

Forensic Advice from a Long-Time Forensic Economic Expert Thomas R. Ireland

- *The KISS Principle.* - Anything too complicated for a jury of high school graduates to understand is not going to be helpful if you testify. Even lawyers are not economic or financial experts.
- *Don't be Slick!* Some experts think that expensive suits, Rolex watches, and very mechanized Power Point presentations add to the power of their testimony. What matters is being understood and being thought of as a normal person who is down to earth, and being respectful of the process. Slickness creates suspicion. Polish suggests rehearsal. Very expensive clothing or jewelry creates distance.
- *Don't Take Sides!* You will take an oath to tell the truth, the whole truth and nothing but the truth. That should mean something. Once you utter those words, your job is to assist the jury in making the hard decisions it needs to make. You assist best when you remember that it is your job to answer questions, not to advocate for the side that has retained you. Don't let your retaining attorney put words in your mouth any more than you would let the opposing attorney do that. Demonstrate your credibility by doing your very best to listen to questions and answer them completely and fairly.
- *Treat the opposing attorney with respect.* You are being paid well to tolerate the slings and arrows of litigation and it is part of the opposing attorney's job to make you get angry or defensive if possible. Don't let it be possible by maintaining an attitude of calm confidence in yourself while being respectful even if you are not being respected.
- *Admit Mistakes Immediately!* If you testify long enough, you will make mistakes in some aspect of your calculations. Following Murphy's Law, you may find these at the worst possible time. Generally, making mistakes that will not badly hurt your career, but attempting to cover your mistakes will hurt you. It may be awkward to admit mistakes, but you are much better off to admit your mistakes when you find them and immediately volunteer the consequences for your calculations. Juries may forgive your mistakes. They won't forgive your efforts to be evasive in covering them.
- *Don't volunteer information.* Telling the truth, the whole truth, and nothing but the truth does not mean telling the jury everything that you know. It means answering the questions you were asked fully and completely. Going beyond that will seldom provide any benefit for anyone, particularly you.
- *Make sure you know what the questions are.* Forensic economics has a substantial literature. Make sure you know what is available in that literature. If others use methods different than yours, be sure you know about those other methods and why you prefer the method you use. Sources will be discussed at the end of this presentation.

- *Don't express opinions beyond your expertise.* You may “know” that smoking shortens life expectancy, but an accountant (or an economist) is not an expert on how smoking shortens life expectancy. Once you express an opinion in an area like this, you open up a Pandora's box that can be used to make you look foolish. You make a much better impression by pointing out that while you may have personal opinions that smoking shortens life expectancy, you are not an expert on that subject and have not made assumptions of your own about such effects.
- *Learn to write well.* It is very important to be able to explain how and why you made your damages calculations. Good writing is not beyond your grasp. It requires making sure that you have explained every step along the way thoroughly enough that someone with a high school education can understand what you did. You don't need to be able to write a great novel, just a clear and concise explanation that tells what you did to come up with your numbers. The secret to good writing of that type is practice, practice and more practice. Ask others to read your reports to see if they are clear, if they contain extraneous material and if there are ways you could change your wording to make your explanations easier to understand. Then try to implement those suggestions.
- *Read relevant legal decisions.* Do not assume that the attorney who has hired you is an expert in the law of the venue for interpreting what are the rules for calculating economic damages. Ultimately, the attorney is a legal expert and you are not. You should never try to act as a legal expert. However, by reading the cases and legal instructions, you will become a much more helpful expert – especially when the attorney who has hired you is inexperienced.
- Talk to the jury. Don't talk down to them or assume that they know as much as you do. Realize that as the expert you are to give your opinion and that's all it is. The jury (or in some cases the judge) will be the ones making the final decision. They may, or may not, take what you, as the expert, say into consideration. Remember that they listen to all of the evidence while you do not (from Everett Dillman).