



THE • GOTHAM • CITY INSPECTOR ©

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TO OUR READERS

As another glorious spring turns into summer, we're all hoping that the worst of the recession is behind us. Even as the bad news continued unabated this winter about massive foreclosures, falling home values and rising unemployment, there have been little glimmers of hope for homeowners and prospective homeowners. Federal tax credits for energy efficiency have been improved, which means savings for consumers. Congress is addressing ways to encourage verified home inspection as a way of protecting potential homebuyers. Also, plenty is being done to stem the tide of foreclosures and get housing back on track. Let's all look forward to better days ahead.

In this issue of Gotham City Inspector, we are pleased to bring you a special report on becoming an expert witness. Recently, Alvin and Larry Ubell gave a presentation at the Brooklyn chapter of the American Institute of Architects about how to prepare expert testimony for a trial, hearing or deposition. Their presentation is summarized here, but for the full text and comprehensive information on readying yourself as an expert, read their full transcript online at

http://www.accuratebuilding.com/services/legal/papers/aia_expert_testimony_presentation.html

From all of us here at Gotham City Inspector, have a wonderful summer!

Jennifer S. Bleyer, Editor-in-chief

ALVIN & LARRY UBELL - The Gurus of How-To can be heard on **The Leonard Lopate Show**. Tune to WNYC-Radio the second Wednesday of every month from 12 Noon to 2 PM. Radio AM 820 - 93.9 FM. <http://www.WNYC.org>



"FOR YOUR PROTECTION, GET A HOME INSPECTION"



The U.S. House of Representatives committee charged with solving the home mortgage, foreclosure and credit crunch crises has added key home inspection counseling provisions to the Mortgage Reform and Anti-Predatory Lending Act, HR1729. If the bill passes as

expected, the provisions will educate prospective homebuyers confused by the complicated home-buying process about the importance of having a voluntary home inspection done by a qualified inspector. For more information and updates on this groundbreaking development, go to the American Society of Home Inspectors (ASHI) site. www.homeinspector.org/news/details.aspx?id=57

SAVE ENERGY AND MONEY



In the Stimulus Bill signed by President Obama in February, significant changes were made to the tax credit available for energy efficiency in homes. Among the changes are an extension of credits through 2010, a rise in the credit from

10% to 30%, and a removal of the \$200 cap on energy efficient windows. For full information about the federal tax credits for energy efficiency, go to www.energystar.gov/taxcredits

R.X. for SELF-MANAGED CO-OPS and CONDOS

Most self-managed co-ops or condos are smaller buildings without the resources for a management company to oversee daily operations, even though they are often just as complicated to run. While they may be able to manage their board and finances, they seldom have the ability to analyze or solve a building's physical problems. Accurate Building Inspectors is pleased to offer consulting and troubleshooting services for self-managed co-ops or condos, and will work on a short- or long-term basis on issues big and small. For more information on the services offered by Accurate Building Control Systems, visit us online at www.accuratebuilding.com/services/management/



BECOMING AN EXPERT WITNESS:

A SPECIAL REPORT

By Lawrence Ubell & Alvin Ubell



A presentation before the American Institute of Architects (AIA) Brooklyn Chapter, April 15th, 2009.

ARE YOU AN EXPERT? Could you be? Experts are often needed in court trials, depositions or hearings because judges, lawyers and juries may not have sufficient knowledge about the technical, scientific or intellectual aspects of a dispute. An expert is sometimes necessary to shed light upon the subject.

Anyone who has a strong knowledge base in a particular field can be an expert. Someone with only theoretical knowledge in a particular discipline who never participated in its use or performance in real time, as it pertains to the disputed technology or science, may not make a good expert and could be disqualified from testifying. You might be an expert if you have unique experience with and knowledge of a discipline and if you would feel comfortable being challenged, badgered, baited and probably insulted on your expertise. If you can control your emotions and not lose your cool and composure, you may be a good candidate. Here are some of the steps to becoming an expert witness.

PREPARE YOUR CURRICULUM VITAE

- **A CURRICULUM** vitae for witness testimony should catalog your experience on single page, including education, publications, important jobs, positions held, teaching, awards received and major projects, with dates and duration for each.

- **IT SHOULD** not look like a resume and it should not look like you are seeking a job or a new position.

CLARIFY YOUR ROLE

- **YOU ARE** serving both the attorney and client whose interests must coincide since they both need your help.

- **YOU ARE** also serving the trier of the facts, which is either a judge alone or a judge and jury together.

- **YOUR TASK** is to explain, teach and inform, in the simplest terms, complex facts. This should be done without using trade or professional language or jargon, but in plain language.

KNOW WHICH CASES TO ACCEPT OR DECLINE

- **ACCEPT CASES** where the matter at issue is totally within your field of education, experience and expertise, and where you know with certainty that you won't be disqualified at trial.

- **DECLINE A** case that is beyond your professional knowledge, expertise and understanding; that you feel is unethical; that you are offered more compensation than you deserve; for which the information and facts given to you are not credible; or that you are uncomfortable with the matter, for what ever the reason.

BE DILIGENT ABOUT RECORD KEEPING

- **DON'T THROW** anything away. Save everything pertaining to the case.

- **CREATE A** file with the name of the engaging lawyer, the client's name and date, and keep it in a safe place.

- **ALL CORRESPONDENCE** you receive from anyone pertaining to the case should be dated, stamped on the date of receipt, keeping the mailing envelopes.

- **DATE AND** save all your work, photographs, evidence and documents pertaining to the case.

UNDERSTAND YOUR RELATIONSHIP WITH THE ENGAGING ATTORNEY

- **BE OPEN,** totally truthful and forthcoming with the engaging attorney, imparting all you know about the subject.

- **UNDERSTAND, THAT** the lawyer may not know a thing about your skills or the technology in the disputed matter. You are there to help, teach and train the lawyer so that he or she has a comfortable understanding of the technology or science.

UNDERSTAND YOUR RELATIONSHIP TO THE ADVERSARY ATTORNEY

- **WITH REGARD** to the opposing counsel, be friendly but do not discuss any aspect of the case even if he or she was once a client of yours, and do not get involved in anything that might be construed as a conflict of interest.

- **IF YOU** have a relationship with any person or entity on the opposite side of the dispute, you must inform the engaging attorney as soon as you are aware of the connection.

DO YOUR JOB AS AN EXPERT

- **PART OF** your job as an expert may be to find evidence that proves or disproves

a fact or proposition, which may include reading depositions, documents, bills, photographs, drawings or samples or conducting site inspections.

• **YOU MAY** also be called upon to reconstruct a condition, create sketches or models and develop concepts to explain what you have discovered and what your theory is in the disputed condition. You may have to examine relevant trade publications; visit city agencies, libraries or museums; or do research on the Internet.

• **YOU MAY** need to measure, weigh, photograph, take samples for testing or test things on your own so that you can explain in court what and how you did what you did and then render an opinion.

PREPARE YOUR REPORT

• **IN MOST** cases you will be asked to prepare a written report. Understand that this report will be given to the adversary counsel, and their expert who will have an opportunity to review and critique it, so be clear, truthful and succinct. If you are uncertain about whether or not to include some material in the report, meet with counsel before its preparation.

SIGN AN AFFIDAVIT

• **YOU MAY** be requested to sign an affidavit on your findings. Read it very carefully as you may have to defend what you signed at trial. If the affidavit is not completely and absolutely truthful, you can call the lawyer and ask him to rewrite it, or you may rewrite it yourself.

• **WHEN THE** affidavit is satisfactory, sign or initial each page and sign the last page in front of a notary public who will take your oath. Make sure you keep a copy of the notarized, completed affidavit.

ATTEND THE PRE-TRIAL CONFERENCE

• **IN THE** pre-trial conference you will discuss the "modus operandi" of the case, ideally at least a day or two before you appear at the trial. The meeting should be held at the lawyer's or your office or some place where you have each other's undivided attention.

• **LISTEN TO** the attorney very carefully and don't interrupt. Speak only if the

information coming from the attorney stops and a question is asked. Give information only if it is relevant to what is being discussed. Take notes, and when it's over, you can and should be able to ask questions and render your opinion.

• **THIS IS** the time to prepare a list of questions that will qualify you as expert, including how many years you have been in your profession, what degrees you have received, what papers you have authored on the subject at hand, and how many times you have testified in a court of law. All the questions and answers should be short and support the expertise required for the court to accept you as an expert.

HOW TO BEHAVE AT THE TRIAL

• **GIVE RESPECT** to the Judge, the Courtroom, the Jury and the Proceedings. This is the time to be seen and not heard until you are called to the witness stand for your testimony.

• **WHEN ON** the stand, answer all questions and statements directly, distinctly, loudly and clearly. Everyone in the courtroom must hear what you have to say, especially the jury and the court reporter. Speaking clearly and with energy adds to your persona of knowledge and truthfulness.

HOW TO HANDLE DIRECT TESTIMONY

• **DIRECT TESTIMONY** is when the attorney that engaged you asks the questions. All of your answers should be in your own words. Don't let it sound like you rehearsed and memorized a script.

HOW TO HANDLE CROSS-EXAMINATION

• **THE OPPOSING** counsel will try to either discredit you or bait you into saying or doing something about the case you should not say or do in a court room, or to say something that is not true and can hurt your side of the case and help the other.

• **THIS IS** the time that you will need all of your faculties to ignore or fend off such process in a very calm way. Let the question be completed without interruption, then pause a second or two to give your client's lawyer the opportunity to posit an objection.

• **IF A** question does come in cross-examination that needs a direct answer, and that answer may hurt your client, don't be evasive, but answer the question directly and candidly.

The authors of this article thank the Hon. Judge Jules L. Spodek, N.Y. State Supreme Court, for his commentary. References: Black's Law Dictionary, West Publishing Co.

Full Text of the talk given before the American Institute of Architects, Brooklyn Chapter:

http://www.accuratebuilding.com/services/legal/papers/aia_expert_testimony_presentation.html

REMEMBERED FONDLY

Two cherished friends of the Gotham City Inspector have passed away since our last issue. We remember their lives and will miss them dearly.

Emily Hoffman was a radio engineer, producer and on-air personality for the Leonard Lopate Show on WNYC radio, as well as for the New York Times' WQXR Radio and the Martha Stuart program "Living" on Sirius Radio. Formerly, she was editor-in-chief for the Gotham City Inspector.

Toby Miller-Fraser was a producer on ABC's "Talk Radio Network" during Alvin Ubell's tenure with the show, and was a longtime producer for the Sally Jesse Raphael Show.

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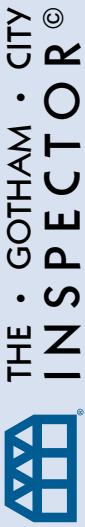
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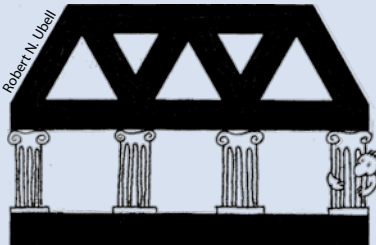
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DO IT SAFELY!©

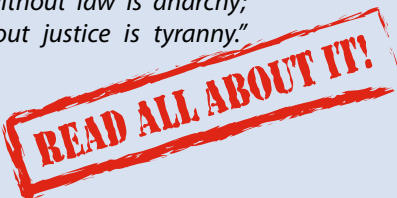
NEWSLETTER

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H E A D L I N E S



"Justice without law is anarchy;
law without justice is tyranny."



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