

Tips on Testifying as an Expert Witness



**Applied Geographic Research
Session 1356, Tuesday, April 17, 12:00-1:40
2007 Annual Meeting
Association of American Geographers
San Francisco, CA, April 17-21, 2007**

**Dr. Barry Wellar, President
Wellar Consulting Inc.
<http://wellarconsulting.com/>**



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Selected Comments on Slides

- 1. The judge or jury as trier of fact has a major stake in your credentials, and the judge may qualify you based on your C.V. However, the C.V. just gets you into the expert witness box. It is your evidence and related experience, and how well they are presented, that is pertinent to the judgement.**
- 2. If you cannot express science as ‘common sense’, your expertise could be all in your C.V. and it will likely stay there in the mind of the trier of fact.**
- 3. If you have problems connecting cause and effect, and providing factual evidence to support your position, the judgement is not likely to be based on your opinion.**
- 4. There can be many weak links in a piece of academic research, and the thesis, article, etc., is not likely deep-sixed. However, just one gap, blunder, or shortcoming in your evidence-in-chief or cross-examination can cause real grief.**

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Selected Comments on Slides (continued)

- 5. Lawyers have a rigor in their approach that is best served by expert witnesses who taken or taught one, two or three or more research methods courses.**
- 6. If you like high-end, disciplined thinking, you will relish the challenge to say all that is necessary and sufficient, but no more.**
- 7. Geographers and academics in general do not seem inclined to describe events or processes by means of text, numerics, and graphics. As the expert witness assisting the trier of fact, your standing goes up if you can easily and clearly move between the three procedures when analyzing or synthesizing real-world events, situations or relationships.**
- 8. Evidence from the field requires expertise and actual, practical experience in field methods and techniques. A sharp lawyer assisted by a sharp expert witness on the other side can make for a very damaging cross-examination of witnesses who “blow smoke” about how the field data were collected, organized, analyzed, synthesized, interpreted, and construed as fact in the witness statement, evidence-in-chief, and cross-examination.**

Tips on Testifying as an Expert Witness

fact ↔ opinion

truth

strategy

tactic

evidence

Judges have seen a lot of CVs.

They need the expert witness to help

them make a correct decision that is

based on factual evidence, not reputation.

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Most people have trouble with $y = a + bx$.

Bear that in mind if you think about bringing the gamma probability density function into a jury trial.



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Something is alleged to have gone wrong, which is why you are at trial. Your job is to establish the facts of what happened, how it happened, and why.

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A witness statement is a chain of individual arguments. The weakest ones are targets for cross-examination by the other side, and severe scrutiny by the trier of fact.

One ruptured link could sink the case.

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Lawyers are trying to win an argument; you are an expert witness serving the trier of fact (judge or jury).

Lawyers on either side are methodical in their approach, which means that you need to be even more methodical in establishing the cause-effect relationship upon which your arguments and opinions are based.

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The more you write or say the higher the probability that you weaken your testimony. Giving the case your best effort includes knowing when to “button your lip”.

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Geographers deal with points, lines and polygons expressed by text, numerics and graphics. That may be one of the reasons that we are qualified as an expert witness. If witnesses on the other side include designers, engineers, statisticians, climatologists, police officers, and GIS analysts, and you cannot apply the three procedures to any spatial circumstance, then the trier of fact is likely to downgrade your evidence.

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“How do you know what you claim to know?” is a question that frequently comes up in a trial, and is often the one that establishes the relative credibility of witnesses in the mind of the trier of fact. The status of ‘expert witness’ is not without challenges.