

Expert Witness – You Are It!©

By: Catherine L. Wolfe, Attorney

Traditionally people think of veterinarians when they think of experts in animal cruelty cases but they are not the only game in town. To the contrary, many of us qualify as experts in the area of animal cruelty, and can and should be used as expert witnesses. This is especially true since veterinarians are not always available, especially in remote areas, and may have little or no time owing to the time constraints of their practice. It is therefore imperative that you have an alternative expert witness available, and that would be you!

Generally, to qualify as an expert witness one need only have **above average knowledge** of the subject. When you think about it, that is a pathetically low standard, but it does happen to be the law. And, that knowledge need not have been acquired through formal education. Experience, training, informal learning, study will do – anything that gives a person **above average knowledge** on a subject.

I was explaining this to a lady once and she was adamant that a formal degree was necessary to be an expert witness. I assured her that that was not the law and then did some legal research to prove my case, as it were. Low and behold, I found a remarkable case from the Michigan Supreme Court case in the 1920's. In that case, the Michigan Supreme Court held that a "hobo" who had ridden over 100 trains was qualified to testify **as an expert witness** concerning the impact of railroad cars. The "hobo" had no formal education, had never worked for a railroad, and yet, he qualified as an expert because of his experience.

I first began contemplating this issue in relation to animal cruelty cases when an animal control officer told me of an awful case where she personally witnessed a man pick his dog up and hang it in the air by its leash which was attached to its collar. The man did it in his driveway, in broad daylight. She charged him with animal cruelty, which it clearly was. Unfortunately the Judge dismissed the case because there was no expert witness to testify that the dog felt pain in that circumstance.

First of all, that should be a matter of common knowledge. In such cases, where a particular fact is so well known, a Judge may take **judicial notice** of the fact so that it becomes a given; it is so obvious that no testimony is necessary to prove it at trial. As an example, a Judge may take judicial notice of the fact that the sun rises in the east and sets in the west, that grass is green, and that insurance fraud causes increased insurance rates. By the same token, I believe it is common knowledge that dogs feel pain when they are strung-up/hung by their neck/throat, and that a Judge can and should take judicial notice of that fact. In such cases, be sure that your prosecutor requests judicial notice so that you do not need to produce any evidence – that fact is deemed to have been established without evidence.

Second, even if a Judge refuses to take judicial notice of the dog's pain when being hung, that is a matter of common knowledge that would not require expert testimony to prove. Expert testimony is only required when specialized knowledge is necessary for the Judge or Jury to

understand evidence or determine a fact. The issue of the dog's pain was not rocket science that required expert testimony. Most Judges and Juries will understand that a dog being hung will experience pain; they do not need expert testimony to understand that.

However, if a Judge requires testimony, non-expert testimony should suffice. That means that anyone, including the Animal Control Officer involved in the case, may attest to the fact that the dog experienced pain. That testimony may be based both on the witness' experience, training, and education, as well as on her observations of the situation (i.e. the fact that the dog was struggling to free itself and to breathe).

Finally, since the Judge required expert testimony, the Animal Control Officer could have requested that she be allowed to testify as an expert witness. The Animal Control Officer certainly had **above average knowledge** of the subject based upon her experience and learning. In fact, although I would never consider myself an expert in dog behavior, I would easily qualify as an expert witness just by virtue of having lived with dogs for years. That has given me years of experience and **above average knowledge** on the subject of dogs feeling pain.

Interestingly, I get the biggest argument on this point from animal law enforcement officers. In every class I teach and every presentation I give, at least 1 student or attendee argues that they are not experts on the subject of animal pain, care, treatment, etc. It is vital to the welfare of the animals that you begin to think and act like the animal experts that you are. The sooner you view yourself as an expert, the sooner others will view you as such. Veterinarians may be the experts of choice these days, but just because they are credentialed does not automatically make them a good witness. They may have poor logic, be inarticulate, have an unimpressive demeanor, or be unpersuasive in another way. That could be catastrophic for your case.

I actually experienced this in a child custody hearing. I had 2 medical experts lined up to testify. The first one was a general practitioner and the second one was the medical "specialist." I put the general practitioner on the stand first, and used the "specialist" as the grand finale. I had interviewed both physicians prior to the hearing and they both appeared to be good witnesses. However, at the hearing, the general practitioner really carried the day – he possessed wonderful logic, a congenial demeanor, and explained his reasoning very clearly. In a nutshell, he was terrific.

On the other hand, the "specialist" was a complete flop. He was abysmally haughty and arrogant, refused to state any of the facts and conclusions he had made in my phone conversation with him, and was a colossal failure. Thus, I learned first-hand that credentials mean nothing when it comes to the quality of a witness' testimony. I would take a non-credentialed, smart, well reasoned witness over a world-renown expert with poor courtroom demeanor and illogical conclusions, any day of the week.

The beauty of all this is that you always have a great expert witness on hand – YOU! Start viewing yourself as the animal expert that you are, and others will begin to do the same. For the sake of the animals, it is critical that you do so and you can begin by preparing a

professional resume and showing it to your prosecutor to use in court to qualify you as an expert witness. Judges and Juries love expert testimony so give them what they want.

About the Author: Ms. Wolfe is an attorney in Michigan. She is an expert in animal cruelty investigations. She founded Wolfe Pack Press (a 501(c)(3) public charity, www.wolfepackpress.org) to develop and distribute educational materials to prevent animal cruelty. She wrote the book, Get the Edge in Fighting Animal Cruelty Cases, and is a national speaker, having given presentations at the 2005, 2006, and 2007 NACA national conferences. Ms. Wolfe has also taught the Level II course for cruelty investigation certification for ACCI (the Association of Certified Animal Cruelty Investigators) and been a presenter for numerous other organizations, including the Michigan Humane Society, and the Michigan Association of Animal Control Officers.