

Handling the Defense Expert - A Checklist

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"All good lawyers know that one good admission on cross exam will outweigh ten pieces of evidence on direct."

--Professor Stanley Preiser, Trial Advocacy, 1977

For trial preparation:

- Identify strategic strikes. Then, become an expert of sorts yourself in those areas.
- Meet with defense expert, together with your own expert if possible. Always ask: "What is your opinion of 'X' in this case?"
- Insist on getting actual tests and data used. Pin the expert down. Always ask: "Is this everything you used to form your opinion?"
- Insist that expert explain the process of reaching his or her opinion.
- Check the data and processes used by the expert with your own expert.
- Get expert's own words, whether in written materials published by expert, transcripts of testimony, or in whatever form.
- Identify learned treatises to use for impeachment. Always ask: "What do you consider to be the major studies/treatises in this field?"
- Use the "Columbo approach." Common sense is your best weapon.
- If you decide to challenge an expert's foundation, always do it pre-trial.
- Be brief when challenging bias/expertise/competence in front of the jury.

For cross exam of defense expert:

- Highlight "hands on" advantage of state's expert.
"The person in the best position to evaluate 'X' is the person who actually did the autopsy, right?"
- Ask lots of "Garbage In, Garbage Out" questions.
"If the data you were given were inaccurate or incomplete, that could change your opinion, couldn't it?"