

Selecting Expert Witnesses: *What You Should Know*



by G. Kent Thorsted

The author's quest for an expert on ramp design led him to Professor John Templer (pictured) and a successful personal-injury case.

Learning about a field of study • doing your homework • paying the right price — all these add up to success when hiring expert witnesses.

Many years ago, I represented an injured woman who had suffered a brain injury when she fell and struck her head while walking in a mall. She had been walking down a relatively steep ramp inside the mall when she slipped on the linoleum floor and literally pitched forward and landed on her head. She did not see anything on the floor, but she described the sensation as slipping on something very slippery. She suffered a brain injury and lost her job. Her personal losses were devastating.

I set out to understand why she had fallen. Prior to filing her case, I had gathered some basic information about the design of the ramp from the building-permit documents. These documents showed that the ramp had been designed at the technical limit of steepness under the building codes. It was apparent when I walked down the slope myself that the ramp was uneven in grade. I had worked with concrete many years earlier as a construction worker for my uncle, and I knew that the type of concrete installation had resulted in the unevenness of the slope of the ramp. This meant to me that there was a good possibility that where my client fell, the ramp violated the building code.

I next hired Conrad Kraft, Ph.D., an excellent human-factors expert, to help me understand the factors involved in her fall. I had used Dr. Kraft several times before in slip-and-fall cases. Dr. Kraft and I proceeded to the mall to view the area. Dr. Kraft brought a couple of bubble levels with him, and using the bubble levels, he found that the ramp area where my client

steepness play in her fall and injuries? (2) What significance did the linoleum surface play in her fall and injuries? (3) Why did she describe her shoe as slipping before she fell, even though she did not see any material on the linoleum? (4) How did her slip cause her to be launched forward down the ramp? Dr. Kraft told me that the answers to these questions were beyond his ken.

I decided then to look for the best ramp expert I could find. On a Saturday, I went to the Architecture Department at the University of Washington. It housed its own library. It took about an hour or so to get a lead on a ramp expert. After I had plowed through several design books, I had a name: Professor John Templer. John Templer was the Regents' Professor of Architecture at Georgia Institute of Technology (Georgia Tech). I followed through by reading all of the research and book-chapter articles he had written on stairway and ramp design. I discovered that he had transformed the little-studied stairway and ramp design into a rigorous field of study. He developed laboratory tests to measure and induce falls on stairs and ramps in a variety of conditions. He traveled throughout the world to photograph and study stairways and ramps. He did research on the safety records of various stairway and ramp designs. In short, he was the pioneer and world's foremost expert in stairway and ramp safety design. His book, *The Staircase*,¹ is the definitive work related to stairway and ramp design. Professor Templer is now happily retired.

I arranged for him to come to Seattle to see the ramp and perform measurements and tests on it. Before he arrived, I found out through discovery that the mall owners had allowed the restaurant located close to where my client had fallen to use

In fact, my client had fallen just outside that garbage room. Professor Templer viewed the site and performed several tests, including measuring the coefficient of friction of the linoleum-covered ramp using the Brungraber device. Professor Templer concluded that the coefficient of friction on the linoleum was inadequate even for a flat surface. For a ramp surface of that steepness, the published research required approximately 20 percent higher coefficient of friction than the standard for flat surfaces. With the presence of grease mixed into the waxed linoleum surface, as my client would have encountered, Dr. Templer concluded that the linoleum-covered ramp would have been "very slippery" — just as she described. Next, he could describe the precise mechanism that led to her headfirst dive onto the concrete ramp. He described her slippage on the floor, initial attempt to shift her weight backward, and, finally, how she was propelled by gravity and the steepness of the ramp onto the ramp headfirst. It was something he had seen, tested, and filmed in slow motion scores of times at his laboratory. To Professor Templer, my client's brain injury was the kind of event and injury he had devoted his professional life to study and prevent.

Set against his example, I offer my advice from lessons that I took from him and my other experiences with experts.

1. "The pursuit of truth will set you free — even if you never catch up with it." — Clarence Darrow

Your proper mindset in this process should be to pursue the truth and pursue it hard. Finding an expert who will agree simply to bolster your client's case is rarely a good idea. Sooner or later, the truth usually prevails, and the only real question is whether we want the truth at the beginning of our case or at the end. This is where a Professor Templer comes in. My goal was, and your goal should be, to find the best expert you can. The truest test of expertise, I believe, is an expert who knows what the limit of his knowledge is. For every issue related to the ramp, Professor Templer could tell you precisely what he knew, what he did not know, and what was possible to know at that time concerning stairway and ramp design and safety. This is a mean trick, since it requires the expert to know literally everything about his field of expertise. Darrow's

he held. Just as he would not overstate his opinions, he would not be bullied from them. This was his life's work. Where other experts had more knowledge on an issue, he encouraged me to retain them. Yes, he knew names. I ended up retaining the top expert on designing anti-grease flooring for restaurants such as McDonalds. That expert, too, was great.

2. First — be your own expert.

You should first acquire knowledge about the expert's discipline, and you should do this when you are in the process of finding the best expert. Your understanding of an expert's knowledge will be critical at every phase of your case, but no more so than in the beginning, when you are making critical decisions whether and how you will proceed. Before you select your experts, do some basic research yourself. Go online, go to the library, and call other attorneys — do not stop until you have developed some understanding of the issues involved. This will help direct you to a John Templer. It will also help you hire a John Templer to review your case.

The best expert's motivation is not, foremost, money. Although many of the John Templers have extensive forensic experience, they are choosy about the cases they take. If you approach them in a manner that shows you have some understanding of their work and the issues in your case, your chances of getting them to review your case are much higher. I try, prior to contacting a top expert, to read several of that expert's research papers and other available written materials, including those that deal with my specific issue. Usually, I have at that point a good idea about my issue and perhaps some idea about the expert personally. Then, when I contact that expert, I mention that my question is related to his research paper or article and I ask a specific question. This allows me to gauge how friendly and communicative he is and even measure his expertise. Quite often, they will take time to explain their research and answer my question. These are busy people, but they are passionate about their area of expertise. If the conver-

need their further expertise, I offer to retain them and send them the file. However, after my initial call, I probably know their preliminary opinion and I know whether that person is the kind of expert that I want for my case.

3. The early bird catches the worm.

Think of your process of finding experts as a race. It is a race to hire the best expert you can find. Sometimes, there is one leading expert in the world or in the nation on the critical issue in the case. If the other side finds that expert first, you lose. My cousin, Jack Helgesen, an excellent trial attorney in Utah, once had the opposing expert witness drop out of the case on the spot when he learned who Jack's expert was. Jack had retained the preeminent expert in the country on emergency medicine, Dr. Peter Rosen.

4. Be cheap.

Retaining the best expert is cost-effective. Surprisingly, their hourly rate is usually no higher than lesser experts charge. If you consider that their superior knowledge and experience allow them to get to the heart of any issue quickly, their total fees are usu-

ally much less than a lesser expert would charge. It is quite common for them to request your documents for review, first with a relatively small retainer before anything more official is agreed. This quick, relatively inexpensive method is their way of assuring that they will agree formally to appear in your case only if they can wholeheartedly support your client. I have had some top experts review my file and send it back with my retainer check. One expert explained to me when we were going through his findings over the telephone that he did not feel right about accepting money I had sent as a retainer. He explained that he would rather not be paid because my client had lost her husband in the incident. Professor Templer's value to this case was far beyond his pay.

5. Money can't buy you love.

If you value your integrity and believe that it is essential at trial, having the best expert

superbly knowledgeable, but also a person of integrity. Professor Templer approached his discipline as a person of science. He published his findings in research papers, books, and public presentations. Openness and transparency are hallmarks of both true experts and scientists. True experts usually are also involved and active within their own professional associations. Many of them rise to leadership positions within those associations. True experts find a calling to promote their discipline and associate with their peers. Integrity in their pursuit of knowledge and their association with others is an important natural part of what makes a true expert.

6. Scientists are cool.

The old and conventional wisdom is that scientists are disorganized, odd, forgetful, and, most of all, poor communicators. Conventional wisdom, like common sense, is mostly nonsense. The very best experts are uniformly good communicators. First, they are very smart. Second, they have a profound command of their field, which the lesser expert lacks. Put simply, lesser experts cannot explain in simple terms to others what they do not fully understand. Whether through teaching, research, writing, or oral presentations; true experts devote a significant part of their lives to sharing their expertise with others. This means that almost invariably, true experts are effective communicators.

7. Where to find them.

Look online. For medical experts, use PubMed (www.pubmedcentral.nih.gov) and do keyword searches on the medical issues you have developed. The abstracts that you can access on PubMed allow you to screen for relevant research, but you will probably have to go to a medical library to read the full research articles. If the articles fit, those articles normally give you contact information for the researchers. Contact them. If they are not interested or their expertise does not match, ask for a referral to some of their peers. Professional associations are also a fruitful source of names and contacts. Almost every field of expertise has one or more professional associations that serve and promote that field. Leaders of these associations are generally very helpful.


I am not suggesting by my choice of Professor Templer that only the top expert in the world or nation or region will do. The number of true experts suitable to you will

Find and select the best expert you can.

8. Humanity over science.

Dr. Templer's quest to learn about stairs and ramp safety and design started when his sister-in-law was injured in a fall at the Metropolitan Museum of Art in New York City. As he explains it, there was very little research or written material at that time concerning stairway and ramp design. This was despite the fact that, at that time, there were thousands of deaths each year and millions of injuries from stairway and ramp falls.² Dr. Templer decided to do something about this. His research and work in creating and promoting the science of stairway and ramp design has saved thousands of lives and countless serious injuries. In addition, Professor Templer led Georgia Tech to create a doctoral program in architecture. His influence and leadership was instrumental in causing Georgia Tech to establish several interdisciplinary research centers in the Department of Architecture. Dr. Templer's approach in promoting his students and architecture towards the rigor of science to solve human problems is the same approach he used to address the tragedy of stairway and ramp falls. This commitment to humanity is at the heart of all attributes of true experts.

Yoda knows best

As Yoda might say: "Truth you shall seek, true expert shall you find, success shall find you." Thank you, Professor Templer, and all the other experts who hunger for the truth and have a passion for humanity. 

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NOTES

1. Templer, John, *The Staircase*, Cambridge: MIT Press, 1992.
2. Deaths and injuries from such falls still cause major suffering today. In the United States in 2006, there were 21,200 accidental deaths from falls, with a high percentage of those coming from stairway and ramp falls (National Safety Council 2006). Millions more were injured that year, including approximately two million

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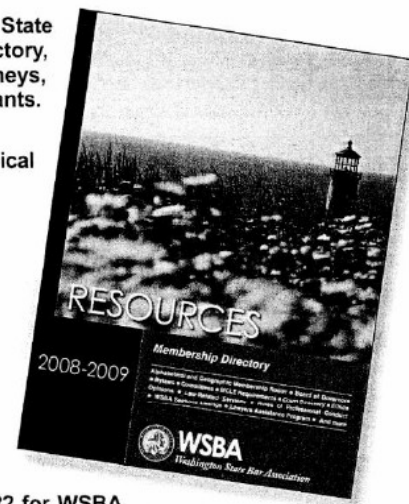
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