

HIRING FORENSIC EXPERTS

By John F. Sase, Ph.D.

In this e-booklet, we help attorneys search for and to select economists and other forensic expert witnesses. The professionals in question are those who possess the optimal mix of qualities that produces the best return on investment in a case. We will consider three major qualities, the advantages of each, and the ways that retaining attorneys benefit from their choice of economists and other expert witnesses. These qualities include: 1) The attainment of a Ph.D. or peer credential, 2) Extensive teaching or public-speaking experience, and 3) Street smarts and actual case experience.

The Importance of a Doctoral Degree

All joking aside, the doctoral degree of a Ph.D. constitutes the peer-conferred license to practice at the highest level of one's discipline. As a result, this explains why a Ph.D. trumps a Master's degree, which in turn trumps a Bachelor's degree in a court of law and elsewhere. Of course, there is more to each degree than its brief title and point value. All too often, the only barrier that separates a Master's degree from a Ph.D. is the completion of and the defense of a dissertation to a doctoral committee. Though it may seem minor, leaping this final hurdle is not a simple task.

Many graduate students possess the drive and the ability to reach the penultimate level of ABD (All but Dissertation) after years of lectures, readings, papers, and tests. However, once doctoral candidates complete their comprehensive written and oral exams, they are left to their own devices to develop research topics and to discipline themselves to finish their dissertations. Here is where lots of students tend to flounder. Many times, the successful ones build upon life experiences, such as structuring and managing a small business or a nonprofit organization or organizing a political rally.

The advantage that doctoral-level professionals have over others in their fields flows largely from researching, developing, and writing high-strata documents in their concentrated areas of expertise. This exercise culminates in the delivery of a substantial, ready-to-publish document that tenders an original contribution to the field. Perhaps more important than the topic itself is the academic experience of managing a major project that demands intense focus and perseverance for at least twenty hours per week over an extended period of one to two years (or longer). As one of my doctoral advisors told me, "The most important part of a dissertation is getting it done!" Ergo, a completed and successfully defended dissertation merits the title and license of doctor while an incomplete work renders the ongoing status of an ABD to the candidate.

The benefits to attorneys who select an expert holding a Ph.D. include retaining a peer professional who is on par with a Juris Doctor (J.D.). These experts come into service with a proven ability to manage and complete complex projects. In addition, they render high-quality deliverables, do so on time, and provide professional follow-up. Choosing an economist or

other expert who possesses doctoral credentials from a reputable institution reduces the search and screening costs that accompany the retention process. In short, this process focuses upon risk management. Attorneys seek to minimize the risk that occurs before and after selection. Beforehand, one wants to minimize the risk of making an adverse selection, i.e., a bad choice. After the retention is made, minimizing the risk of moral hazard becomes the priority. Moral hazard is the problem that occurs if the expert cannot, or will not, perform to expected standards. Of course, risk minimization includes more than simply selecting an expert with a relevant Ph.D.

Never a Stroll in the Park

From the preceding discussion, we can understand that earning a doctorate is never a stroll in the park. The fact remains that only a minority of doctoral candidates complete a dissertation and its related requirements. Furthermore, many economists and other professionals who earn Ph.D. degrees choose to focus their careers solely on research and writing. This choice poses challenges in the expert-selection process for the academician who confines his/her career to this path because they generally refrain from teaching or from public speaking. Furthermore, not all teaching experience translates well into, or is an asset to, forensic-expert work. Throughout the years, I (Dr. Sase) have seen a number of my colleagues avoid introductory courses and limit their class loads to upper-level sections that require extensive, prerequisite backgrounds to understand the content.

I do not state this fact to demean the importance of their work or their dedication to the path that they have chosen. Rather, I make mention of it in respect to the consulting arena: Here we must remain aware that professional participation requires a balance of many skills. This kind of work demands a mix of abilities in which fluent communication with the general public remains one of the most critical elements. As a reminder, let us note that some of the greatest economists have been able to explain their views eloquently to the average citizen as well as to enclaves of academic peers. In writing my monthly column for the *Legal News*, I emulate the nineteenth-century British economist John Stuart Mills, who wrote some of his most influential articles in *Fraser's Town and Country Magazine*, a general-interest and literary journal that was like *Playboy* without the pictures.

Many of us who hold ourselves out as forensic experts routinely volunteer to teach the freshman survey and sophomore principles courses at universities. In part, we do this with the intent of staying in touch with students who have little or no background in our subject area. When colleagues ask me quizzically why I choose to teach these courses, I simply tell them that they keep me current for talking to jurors and others in a court of law. Taking this matter a step further, let me suggest this to attorneys: Search for experts who reach out to the larger community by speaking with groups at libraries and other meeting places where one can interact with a broad spectrum of society. At such forums, I find that I continuously meet interesting people and hear their fascinating life stories. What I learn from these folks not only helps me in the classroom but in court as well.

In short, the benefit of this to attorneys comes in the form of experts who do not talk down to people from the stand but instead embrace a human quality in the courtroom. A little humility can go a long way. Furthermore, I have noticed that experts who teach and speak appear more relaxed and controlled at depositions and on the stand than professionals who do not. Additionally, most experts who teach and present have mastered the art of PowerPoint, videos, and other visual tools that help to keep jurors awake, interested, and focused. Finally, lecture-seasoned experts tend to recover seamlessly from an occasional fumble and seldom find themselves intimidated by opposing counsel.

Being Street-Smart and Alley-Wise

Many academicians suffer from the affliction of having a soft, thin hide. I have seen and heard of a number of brilliant professors who crumble like tissue paper when attacked by an aggressive opposing counsel going for the jugular. Personally, I have experienced attorneys at depositions who have lunged at me, bellowing over the conference table. Presumably, these lawyers either have forgotten that we are in a discovery deposition, not a trial, or merely want to test the waters to determine how I might react on the stand. Will I crack? Will I falter in my testimony? Will I break down into tears?

As one who studies behavioral economics, this thin-skin phenomenon continues to intrigue me. This trait appears to be least prevalent among individuals who have survived the Hell of war or who have experienced a traumatic event during their formative years. More generally, this trait appears to diminish during childhood with rough play or running the streets.

Working minimum-wage jobs as teens or young adults while in school has provided further life lessons for many of us. I preferred delivering newspapers and working as a counter clerk. Other friends and colleagues gravitated toward bussing tables or driving a taxi. Nevertheless, working these seemingly menial jobs has contributed positively to our maturation process. Some attorneys and economists receive their *education de rue* by playing in rock or blues bands, performing in community or guerilla theatre, or demonstrating for emotionally charged causes. From such experiences, a group code seems to develop. This code of the street forms the seed for what later grows into a set of professional ethics. Learning mutual responsibility and dependence on one another through hard times helps to develop *humane* survival skills--ones that many people lack in this day and age. A number of individuals with whom I have made music and acted in theatre went on to become successful attorneys. If these life experiences have helped us to develop our professional practices in an ethical manner, then it seems that the outcome gained was worth the pain of not being paid at gigs, of working with temperamental musicians and actors, and of having audiences and venue managers threaten us or throw things at us.

Going around the Block a Few Times Can Cause Pain

In every pursuit, one has to start somewhere. In the wide field of forensic science, we eventually would find ourselves short of seasoned experts if attorneys did not give neophytes a chance to hone their professional skills. However, most attorneys still wish to hire an expert that has been around the block a few times. For forensic work, this means having a number of

depositions and courtroom testimonies under one's belt. This qualification begs the question of how much experience is sufficient. Considering that many experts take readily to forensic tasks while others wash out after a brief episode, it seems that the magic number of depositions and testimonies remains arbitrary. Nevertheless, based upon my questioning of attorneys and other experts and my personal experience, it appears that a forensic practice settles in after a dozen depositions and testimonies. Beyond this point, ongoing experience and exercises to improve one's ability hardly represent a waste of time. We know of one local law firm that has a television studio in its expansive domain and another law practice that has built a moot courtroom in the carriage house behind the mansion in which the firm is housed. They built these in order to practice, to review, and to improve the skills of their attorneys and to develop the on-stand performance of their clients and experts.

In my experience, most attorneys have a good handle on what they want from a forensic expert. However, some don't. These are the attorneys that have not used experts extensively or are new to the practice of law. The main credential for which all attorneys should look in an expert is the combination of academic credentials and street-smarts. Attorneys should seek out an expert who has gone through the grueling work of earning a Ph.D. Finally, this person should know how to communicate with and to the average adult in a down-to-earth manner.

--Dr. John

© 2011 John F. Sase

Video Version

Part 1: <http://youtu.be/vDjvsGMjrm4>

Part 2: <http://youtu.be/kGUY2aN6Z8U>