

Former Government Employees as Expert Witnesses

There are a lot of things that can prevent an expert from testifying: conflicts with the parties involved, restrictions from their employers, time constraints, etc. One thing, however, that should not preclude an expert is their status as a former employee of the U.S government.

Last Monday, when *The Aransas Project v. Shaw* started proceedings in federal court, this concept was initially questioned by a Justice Department attorney. Typically, he said, the government does not allow employees to testify because they possess sensitive, confidential information.

According to the [Code of Federal Regulations](#), “An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest.”

This does not, however, apply to *former* employees. Many pharmaceutical cases include testimony by former FDA executives, and numerous tax cases call upon ex-IRS employees. In fact, an example from the Code of Federal Regulations details how a former senior employee of the Environmental Protection Agency (EPA) may testify as an expert in Clean Air Act compliance almost immediately after terminating employment with the government.

This example is especially relevant to *The Aransas Project* as the issue involves whooping crane expert Tom Stehn who was previously the U.S. Fish and Wildlife Service’s crane coordinator at the Aransas National Wildlife Refuge. Although Stehn recently retired, he was employed by the government during the time frame at issue in the case.

The fact that he is no longer a government employee allows him to testify and, in fact, makes him a more qualified expert witness. The best experts are often former government employees who were in the trenches, and you should have no reservations in retaining them when it makes sense for the case.

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The case involves a group of environmentalists who have sued the state of Texas to protect the last migrating flock of whooping cranes. These endangered cranes, which were well on their way to increasing their population, faced a setback when the salinity of their habitat got too high in 2008.

The Aransas Project, representing the cranes, says that the state has violated the Endangered Species Act by allocating too much water to the Guadalupe and San Antonio River systems, and therefore increasing the salt levels of the whooping cranes' marshes. The Guadalupe Blanco River Authority and the Texas Commission on Environmental Quality, however, claim that there was no harm to the cranes and want to continue with the current fresh water release system.

Whooping Crane Expert

To help determine the validity of the claims, U.S. District Judge Janis Jack specifically subpoenaed whooping crane expert Tom Stehn to testify as an expert for the court.

The government's requirements that employees not provide expert testimony are similar to many corporate policies. Just as corporate policies don't follow employees from company to company, the government restrictions end after someone is no longer employed.

The inclusion of Stehn's testimony seems to be especially beneficial for the Aransas Project according to Jim Blackburn, the lead attorney for the environmentalist group.

"We've based our case on him," he said.

Tell us: Have you ever had an expert's former employment prevent testimony?

<http://www.mysanantonio.com/news/environment/article/Judge-wants-expert-on-cranes-called-to-stand-2347213.php>