

## The Potential Pitfalls of

# Using the Same Expert Witness

So much of business is built on relationships. If time is money, especially legal timekeepers who are compensated based on knowledge and experience acquired throughout our careers, then it makes sense to build a professional network of people you can depend on. But anyone working in the legal field is well aware of the inevitable last minute changes that arise, requiring agility and cat-like reflexes to adapt and persevere. Sometimes it's critical to branch out. So, without belittling the personal investments of time, energy, and experience that culminate in trusted business connections, today I want to discuss some of the potential pitfalls of always working with the same experts.

## Benefits of Using the Same Expert Witnesses

The benefits of working with the same experts mirror those of working with trusted business partners: you've invested time in befriending the business associate; you know how he or she works and you're familiar with the work product; you can rely on them. You can skip over the "getting to know you" phase of the relationship and get on with the business matter at hand. There is less of an investment of your time (read: money) in recruiting and establishing the business relationship, because you simply have to pick up the phone or send an email asking about the expert's availability to take on the work.

## Drawbacks of Using the Same Expert Witnesses

But let's consider another practice that I have experienced firsthand: quasi-informal mandates to work with the same "approved" experts on similar cases throughout a practice. Let's say we have a legal professional starting off his career with a high profile firm that represents an automobile manufacturer, and the workload focuses on product liability cases dealing with airbag deployments. The basics of the cases overlap and involve practically the same parties on the defense side: same manufacturer of the car; same basic mechanics of the car; very similar (if not the same) manufacturing process of the airbag system in the cars, etc.

There are just as many, if not more, unique elements to each case as well: varying plaintiffs with unique storylines playing into

the case; situational elements leading to the deployment (or lack thereof) of the airbag, which may or may not be collision-based; slightly varying manufacturing techniques for each airbag, braking system, engine, collision endurance, etc.; all of which are further complicated with the human element that touches everything we do (even when a programmed robot is involved).

The legal professional comes to learn the firm's position is: "We always use the same experts." It's common practice for the unwritten mandate to instruct employees to use this one accident expert on each and every case, regardless of the situational elements that make each case unique. What if he suspects different elements come into play in his case and he wants to explore them with an expert? Impossible; the Wizard of Oz voice comes into his head: "It's always been done this way. Use the same approach. We have a strong track record defending these cases with this expert; don't deviate from the path."

## Considering the Best Expert

Is the expert really the "best expert" for the case, or is the expert simply the familiar one? Does the expert know he or she has a steady stream of business coming in, across similar cases, and he or she simply has to "go through the motions" and prepare the same basic information with a few edits? Hopefully it is *never* this simple. Hopefully an expert always reads the case specifics with a fresh set of eyes and reads any information in full detail without predisposed notions of what to expect, considering each and every element and allowing his or her mind to wonder while considering each of the possibilities. After all, we all want to hire the best expert for the case that will give each minutiae of case specifics strong and fair consideration.

What does the expert do to compete against other potential experts for your case? How is he or she staying abreast of industry developments? If the expert relies on repeat business with similar elements, are they taking advantage of educational opportunities to keep up with the leading edge of change in our dynamic world? How many people would still be employed in any career if they did the same work today as the work they did five years ago?





witnesses' testimony, despite the dynamics of case specifics. The successful litigator is the well-prepared litigator. Is it inconceivable to think that your repeat opposing counsel would invest the resources in learning the ins and outs of your practice for the courtroom?

You cannot shortchange the task of locating relevant, credentialed expert witnesses. Although you may be in the practice of representing similar clients or lines of business, each case is different and each case deserves personal attention to detail. I understand the value of time, the limitation of resources, and the competition in the courtroom, but I believe that the risks of the repeat expert outweigh the benefits.

Ingrid Vinci spent 10 years as a litigation attorney before founding Expert Consulting Services (ECS). A graduate of Southern Methodist University School of Law, she practiced in the areas of personal injury, professional negligence, product liability, and premises liability. During her tenure as a litigation attorney, Ingrid worked with experts in a wide variety of areas of expertise.

Ingrid's philosophy of case development involved establishing strong relationships with the expert witnesses with whom she worked by encouraging open and regular communication and utilizing the expert witnesses to help formulate case strategy. She values the importance of a solid and collaborative relationship between a legal professional and his or her expert witnesses.

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Recent technological advancements in our society can show you just how important it is to learn and adapt to change, to become agile in an age where nothing is certain and disruptors persevere to turn entire industries on their head.

Aside from the considerations outside of the courtroom, there are just as many inside the courtroom, many of which are receiving more attention with the help of mainstream media. There is much chatter around the expertise of your witness: what makes this witness an expert? Is his or her opinion backed up with sufficiently reliable information? How much of the expert's testimony is factual versus opinion? Courts are spotting trends amongst litigators and raising questions around bias: do the facts of your case truly run parallel to the other cases you have defended with the same expert, or is that the 'easy out'?

## Opposing Counsel's Familiarity with Your Expert

There is also the risk that your opposing counsel has seen your defense before; they know what your expert witness is going to say and they prepare their rebuttal specifically for the expert's repeated checklist of presented facts. Patterns emerge in the expert