

# A Matter of Opinion

**A STRIKING EXAMPLE** of how times change is how tame the statements and persona of the great Mae West (born Mary Jane West in Brooklyn in 1893) appear when compared to what is said and done by some of today's pop culture icons. One of the many then-quite-risqué utterances attributed to Ms. West was the classic, "So many men, so little time."

That lament may itself have had a long lineage, possibly extending back a couple of thousand years to the Roman playwright Terence, who commented (as translated), "So many men, so many opinions..."

The law today reflects Terence's observation that we humans tend to be an opinionated bunch, by placing limits on those who are allowed to offer their opinions in court proceedings. Courts generally only allow qualified experts to give opinions, restricting non-expert ("lay") witnesses to testify only as to facts. In classic car cases, this issue sometimes comes up in the context of determining the value of an automobile. A recent example was *Welsh v. Newman International Transport, Inc.*, in decisions issued on September 8 and November 16, 2011, by the United States District Court for the Middle District of Florida.

According to the Court, plaintiff David Welsh owned "two classically restored vehicles," a 1969 Ford Mustang and a 1970 Dodge Challenger. In January 2010, Welsh hired defendant Newman to transport the cars from Florida to auctions in Arizona. Unfortunately, the vehicles were damaged in transit.

Discussions between the parties regarding reimbursement for the damage followed. The cars were eventually sold at auction in Palm Beach, Florida. The Mustang sold for \$51,700, and the Challenger for \$68,200. Claiming he received less than he desired for each vehicle, Welsh sued Newman for alleged "diminution in value" totaling approximately \$99,000.

To support his claim, Welsh sought to have Bruce Shaw Esq. testify as an expert witness to offer his opinion as to the damage caused to the cars. Newman objected and asked the court not to allow Shaw to testify.

The court denied Newman's motion, and Shaw was allowed to give testimony as an expert witness.

The court noted the test that proposed expert testimony must meet. "Rule 702 of the Federal Rules of Evidence allows the admissibility of expert testimony '[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.' ... A judge's role is to keep unreliable and irrelevant information from the jury due to the potential to create confusion and its lacking probative value."

First, the court found that Shaw was qualified. "Mr. Shaw [has] plenty of relevant experience that will allow him to testify knowledgeably on this issue. He has owned a chain of automobile stores specializing in the inspection, repair, customization and restoration of the type of cars involved in this lawsuit. He has four decades of collector experience, and has sold or brokered the sale of nearly 40 collector cars. Additionally, Mr. Shaw has served as an auction consultant, where he has had the opportunity to provide valuations such as this one to many clients on cars similar to the ones involved here. He is thus familiar with the methodology of valuation for performing auction consultations utilized in this case."

Shaw's qualifications gave him insights the average person would not possess. "Thus, this court finds that Mr. Shaw's testimony rests upon an experience confessedly foreign in kind to the jury's own, and he is qualified to testify as an expert."

The court also found that Shaw's methodology in determining the values appeared to be reliable. "Mr. Shaw established an understanding of the pre-loss characteristics of the cars through a review of Plaintiff's owner information, including photos depicting the restoration, documentation history, an interview with the owner, and review of the supporting documents of originality for the subject vehicles. ... Mr. Shaw examined the originality, condition and completeness of paint, body panels, interior, drivetrain, and trim parts, the prior accident history of the subject vehicles, any documentation of originality for the vehicles, historical facts about the vehicles, and other evidence of originality..."

"Mr. Shaw then searched for comparable sales of vehicles of like kind and quality of Plaintiff's cars. He based his selection of comparable

vehicles on his experience in the field. ... He reviewed auction sales of other similar vehicles, reviewed automotive magazines which specialize in collector cars, and reviewed monthly car sales advertisements in periodicals specializing in collector cars. ... After selecting the best comparables, Mr. Shaw examined the sales prices of the comparables and, taking into consideration other factors, such as the fluctuations in the collector-car market and the inexactitude of the comparables to the subject vehicles, determined a pre-loss value for the subject vehicles based on the sales prices or list prices of the comparables chosen."

Even though Shaw was confirmed as an expert witness, plaintiff Welsh was not done. Welsh also claimed he himself was entitled to testify as to the value of the vehicles, whether he was qualified as an expert or not.

With language that should warm the hearts of all classic-car owners, the court agreed with Welsh.

"It is well-settled law, that an owner of property is qualified to render an opinion as to the value of that property at trial. ... It is equally well-settled that the owner of the property need not be qualified as an expert to render an opinion as to the value of his/her personal property."

Thus, the court found that the plaintiff, as the previous owner of the vehicles, was entitled to say what he thought they were worth during a trial, and didn't have to be qualified as an expert in order to do so.

As a result of these rulings, Welsh had both Shaw and himself qualified to testify at trial as to the value of the cars. Thus, the court ruled that, whenever a trial in the case occurred, both Shaw and Welsh could testify as to the value of the cars. As it turned out, the parties settled the case before trial.

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One of Mae West's cars, a 1934 Cadillac V-12 Town Cabriolet, was, like its owner, traffic-stopping. Some reports indicate that when she tired of it, she donated it to a convent.

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