An Expert’s View

Expert witnesses play a vital role in many correctional lawsuits. An experienced expert may participate in more inmate lawsuits than any of the lawyers representing the parties in a given case. We thought it would be interesting to get a different view on the litigation process so we turned to Tom Rosazza from Colorado Springs, CO.

Tom Rosazza brings over 35 years of experience in corrections to the witness stand. He worked in corrections in the military, was involved for a number of years with correctional standards in Maryland, and has consulted with correctional agencies for over 20 years, mostly in the areas of liability management, standards development and jail planning. He also has written many monographs, articles and training courses on jail administration. He is the co-author of the Resource Guide for Jail Administrators and the author of Jail Inspection Basics, both of which are available from the National Institute of Corrections. Mr Rosazza can be reached at www.rosazza.com.

Since this article is about expert witnesses and the court process, we put Mr. Rosazza on the stand and swore him in. The following is his testimony and he is sticking to it.

CLR: How many times have you been retained as an expert witness in a corrections case?

Rosazza: Over 200 times over the past 15 years.

CLR: Of those 200-plus cases, how many times have you actually testified at trial?

Rosazza: Maybe two to three times per year. Deposition testimony tends to happen more often, perhaps once monthly.

CLR: You have worked for both plaintiffs and defendants, have you not? What is the approximate breakdown?

Rosazza: The cases are generally split 50/50 between plaintiffs and defendants.

CLR: Aside from expert witnessing, isn’t most of your work as a correctional consultant, working with agencies?

Rosazza: Perhaps.

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National Prison Reform Commission Begins Work

by Margo Schlanger

Editor’s Note: Margo Schlanger is Professor of Law, Washington University in St. Louis, and a member of the Commission on Safety and Abuse in America’s Prisons. She is a former trial attorney, U.S. Department of Justice Civil Rights Division. She is the author of a superb article on inmate access to courts: Inmate Litigation, 116 Harvard Law Review (2003). You can contact her at mschlanger@wulaw.wustl.edu

Chaired by former Attorney General Nicholas Katzenbach and former U.S. Circuit Judge John Gibbons, the Commission on Safety and Abuse in America’s Prisons opened shop in March and held its first public hearing in April in Tampa, Florida. The Commission is a private group, organized by the Vera Institute of Justice in New York. It brings together 21 commissioners — civic leaders with law enforcement backgrounds, inmates’ advocates, former inmates, corrections professionals (from both jails and prisons), forensic psychiatrists, law professors, and others. Some of the commissioners are very high profile — they include William Sessions, former U.S. District judge and FBI Director; Marc Morial, former Mayor of New Orleans; Gloria Romero, California Senate Majority Leader; Gary Maynard, Director, Iowa Department

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Most of the time though, they may not see the need for an expert until litigation is considerably underway.

CLR: When should someone retain an expert in jail litigation?

Rosazza: I don't know if there is a hard and fast rule on when someone needs to hire an expert, but common sense suggests that when there are complex issues of jail management and practices involved, an expert can be valuable. In some cases, the parts seem to speak for themselves, but in the side has an expert, the other side may need one. Or, the attorney may feel that an expert can educate the jury and lend credibility to the claim.

CLR: People mostly think of an expert as testifying in support of a particular position. But are there other tasks that you perform when someone retains you as an expert? For instance, do lawyers use you to analyze and critique the other side's expert to help the lawyer who hired you attack the expert?

Rosazza: An expert must assume that the case will go to trial, even though in my experience that rarely happens. The role of an expert really includes two main functions: that of subject matter expert and that of consultant.

The subject matter expert reviews case materials, develops opinions, constructs an expert report, and testifies in deposition and/or trial. The consultant assists the attorney in technical matters related to jail or prison operations, standards and accepted practices.

I am often asked to critique the other side's expert report especially when that expert is to be deposed. In that case the attorney will ask me to develop questions about the expert's opinions, bases for those opinions, and questions about the expert's background.

CLR: When you are sitting around having a beer with colleagues after work, do you have a favorite 'expert witness' story that you like to tell? Can you share it with our readers?

Rosazza: I testified in a 1983 case where an inmate was severely burned by his cellmate. The jury award $1.6 million after testimony affirmed that the captain of the cellblock refused to move the plaintiff from the double cell, even after the cellmate told the captain that he would burn the cell. The captain told the cellmate: "I don't care if you burn both of your asses." That statement sort of nailed the deliberate indifference claim.

After I testified on direct, and during a break, I was told by plaintiff's attorney that the defense counsel was coming after me. I guess he saw his case falling down around him and he needed to discredit me. You could taste the tension in the courtroom.

Counsel then came at me with all guns blazing. He fired off question after question hardly allowing me to finish my answers. He was getting more and more animated with his arms thrown, and books slamming on the podium. The tension became more intense.

The jury was leaning forward and ready into the dramatics. My strategy was to remain calm (which was no easy task) and not let him rattle me.

The dialogue went something like the following: "Mr. Rosazza, don't inmates often argue?" I replied calmly that they do. Then he asked, "It doesn't mean that they are out of control does it?" "Not necessarily," I replied. Then he said, "It's sort of like what's going on here in this courtroom, isn't it? I mean we are in control here, aren't we?" I replied, "Counsel, I'm in control, but I don't know about you."

My response broke the tension and the jury, a person, broke into continued laughter. Even the judge had a smirk on his face. Counsel's second chair could only look at the floor and shake his head.

No further questions. You may step down.

Rosazza: Thank you, Your Honor!
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outside the cell” and to work collaboratively rather than adversarially, if we ever hope to accomplish this vision.

Despite its packaging as a law review issue, this collection of articles and essays offers an unprecedented analysis of the past efforts at prison reform through litigation in the United States. I predict that the vision it presents of the future of prison reform will stand the test of time.

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Footnotes
2. New York State Special Commission on Attica, Attica (1972), at xvi-xvii.

Copies: Pace Law Review, 78 North Broadway, White Plains, New York 10603. The entire issue of the law review or any of the articles can also be downloaded for free at: http://library.law.pace.edu/research/prison_reform_revised.html. Additional hard copies of the law review may also be available through Professor Michael Mushlin at Pace Law School, who can be reached at: mmushlin@law.pace.edu.