

## Selecting Experts in an Anti-Expert, Anti-Establishment Environment

Selecting experts in an increasingly anti-expert, anti-establishment environment can be tricky. In the current social and political environment, it will be particularly critical to choose experts who match the culture of the venue.

I have been in trial numerous times when an expert with prestige credentials offends the jury, or even the judge, with arrogance, failure to communicate clearly, and even disrespect for the innate intelligence of the jury or judge. Most notably, a Harvard economist in a mid-western venue can do more harm than good if that expert cannot relate to his or her audience. In the Midwest, it might be wise to leave the eastern establishment behind.

This is not to demean credentials. Daubert needs consideration. However, a less credentialed expert, but a good and local communicator, will most likely be more successful with your local audience.

Therefore, below are six priorities for picking experts. They are in priority order. For some of you, this might seem like “reverse” thinking, but it just might work the next time around. The “best experts” may be different than you think.

1. Think local. Juries, and even judges, love having their local folks testify. In fact, in many venues, particularly the south, the audience can be offended by a trial team bringing in an “outsider” when they think they have plenty of local talent. If possible, pick local, at least within the state in which your case is venued.
2. Think teacher. Nothing works better with a jury than an expert who can teach well. Since your goal is to persuade your audience that your credibility exceeds your opponents, it is critical that your expert relays information in a manner that the jury can repeat in deliberations supporting your case.
3. Think likable and engaging. We all want to listen to people whom we like. In the field of experts, likable frequently means not arrogant or condescending. Your audience will quit listening if they feel that they are being looked down upon. An expert needs to relay information as if the listener is his or her equal.
4. Think good communicator. Along with being engaging, an expert needs to explain technical details in a clear and concise manner. Convolved, long answers and explanations contradict good communication. In one case, we had one expert answer a question with 363 words! Clear explanations with clear demonstratives are critical.
5. Think “non-career” expert. Too frequently, an expert will be hired, in part, because he or she has testified many times before. This has its limits. Career experts who have testified over and over again may likely be seen by the jury as a “gun for hire”. Furthermore, an expert who has testified multiple times can be immune to witness preparation coaching. Thinking they know as much as the lawyers, and maybe even more, career experts can be a nightmare to prepare, unlikely to listen to your advice.

6. Think credentials last. Certainly one wants to pass the Daubert standards. However, as a lay person from outside the legal discipline, I am regularly shocked at who passes muster at a Daubert hearing. While your experts certainly should be academically qualified and experienced, this should not be the top of your hit list.

In this environment of “anti-establishment” and “anti-expert” sentiment, we would urge extra caution when selecting experts. Always have an expert who can relate to the local audience. Do not make the mistake that the audience will adapt to the expert. If you do, you will most likely be very disappointed.