

EXPERT WITNESSING BY MARKETING ACADEMICIANS: AN EXPERIMENTAL STUDY OF PROFESSORIAL PARTICIPATION AND ITS IMPLICATIONS

John M. Hess, University of Colorado, Boulder
Theresa M. Szczurek, University of Colorado, Boulder

Litigation is increasingly becoming a major factor and expense in contemporary society. Along with the general growth in the use of expert witnesses, there is also growth in use of academicians and, specifically, marketers as witnesses. By serving as expert witnesses in government hearings, arbitrations, civil cases, or criminal cases, increasing numbers of academic marketers play an active role in influencing cases, legal precedents, and public policy.

An expert witness is a specialist who utilizes academic, technical, and practical knowledge and research to provide information and testimony in criminal or civil cases, arbitrations, or government hearings. Expert witnesses come from all areas of academe, but the volume of activity varies greatly by field. Yet, a review of legal, marketing, and special functional literature shows a substantial gap in our understanding of how marketers serving as expert witnesses affect public policy and business decisions.

Having acknowledged the increasingly important role of expert testimony and the unique expertise of academic marketers, this research paper focuses on the role of marketing professors as expert witnesses. The specific objectives are to explore the impacts of and motivations for expert witnessing activities by individual academic marketers and to examine and review some macromarketing implications of such activities. We consider the impacts on individual witnesses, the marketing profession, the university, the legal system, and society as a whole.

METHODOLOGY

Original information was gathered using individual interviews with 20 expert witnesses and 20 lawyers from across the nation, 2 focus group interviews of lawyers and judges teaching in the National Institute of Trial Advocacy, and a national survey of academic marketers. Academicians from all specialties and disciplines at a major public state university were also surveyed, but this paper focuses only on marketers.

The population of interest was marketing academicians; the questionnaire was sent to a random, sequential sample of 300 academic members of the American Marketing Association. The response rate of 31.7 percent (95 respondents) indicates strong topical interest. Since response rate is likely to be higher among those who have served as an expert witness, this study may overstate the proportion of professors involved in expert witnessing. The demographics of these respondents are: 89% male, 65% tenured, 88% with doctorate, and 70% in full or associate ranks. Respondents came from small to very large universities and from a wide range of marketing specialties.

The respondents were divided into two groups: *Expert Witnesses (EW)* for those who have served as expert witnesses within the past 5 years and *Non Expert Witnesses (NoEW)* for those who have not. Analysis determined that the tenure and rank of these two groups differed significantly. As expected, EWs are most typically a full or associate tenured professor with a doctorate, while NoEWs are more likely assistant professors without tenure.

RESULTS

Some Trends. A greater number of experts are being used within a case; in important litigation, lawyers increasingly use multiple witnesses within a specialty. Increasing use of academicians was suggested as a second trend. Nearly one third of our respondents had participated in at least one case within the last five years; nine tenths would like to do

such work. The third apparent trend relates to having the expert build the case rather than simply providing expert testimony.

Effects on The Individual Witness. Academicians involve themselves as experts for a variety of reasons. Money was the chief motivator, but professional growth, variety, and public service were also important. On a 5 point likert type scale where 1 was very high importance and 5 was no importance, the mean scores were: Income 1.9, Variety 2.3, Professional Growth 2.5, and Public Service 3.7.

University Impacts. The university both affects and is affected by expert witnessing activities of professors. Marketing professors generally agree that the results are generally positive even though the university does not strongly facilitate such activities. The majority of respondents thought their work would not jeopardize objectivity of the university and judged the contribution to research leadership positively. Most EW faculty spend a relatively small amount of time on this type of activity; eighty six percent averaged one day or less per month. Over three fourths (77%) of both groups agreed that this activity should be counted as consulting. As with consulting, association with a university may be a valuable source of referrals. Departmental or colleague referrals were also important.

Professional Aspects. Expert witnessing provides an opportunity for marketers to espouse their theories. Never the less, there is difference of opinion about the professional contribution of this activity. Understandably, EWs considered expert service as more beneficial than NoEWs, but both were generally positive. More EW than NoEWs thought witnessing jeopardizes professional objectivity. This may indicate that loss of objectivity is more apparent to those who have been involved in the process.

Legal Implications. Experts may contribute to the operation of the legal system by helping with the case, and by interjecting facts, expert opinion, and objectivity to the legal process. Conversely, some think that experts are over used and counter-productive and that more testimony is given than needed. Most respondents, however, agreed that expert testimony was beneficial to the working of the law. In many instances studied, it seemed that marketers were brought into the case almost by chance; most lawyers did not know *a priori* what special skills marketing academicians could add to a case.

Social and Public Policy Contributions. Although public service was not listed as a primary motive for expert witness activities, the benefits of a more informed and efficient legal system can hardly be questioned. Two and one half centuries ago in his "Fable of the Bees", Bernard de Mandeville argued the "Private Vices, Publick Benefits" aspect of activities motivated by self interest. Using bees as an analogy to humans, a person may undertake an activity due to self-interests, but in so doing makes a large contribution to society. We may witness primarily for money and experience, but in so doing we contribute to the string of precedents on which our legal system is built and to society in general. Every case offers the possibility of influencing the body of legal knowledge and, hopefully, each witnessing assignment contributes to a just public policy decision.

References and/or article are available upon request.

Contact: John M. Hess
University of Colorado
College of Business
Boulder, CO 80309-0419