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MINNESOTA LAWYER

April 11, 2011

minnlawyer.com



Vol. 15, No. 15 | \$6.00

How To: Pick an expert witness

The best witness may not have the most impressive credentials

Sometimes the best expert witness doesn't have three academic degrees or a job at a prestigious hospital. Sometimes the best expert witness is a HVAC installer with 25 years of experience.



Donald Chance Mark Jr.

Donald Chance Mark Jr., an attorney at Fafinski Mark & Johnson in Minneapolis, had a case that involved a gas line explosion. The other side paraded a series of accident reconstructionists up to the stand, each with more titles than the last.

But Mark sought out real world experience instead of resume bullet points.

"I try to get the best qualified expert I can and that doesn't always means the [expert] with the most letters after

his name," Mark said. "My witness knew the equipment inside and out and had hands on experience and he was without a doubt the best expert in the case."

Too often attorneys focus on the wrong things when picking experts. Jurors aren't always going to be impressed by a job title or educational background. Instead, focus on communication skills and be prepared to sacrifice prestige for the end goal, Mark said.

"It is so important to establish a dialogue with the jury, to include them in the testimony. That is one of the things I prepare witnesses for, to try to make it a conversation, like a professor

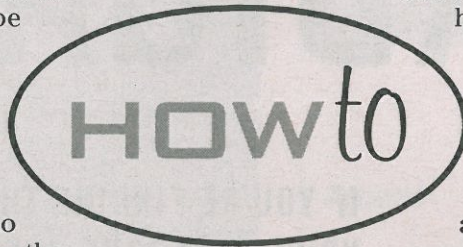
in class," he said. "I had one case where the other side brought in an expert who was very qualified, but was on TV a lot. He came off as too smooth and rehearsed and that didn't play well to the jury."

John Gilleland is a jury consultant with TrialGraphix. He

helps attorneys prepare experts to testify. He says that attorneys should look for witnesses who use plain English and avoid jargon whenever possible, and for in-

dividuals who can connect quickly with the jury, because eventually every juror experiences information overload.

"You want [an expert] who can start with the aerial view of what is going



on and then zero in on the more specific issues," he said. "To be effective you want them to be able to think on their feet and be comfortable and appear confident on the stand. You can identify [those traits] when interviewing potential [experts.]"

Mark said that in some kinds of cases there is a shorter roster of potential experts to choose from because of the issues involved. But lawyers should be careful not to use the same experts every time. He said there are some doctors who spend more time in the courtroom than practicing medicine and when that comes up in a trial, the jury will remember.

"I don't want somebody who will just say what I want them to," he said. "We have sophisticated jurors here in Minnesota, and they are going to see right through it if it is obvious the witness is less than genuine." 