

PICKING EXPERTS

By Bill Daniels

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You can pick your friends and you can pick your . . . okay, never mind that.

This column is about picking experts, a topic that makes me grumpy because once I pick them , I have to pay them. Still, no sense being over the top. It's just, I've been okaying invoices today and, ah well, let's just say it's put me in a philosophical mood.

We all use experts in our cases. Sometime more, sometimes less. They are a necessary part of what we do and many of them we love.

On the other hand, we all have our "nightmare expert" stories. There's billing nightmares: like the prominent witness who freely runs up charges at \$750 an hour and then doesn't return phone calls. Or the fellow who charges full rate for packing and unpacking his luggage before and after a trip. It just makes you want to sigh.

Then there's the testimony nightmares: The experts who show up unprepared, or unstudied, or testify in deposition exactly opposite to what they told you during the prep. We've had them forget to put on their false tooth before a video depo, I've watched them walk up to the stand with a cane only to leave it behind on the return. Picture me, face down in hands, head shaking.

Now, I'm not knocking the large class of hardworking, professional, knowledgeable expert witnesses who truly do bring a benefit to our cases. My point is, if you aren't careful in your expert selection process, there's a real risk that your case and your client can suffer the consequence.

So, where should you be looking? Probably the best way to locate a good expert is by asking your friends and colleagues. The idea is to hunt for referrals from attorneys who you know and trust or, who have litigated a case similar to yours. O'Brien's Evaluator is a good place to start your search, as is the CAALA Listserv or any of the verdict and settlement reporters published by various commercial outfits. Don't be afraid to call up other practitioners. One of the great things about plaintiff's lawyers is: we share. Take advantage of that generosity.

Of course, you can always try a Google search to see if you can locate someone who has special expertise or is a recognized leader in their field. Also, make sure you also do a Google search on anyone you are seriously thinking of hiring. You can be sure the opposition will and it's amazing what's out there on the internet.

Another good source is the community where your case is located. I'm not just talking about physical location here. For example, I have a case against a law enforcement agency involving various allegations of discrimination. One of my consultants is a former command-level officer

for that department and, when it comes down to declaring experts, he will likely end up on my list. How'd I find him? He was someone my client knew.

If I am looking for an expert in an unusual area I might also hire a resource person to hunt for me. Gerri Colton springs to mind (www.TechMedAdvisors.com). She charges for her time, but sometimes it's worth it and she's been a lifesaver for me and my firm in the past. There are other resource people out there. Ask around.

Don't be afraid to look closer to home as well. Years back I had an unusual case involving an Achilles tendon injury during a holistic therapeutic dance class in Santa Monica. It was not the kind of case you wanted to try. But it was a case that could (and did) settle.

My kids were taking dance lessons in the Valley from this nice, elderly lady who had been a dancer and dance instructor all her life. I asked her if she'd take on an expert assignment and she was terrified at the idea of having to testify in deposition, let alone court. Still, I knew she'd be a terrific witness if it got that far. She was scared, yes. But she was also clear in her views and spoke about what went wrong in that dance studio from her heart. I wish I could say that about every expert I've hired.

Anyhow, I talked her into taking the assignment and send out a small retainer to seal the deal. Armed with my "expert," I confidently headed for an MSC and got a nice result for the client. My kids' teacher got to keep the retainer and she didn't even have to testify, something for which she is grateful to this day. Win, win, all around.

I generally avoid the paid listing services. My experience is it just takes too much time to weed through the candidates and find the person who is really up to your particular challenge. Still, if you get stuck, don't be afraid to do some exploring.

Also, beware the defense-oriented expert who masquerades as being a balanced analyst in their field. Personally, I like using experts who primarily testify for the defense. It helps drive home the notion that my case is so strong it doesn't matter who the expert is.

However, there are folks out there for whom the defense bias is so ingrained that they can't help favoring the defendant's point of view, even when they're retained to testify for the plaintiff. It's not so much that this sort of witness will not tell the truth. It's more in where their efforts will lie. A defense oriented expert might avoid opening doors to inquiries that would benefit your client simply because they can't conceive there would be anything useful to learn if those doors were opened. Not necessarily a good thing.

Above all, take care when you hire your experts. Get a complete curriculum vitae and grill them on it. Get references and check them out. Ask for any disclosures they've filed in federal court about their past experience. Ask up front if they have ever been disqualified as an expert and if so, what were the circumstances? The bigger the stakes, the more due diligence you need. The

worst place to find out about your expert's weaknesses are in a defense motion to exclude or a motion in limine.

Okay, now that I've got all that out of my system I feel a little better. Experts, I love you all, don't ever change. Now, back to paying bills. And I was in such a good mood there for a minute.

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William A. Daniels is a Trial Attorney with BILL DANIELS | LAW OFFICES, APC, in Encino, CA. His practice focuses on class actions, employment and serious personal injury cases. A graduate of Loyola Law School of Los Angeles, he is a member of the Consumer Attorney Association of Los Angeles Board of governors and a founding member of the Civil Justice Program and the 21st Century Trial School at Loyola. For several consecutive years he has been named a "Super Lawyer" Los Angeles Magazine in Southern California.

He can be reached at William.Daniels@BillDanielsLaw.com www.BillDanielsLaw.com