P e t e   F o w l e r
CONSTRUCTION
S e r v i c e s ,   I n c .

Expert Witness Success!

Introduction

Expert testimony can make or break some cases. *"Expert Witness Success: Managing the development and delivery of opinions, reports and testimony for success"* will give you a framework to make sure your expert testimony is complete, supportable and understandable by the non-technical people who need to use the information to make decisions. Since there are no guarantees in litigation, disciplined execution of a well-tested **method** is as close as we can get. With our system for development and delivery of expert opinions, you don't have to wait until the testimony is delivered to know if it is going to be good.

Presenters

Paul Kushner and Pete Fowler are expert consultants who have collectively worked on thousands of cases in litigation and have all delivered successful trial testimony. Cases have included construction defects, personal injuries, code analysis, insurance and bad faith, ownership, and contract disputes involving scope, budget, payment, and schedule analysis.

Expert Analysis

Forensic work includes collecting and organizing documents and physical evidence, and documentation of conditions with photos and other demonstration aids like diagrams and flow-charts. Analysis includes turning raw data into understandable, usable information. Ultimately presentation of conclusions occurs in meetings, mediation, or sworn testimony.

Program Outline

1. Introduction (11:00-11:20)
2. Preparation (11:20-11:40)
3. Designation (11:40-11:50)
4. Lunch Break (11:50-12:05
5. Planning (12:05-12:20)
6. Presentation (12:20-12:35)
7. Performance (12:35-12:50)
8. Pitfalls (12:50-1:00)

Back-Up Materials

1. Answering the Tough Questions – A Forensic Approach to Consulting by David Heemann
2. Project Management Parable – A Project Status Meeting
3. Sample Expert Designations
4. Solving Building Problems
5. PFCS PowerPoint Sample of a Personal Injury Litigation
6. Opinion Letter Sample
7. Structured Case Analysis: How and Why

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PREPARATION

Having your deposition taken is neither easy or fun! If your expert tells you different he or she most likely has an over-inflated sense of self- worth, self-importance and is probably either deranged, under the influence, stupid, naïve, inexperienced, or absolutely lying.

Giving testimony in trial is even less fun.

At a deposition you have one major advantage - the person taking your deposition is not your professional opposite number.

At trial you have an audience. If you have any fear of speaking in public. The witness stand is not for you!

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WHO AM I?

We are *expert witnesses*.

*"**Expert witness:** a witness who, by virtue of experience, training, skill, or knowledge of a particular field of subject, is recognized as qualified to render an informed opinion on matters relating to that field or subject."*

The Architect's Handbook of Professional Practice

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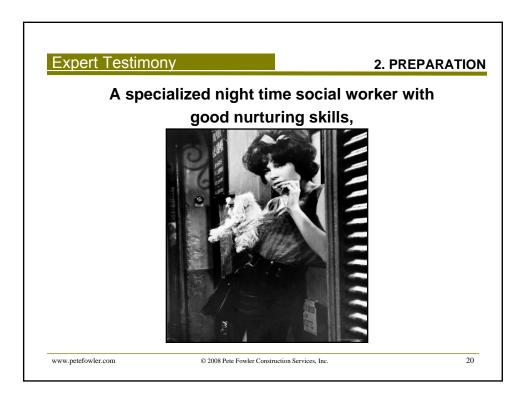
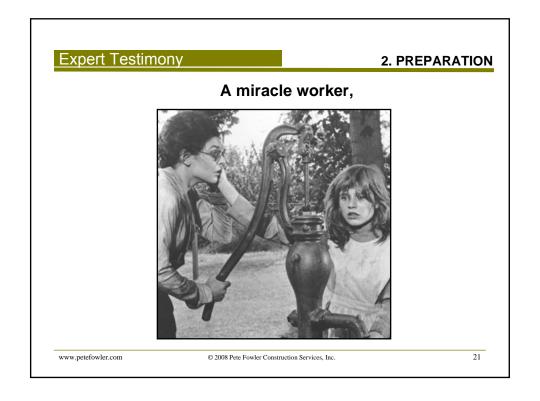Pete Fowler Construction Services, Inc

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I am not…

A hired gun with a passion for Marinara sauce and cheroots,

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2. PREPARATION

more of a Popeye

"I am what I am",

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2. PREPARATION

Dragnet's Jack Webb, "Just the facts ma'am."

JACK WEBB
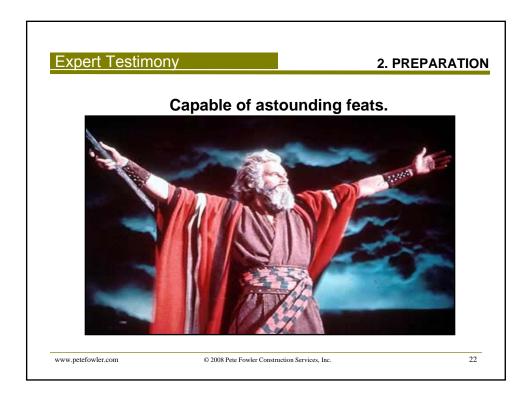
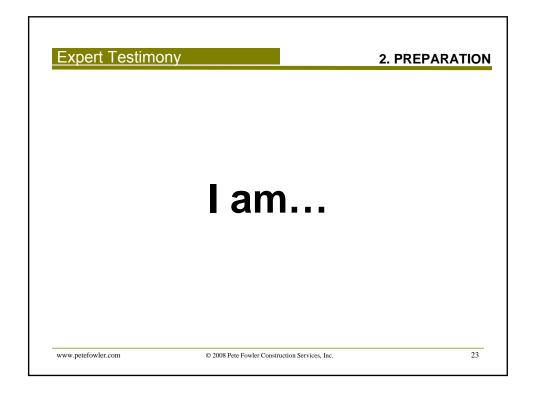JUST THE FACTS

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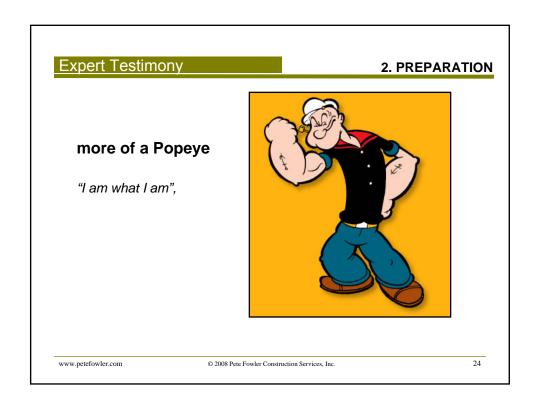
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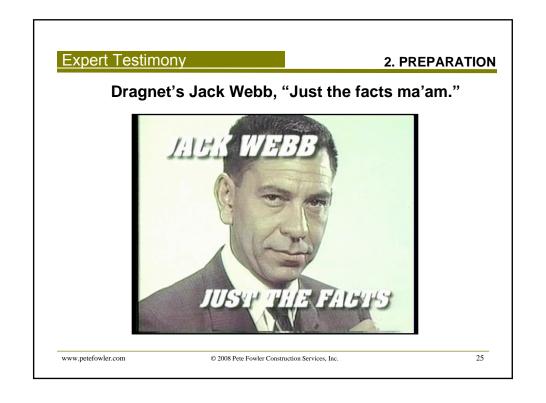
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Credible.

Credibility

Pronunciation:
\kre-də-bi-lə-tē\
Function:
noun
Date:
1594

Definition:
1. the quality or power of inspiring belief
2. capacity for belief

Merriam-Webster Online Dictionary. 2009.

A **witness** testifies only about facts observed, whereas an **expert witness** testifies about opinions based on the facts.

The **expert witness** is skilled in a particular subject, and is recognized as especially qualified to speak on that subject. The expert's opinions are developed through an <u>analytical process</u>. Testimony may rest on personal observation of facts, on opinions based upon facts as described by others, or on hypothetical questions based on facts in evidence.

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2. PREPARATION

So who would you prefer analyzing your case?

Expert Testimony **2. PREPARATION**

A French man with a slight speech impediment?

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2. PREPARATION

**Or a clear thinking pipe smoking Englishman
with some nasty habits?**

Expert Testimony

2. PREPARATION

"It is a capital mistake to theorize before one has data. Insensibly one begins to twist the facts to suit theory instead of theory to suit the facts."

"It is a capital mistake to theorize before you have all the evidence. It biases the judgment."

Sherlock Holmes/ Sir Arthur Conan Doyle " A Scandal in Bohemia"

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Project Status Meeting

Date:	September 1, 2006
Meeting Date:	September 21, 2006
To:	Project Team
From:	Project Coordinator
Project:	*OMMA-Goodness! Project Management Training* PFCS Project 07-123
Regarding:	Project Status Meeting Agenda
Attachments:	None
Note:	Confidential Attorney-Client and Attorney Work Product. Protected under all applicable evidence codes.

Meeting Information
1. Who: PM, Expert, Project Coordinator, Technical Lead
2. When: Date. Time. Duration is generally between 7 minutes and 4 hours.
3. Where: In-office, via telephone conference, video conference, etc…
4. Roles: Leader, Timekeeper, Scribe

Agenda
1. One Minute Summary and Project Information Review (1-3 minutes)
2. Project Plan Review: Objective, Method, key Milestones & Deliverables, and key Actions to date (1-5 minutes)
3. Old Business: Actions from previous meeting (0 minutes to 3 hours)
4. Review Scope, Budget & Schedule compared to performance (2 minutes to 3 hours)
5. New Business (0 minutes to 3 hours)
6. Brainstorming/Problem Solving/Team Consulting: Update Project Plan (2-60 minutes)
7. Update Actions (what, who, when, where, how, how much and how long for each) during or immediately following meeting (3-60 minutes)
8. Arrange next Project Status Meeting (1-3 minutes)

Minutes
1. Notes re: discussion and decisions.
2.
3.
4.

Actions
1. What, Who, When, Where, Why, How, How Long, How Much
2. Next Project Status Meeting
3.

Instructions for Use

TITLE BLOCK: 18 point Tahoma font "Project Status Meeting Agenda"

INFORMATION BLOCK:
1. Date: Date Agenda is delivered.
2. Meeting Date: Date of meeting. This is here to avoid confusion and is partly duplicative with the Meeting Information section below.
3. To: Note who the attendees will be. A "CC:" line can be added for non-attendees, if necessary.
4. From: Meeting Host. Usually the Project Coordinator.
5. Project: Project Name and PFCS Project Number
6. Regarding: "Project Status Meeting Agenda"
7. Attachments: Numbered list of attachments with the number of pages per document in parenthesis at the end "(2 pages)".
8. Note: Either the standard mediation admonition or any other note such as "Internal document. Do not distribute outside PFCS." Or the line can be eliminated if not used.

Meeting Information

1. Who: PM, Expert, Project Coordinator, Technical Lead
   A. List who is coming to the meeting and their roles on the Project Team. \
   B. This may be mostly duplicative with the "To:" in the Information Block.
2. When: Monthly (at the most)
   A. Date
   B. Time
   C. Duration
   D. This may be partly duplicative with the "To:" in the Information Block.
3. Where: In-office, via telephone conference, video conference, etc…
   A. Specify the location.
   B. If there is a technology solution make sure everyone knows how to joint in advance.
   C. If there is a conference call, make sure everyone knows the numbers, passwords, including the different numbers for the leaders and participants.
4. How Long: 7 minutes to 4 hours
   A. Try to keep is as concise as possible.
   B. Remember this session might need the time for the participants to really THINK. Our work is an intellectual, hypothesis based endeavor. If the answers were obvious our clients would not hire us. Do not rush through this CRITICAL step.
   C. Bill the time for the meeting to the Milestones, Deliverables and Actions that were identified and discussed in the meeting.
5. Roles: Leader, Timekeeper, Scribe
   A. Good meetings need to have 3 key roles: Leader, Timekeeper, and a Scribe (to take the notes and deliver minutes at the conclusion, if necessary.
   B. If possible, separate the roles and no one should have more than one role.

Agenda

1. One Minute Summary and Project Information Review (1-3 minutes)
    A. Project Coordinator and Technical Lead shall make sure the Project Information sheet, including the One Minute Summary are up to date before the meeting begins.
    B. Have this updated information available when the meeting begins, either on an overhead projector or printed for everyone.
    C. Begin the meeting by reading the One Minute Summary to the attendees to make sure everyone is on the same page. This may seem irritatingly tutorial, but it is a REALLY important "get everyone on the same page" activity.
2. Project Plan Review: Objective, Method, key Milestones & Deliverables, and key Actions to date (1-5 minutes)
    A. Project Coordinator and Technical Lead shall make sure the Project Plan up to date before the meeting begins, including all completed, in process and upcoming known Milestones and Deliverables, and all completed, in process and known upcoming Actions.
    B. Print or have accessible key Deliverables for review.
    C. Review the high-points of all these with everyone
    D. This is another REALLY important "get everyone on the same page" activity.
3. Old Business: Actions from previous meeting (0 minutes to 3 hours)
    A. Review the Actions and commitments from the previous meeting.
    B. Note completed and not complete Actions in the Minutes.
    C. Forward incomplete Actions to the Actions in this meeting, so that noting is forgotten. Note each item that is a carryover and the date from which it is being carried forward.
    D. **This is a REALLY important follow-up and follow-through mechanism. In fact, connection of the Actions from previous meetings to Old Business in the next meeting is probably the most important part of this process or of project management generally.**
4. Review Scope, Budget & Schedule compared to performance (2 minutes to 3 hours)
    A. What have we promised to do, by when and for how much?
    B. Are we clear about our scope, budget and schedule? Are we delivering as promised, within budget and schedule?
    C. One of the most common project management problems is "scope creep". Is that happening?
    D. Do we need to re-negotiate? Change orders?
5. New Business (0 minutes to 3 hours)
    A. This is where pre-meeting agenda items are discussed.
    B. This is where new business that is brought up during the meeting should be discussed and noted in the Minutes.
6. Brainstorming/Problem Solving/Team Consulting: Update Project Plan (2-60 minutes)
    A. Update as necessary using the applicable method and Menu of Deliverables
    B. Literally review the steps of the applicable Method and the Menu of Deliverables as a memory prompt.
    C. Brainstorm or Team Consult
    D. Update the plan as necessary.

7. Update Actions (what, who, when, where, how, how much and how long for each) during or immediately following meeting (3-60 minutes)
    A. This is where the detailed work of connecting Actions with Milestones and deliverables takes place.
    B. At this point we may realize that what we "want" to do is going to cost more than the project deserves. Some re-thinking or re-negotiating may be required as a result of this detailed planning.
    C. By identifying all actions, what the work will look like, who will do it, when it will be done, and how long it will take, we gain mastery over the work.
    A. By referring back to this analysis (detailing out the Actions) before the Project Status Meeting, and comparing performance to plan, we can then exercise dominion over the project.
8. Arrange next Project Status Meeting (1-3 minutes)
    A. Who needs to be in the next meeting?
    B. When, where, etc…
    C. Who will distribute the Meeting Minutes
    D. Who will compose the Meeting Agenda for the next meeting?

Minutes
1. Notes re: discussion and decisions.
2. Meeting Notes need not be beautiful, but they should be taken, be numbered consistent with the Agenda and saved to the file.
3. Meeting minutes need not be distributed for internal Project Planning Meetings
4. If it is a more formal meeting with outside attendees then Minutes should be distributed.

Actions
1. What, Who, When, Where, Why, How, How Long, How Much
2. Actions need to be SMART: Specific, Measurable, Action Oriented, Realistic, and Time Activated (have an estimated duration and a dead-line).
3. Next Project Status Meeting
4. **As noted also in the Old Business section: This is a REALLY important follow-up and follow-through mechanism. Connection of the Actions from previous meetings to Old Business in the next meeting is probably the most important part of this process or of project management generally.**
5. If the meeting is internal, consider sending a message to all attendees summarizing the Next Actions.
6. If the meeting is a Monthly Project Status Meeting, consider calendaring to re-send the list of Next Actions to all attendees mid-month as a reminder, so that people are less likely to miss commitments.
7. It will often be necessary to sit down and have a formal "Delegation" session that conforms with the One Minute Manager Meets the Monkey.