Economists as Expert Witnesses

Marvin Hayenga

Iowa State University
Basics to Consider

- Expert witnesses deal with complex issues in litigation -- causation, damages.
- Must be “qualified” on basis of education and experience.
- Should be an analyst and educator in the court, not an advocate or “prostitute.”
Some cautions

- Don’t expect to win everybody’s popularity contest! You may be viewed as being an advocate for one side, and enemy to the other.

- Takes time away from academic publishing, but can complement teaching and research activities.
Some cautions

Have tenure first on “politically sensitive” issues? May test administrative support for your academic freedom.
Getting started

- Networking and prior success provides referrals; make your interest known!
- Base your rates on your expertise, litigation experience, and what the traffic will bear
- Get assignment and role clearly defined
Your role

- May need to educate your lawyer-client regarding the relevant economic issues in the case and how you can be useful
- Suggest priority information needs, possible sources, experts, etc.
Your role

- Assist your clients re:
  - weaknesses of claims/analysis/positions of experts on other side
  - soft points in your own analysis and susceptible points in cross examination
Your analysis and reports

- Do your homework—know situation thoroughly and do work carefully
- Use generally accepted, reasonable analytical procedures; past court decisions may define those
- Do not put preliminary analyses and conclusions on paper or disk until requested by lawyer-client
Your analysis and reports

- Be consistent with prior published material and testimony; contradictions kill your effectiveness!
- Expect extremely careful critiques from opposing experts
Successful testimony

- Insist on practice sessions for direct testimony and cross examination
- Listen very carefully to questions
- Pause before answering
- Answer only questions asked briefly and to the point!!
Successful testimony

Depositions and trial can be worse than a prelim oral exam; very stressful!!

Simplify logic and explanations; communicate with jury at their level of sophistication; avoid jargon!!

Avoid perception of arrogance; it reduces your effectiveness
Successful testimony

- Avoid flippant remarks, game playing with opposing counsel
- Watch out for traps--examples:
  "How much are you being paid for your testimony?"
  Hypothetical questions--don’t accept assumptions inconsistent with the situation
Successful testimony

- Be consistent and honest
- Use available opportunities to restate or reinforce your key points
Conclusions

- Serve as a teacher/educator to the court on complex issues
- Can provide a critical service to the judicial system
- Provides some interesting challenges for problem solvers, and access to proprietary information otherwise not available
Conclusions

- Can lead to contributions to the professional and trade literature
- Can provide real world examples to spark interest in the classroom
- Has opportunity costs, but can pay off professionally and monetarily