Ongoing

4. Timing and practice tips of giving expert notice

    a. Civil rules

    b. Criminal rules

    c. Practice

5. Commonalities and differences between use of expert testimony in criminal and civil cases

6. Incorporated in theory of the case – Not just examination

    a. Jury selection

    b. Opening Statement

    c. Questioning of other witnesses

    d. Jury Instructions

    e. Closing argument

7. Standards of admissibility

    a. Federal court (*Daubert*)

    b. DC courts (*Frye*)

    c. Admissibility hearing?

d. Motions practice

8. Know opposing counsel and judge

B. Selection and Presentation of Expert Witness at Trial

1. Identifying suitable expert

a. Role: Consultation v. Testimony

b. Colleagues

c. Websites/Professional associations

d. Universities

e. Authors of books/articles

f. Expand the community – Not just tried-and-true

2. Investigating the expert

a. Vet CV

b. Computer records checks

c. Colleagues

d. transcripts

3. Talking to the expert – Initial conversation

a. Overview of case

b. Price quote

c. Stress confidentiality

4. Preferred Profile of Expert

a. Familiar with subject matter and/or willing to learn

b. Able to articulate subject matter in clear terms

c. Respects own limits of expertise

d. Easy to work with

5. Trial preparation – Subsequent conversations

a. Explain each party's theory of the case

b. Provide opinions of opposing party's expert

c. Talk about areas of ambiguity

d. Seek assistance in cross-examination of opposing party's expert

e. Multiple conversations

f. Mock examinations

g. Select supporting media

h. Lawyer controls substance and pace of testimony

6. Making decision to use expert in trial

a. Relative qualifications

b. Amount of added value

c. Personality/charm

d. Focus on issue

e. Prepared

i. Presentation of expert testimony at deposition

(pretrial disposition as alternative goal)

7. Presentation of expert testimony at trial

a. Make it engaging

b. Break down jargon

c. Use analogies and visuals

d. Show why your expert's opinion is more value than that of opposing party's expert

e. Prepare expert for cross-examination

f. Prepare re-direct examination

C. Cross-Examination of Expert

1. Problem: Highly credited and credentialed specialist

a. Expert testimony is on crucial issue

b. Expert is likely to be well-credentialed

c. Lawyer knows little to nothing about subject

d. Lawyer can feel inadequate for task

2. How to solve problem? Preparation/Investigation

3. Investigation

a. Evidence

b. Science/technology/etc.

c. Expert

d. Expert's conclusions

4. Investigate evidence

5. Investigate science/technology/etc. – Learn discipline

a. Talk with own expert

b. Treatises, professional journals

i. especially written by experts involved in case

c. Obtain all manuals, protocols, etc.

6. Investigate expert

a. No different, if not more, own expert

b. Meet with expert

c. Run electronic database searches

d. Obtain and review prior transcripts

7. Investigate conclusions

a. Tests not done; steps not taken

b. Lack of personal knowledge as to evidence

c. Mistaken as to evidence

d. Conflict with written authorities

e. Hypotheticals

8. Courtroom motions practice

9. Voir dire after opposing side's qualifications

a. Timing?

b. Objection?

10. Substantive cross-examination

a. When, how, and if to attack

i. Credibility/bias is always relevant

1. Money

2. Personal investment in testimony

b. When to adopt

c. Turn opposing party's expert into your expert

d. Style

    i. Measured, crisp, short examinations

    ii. Respectful

    iii. Do not parry