

## **A FEW THOUGHTS ABOUT EXPERTS**

**Sandy Carnegie**  
**704-892-1699**

**Jim Fuller**  
**704-892-1699**

**[www.PIteam.Net](http://www.PIteam.Net)**

- 1. Have a plan, or at least a goal; don't meander**
- 2. Not, not, do not rehash**
- 3. Exhibits: prepare 'em; use 'em (shontel)**
- 4. Start; don't just begin**
- 5. Bec's rules: short Q; eye (not notes); one topic**
- 6. Qualifications: A not mechanical, but thematic**
- 7. Qualifications: test 'em**
- 8. We: tell story of who, what, why**
- 9. They: Gertrude Stein; Bear Bryant; mechanic**
- 10. Conclude; don't just quit**

# **Examination of Experts**

**Why should we listen to you,**

**What did you do,**

**And why is it important**

# **How Experts are different**

- The do not have to have personal knowledge. Often everything they have to say is based upon reading what others have said.
- May offer opinions beyond direct sensory impressions.
  - Cause or consequences of events
  - Interpret actions of others
  - Draw conclusions
  - Comment on likelihood of events
  - State opinions about nonfactual issues such as fault, standard of care or damages.

## **Rule 702 – Expert Opinions Admissible**

Where expert's "scientific, technical, or other specialized knowledge will assist trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion, or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

# Organization for the Direct Examination of an Expert.

---

- I. Introduction
- II. Qualifications
- III. Tender the Expert
- IV. Opinion – Brief
- V. What the Expert Did to learn about the Case
- VI. Opinion with Explanation and Detail

# What the Expert Did....

- \* Showing adequate factual basis and being persuasive for the jury
- \* Why the witness did the things he did
- \* Foundation regarding reliability – will vary greatly depending on the area of expertise.
- \* Terminology and Jargon that must be defined.
- \* Answers that cover too much at once – what do you do.
- \* Highlight information that will contrast your expert to the opposing expert if possible
- \* Highlight facts that are important to the opinion
- \* Anticipating the cross examination – start the education.
- \* Information of a type reasonably relied upon by experts in the particular field

# The Opinion With More Explanation

Have the expert now go into greater detail about the opinions held.

- \* The facts that support the important conclusions.
- \* Ask the “Why” question.
- \* Ask very direct questions to anticipate the cross or the defenses position.
- \* Conclude examination with positive, persuasive restatement of most important opinion.

# Strive to always.....

- Keep your language simple
- Work with your expert to simplify opinion
- Use Visual Aids – Ask the Expert what she would like to use as a visual aid. High Tech is not necessarily an improvement over simple diagrams.
- Use Publications, but with caution.

# Cross Examination of Expert Witness

Look for opportunities to make the following points on cross:

- \* Acknowledge reliability of your expert's data, the validity of assumptions or credentials.
- \* Seek areas and points on which the expert agrees
- \* Contrast the expert's failure to do something which your expert did.
- \* Explore the relationship with the opposing party/attorney
- \* Exploit any inherent bias shown by the witnesses history<sup>26</sup> of having always testified for one side of an issue.

# Cross Examination of Expert Witness

---

- Research and preparation are key.
- Adhere to the rules of cross examination to maintain control
- Every source relied upon by opposing expert must be reviewed and thoroughly understood.
- Expert's background and qualifications should not be routinely accepted.