

I recently received the following inquiry regarding this issue:

"Your book speaks to this but I wonder if you could elaborate a bit for me. When lawyers start to beat up on me about the advertising, I'd like to have a few graceful and effective responses to defuse the issue. I realize that the expert's manner and tone in responding to questions of this type are critical and I have no problem in that sphere. I'm at a bit of a loss in terms of artfully phrasing the responses. Form is fine--could use some help with content. Could you advise?"

I am sharing my reply with you, our readers, because I think it addresses concerns common to many of you in expert consultant practices:

- Answer questions honestly, and do not elaborate, except to further defuse the question.
- As with all deposition and courtroom questions, respond only to questions, not to statements; be comfortable with the silence and wait for a question.
- Don't answer compound questions, or at least divide your response, with one answer to the first part of the question and a clearly separate answer to the second part.
- Don't give credence to a line of questioning by trying to justify what doesn't need to be justified. Your restraint will make the attorney look foolish to the jury.

Here are a few examples of questions you might encounter and suggestions of possible answers (not a consecutive line of questioning):

Q: Do you advertise your expert witness services?

A: Yes, I do.

Q: Doesn't that mean that you're a hired gun?

A: No. (Don't elaborate; make them explain, by your silence, what they mean by a hired gun. This you can then defuse. If the attorney continues that line of questioning, you can define "hired gun" for him as 'one who is willing to mold his opinion according to request,' which is not what you do).

Q: You're available to testify for pay, and are willing to say whatever the attorney asks you to say; isn't that correct? (compound question)

A: I am paid for my time and expertise in reviewing the case and to testify, if necessary, in deposition or court. What I say is my own opinion based on the facts of the case.

Q: I have a list of directories in which you advertise your services as an expert witness. You are hiring yourself out to testify for various attorneys, correct?

A: I list my services in directories so that attorneys know I am available for record review and testimony.

Q: You "promote" your expert witness services, isn't that correct?

A: My resume and contact information are listed so that attorneys know I am available.

Q: Retaining counsel found you on one of these "directories," isn't that correct?

A: I don't know.

Q: Your opinion is for sale, isn't that so?

A: No, I base my opinion on the facts of the case and am paid for my time in reviewing the case and testifying about that opinion.

Note: Questions about the *content* of advertising is a different subject and will be covered in a future article. (Rosalie Hamilton)

QUOTE

"Whatever you can do or dream you can, begin it. Boldness has genius, power and magic in it." - Goethe

TRAINING CENTER

How to Excel During Cross-Examination: Techniques for Experts that Work

by Steven Babitsky, Esq. and James J. Mangraviti, Jr., Esq.

This practical survival guide for expert witnesses reveals all of the techniques and "tricks" used by trial attorneys during cross-examination. Each technique is identified, explained and illustrated with actual and sample trial testimony. As an expert witness, your "marketability" will increase once you master cross-examination.

For more information on this text and additional resources on cross-examination techniques and examples, visit <http://www.expertcommunications.com/products.htm> where you will find *How to Excel During Cross-Examination* as well as other books, CDs and videos/DVDs addressing this topic.

EXPERT EXCERPT

Answering Hypothetical Questions

If you have some experience as an expert witness, you probably already know that hypothetical questions are a key cross-examination tool. They are used by attorneys as an intermediate step between your position and theirs. The idea is to first get you to accept facts in a hypothetical scenario, and then force you to transfer that acceptance onto opposing counsel's version of the real facts.

Since you can't know what opposing counsel will offer in the way of hypothetical questions, it's difficult to prepare specifically for them. When you encounter them, keep in mind the following guidelines:

1. Force counsel to be specific.

If the hypothetical question is ultimately irrelevant to the case facts, that contrast will be made more easily with specificity of the hypothetical. The process of requiring specificity can itself reveal the inaccuracy and irrelevancy of the hypothetical and kill it before it goes any further.

Your rationale for this technique is simple, logical and well founded. In order for you to render an accurate opinion as to a hypothetical question, the question must be specific. Generalities lead to inaccuracies.

2. Remind the jury that you are answering a hypothetical.

Opposing counsel will want the jury to forget this fact and confuse this testimony with the case itself. This is all too easy a goal, as testimony in the memories of the jurors tends to blur together.

Incorporate the reminders in your answers, for example, "In the case of your *hypothetical* situation - my answer is 'Yes'." Emphasize the word hypothetical in your answer. Giving it more emphasis reminds the jury that it *is* a hypothetical and signals them that you see a distinction between the hypothetical and the case facts.

Earlier I described the hypothetical as an intermediate step opposing counsel might make, wherein subsequently he would link the hypothetical to his version of the facts. Be aware that the final step is often not made by opposing counsel in cross examination. He may want to save it for closing arguments. Your only chance to negate it is under redirect examination and only if your attorney revisits the hypothetical.

In the above circumstance, together with your attorney client, you must compare the hypothetical with the case facts to show that the hypothetical was not an accurate one and not relevant to the facts. If your efforts are effective, be prepared for opposing counsel to salvage his hypothetical by attempting to reconnect it with the case in re-cross.

- David Tunno, Trial Consultant, www.tunno.com

SPEAKING SCHEDULE

Rosalie Hamilton, practice development strategist for expert consultants, will be speaking at the following events:

April 28 - Appraisal Institute, Atlanta Area Chapter Seminar, in Atlanta, GA.

August 17 - Lunch & Learn Teleconference Class, LNC Resource.

September 24 - Forensic Expert Witness Association, Northern California Chapter, Marketing & Business Development Workshop, in San Francisco, CA.

LEGAL LEVITY

"Your Honor," said the jury foreman solemnly, "we find that the man who stole the \$20,000 is not guilty."

Legal secretary to amorous boyfriend: "Stop and/or I'll slap your face."

BONUS TIP

Don't Apologize for Your Income

Be poised and unapologetic about your income. You have paid your dues in your profession. If you are new to forensic work, I personally assure you that you will earn every dollar you are paid in the legal arena. Litigation support is always stimulating and challenging, occasionally inspiring, and potentially lucrative. It can also be stressful and perplexing and make you wonder whether justice can ever really be accomplished. Take pride in the fact that you are contributing to that goal and charge for your efforts.

- Rosalie Hamilton, President of Expert Communications

EXPERT COMMUNICATIONS

Providing the practice development strategies and professional assistance you need to expand your litigation consulting practice.

- Legal Marketing Analysis and Planning
- Public Relations Management
- CV/Resume Risk Assessment and Review
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- Editing and Ghostwriting
- Website Creation, Analysis and Remodeling
- Training Seminars and One-on-One Communications Coaching
- Legal Marketing Conformity Liaison for Firm Marketing Directors

For more details about personalized help with legal business development, call us at 727-467-0700.

FEEDBACK

A Big Thank You

A big thank you to all of our readers who checked out our new website and sent in their comments! Some of you caught a few mistakes, and everyone was very kind and complimentary. I encourage you to check back often, as we will be adding more resources and timely articles and reports on a regular and frequent basis.

On another note, we will soon be conducting a comprehensive survey of a certain number of randomly chosen experts from among our 10,000+ readers. This will be compiled into a special report providing the best (and worst :) practices of experts and other information our subscribers have requested. If you are one of the randomly selected experts, please take the few minutes necessary to give us your comments and opinions. All responses will be kept anonymous and confidential.

Thanks again for all of your input - your feedback helps us help you succeed!

FINE PRINT

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