



Online Ethics Center
FOR ENGINEERING AND SCIENCE

Expert Witness Subject Aid

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Description

A bibliography of definitions and seminal articles looking at the ethics of expert witnesses.

Body

Experts in science and engineering are sometimes called upon in legal trials, either as testifying witnesses or as non-testifying consultants. The roles that experts can take can vary from providing a fact-finder with basic information or in explaining highly technical subjects in a manner understandable by a judge and/or a jury.

[Rule 702 of the Federal Rules of Evidence](#) describe an expert witness as

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Ethical issues that can arise include conflicts of interest that may affect the truth of the information given by the expert witness, avoiding adopting a position of advocacy except as a spokesperson for the field of special knowledge they represent, and a number of other issues, depending on the type of case they are involved in and the type of information they are asked to provide.

Subject Overviews

Carper, Kenneth L. 1990. "Ethical considerations for the forensic engineer serving as an expert witness." *Business and Professional Ethics Journal* 9(1/2): 21-34.

The professional engineer serving as an expert witness plays an essential role on the resolution of disputes involving technical engineering matters. The author discusses the importance of being mindful towards bias when serving as an expert witness, the great responsibility that this role entails, and guidelines that have been established by a number of professional engineering societies governing engineers serving as expert witnesses.

Sanders, Joseph. 2009. "[Science, Law, and the Expert Witness](#)." *Law and Contemporary Problems* 72(1): 63-90.

Expert witnessing is a particularly useful place to observe the clash of legal and scientific conventions because it is here that one group of people (scientific experts) who are integrated into one set of conventions are challenged by the expectations of a different set of conventions. Here, Sanders looks at how legal conventions affect the behavior of expert witnesses when they appear in court in both criminal and civil cases. He also reviews differences in scientific and legal conventions as they apply to expert knowledge and discusses two central reasons for these differences: adversarialism and closure.

Saks, Michael J. 1990. "Expert witnesses, nonexpert witnesses, and nonwitness experts." *Law and Human Behavior* 14 (4): 291-313.

The role and responsibilities of the expert witness is a controversial subject. This article emphasizes the legal rules (of evidence and procedure) governing the expert and the policy rationales on which they rest. As the law's policies for the use of expertise shift from stage to stage as litigation progresses, the law expects the role of the expert to be reshaped accordingly. On some important issues, the law sends contradictory messages: What its formal rules announce is at war with its structure and practices. And these, in turn, sometimes are in tension with the demands of the expert's professional ethical codes. On other matters of importance to experts, the law is silent, because the rules were motivated by a need to control the behavior of parties and lawyers, not experts. The result of all this is to present those who would be conscientious expert witnesses with a need to resolve nearly impossible role conflicts and ethical dilemmas.

Weil, Vivian. 2001. *Trying Times: Science and Responsibilities After Daubert*. Chicago: Center for the Study of Ethics in the Professions.

Can judges make responsible decisions about what scientific evidence is admissible in court? When is expert witnessing unethical? How can courts respect scientific standards while pursuing justice? These are some of the questions that direct attention to responsibilities of the professionals in legal cases that require evidence from experts. This book attempts to find answers to these questions, and it is likely to be of interest to scientists, lawyers, engineers, and researchers in medicine at this intersection of law and science.

Policy and Guidance

American Psychological Association. 2010. [Ethical Principles of Psychologists and Code of Conduct](#). Last viewed 20 May 2016.

See specifically 2.01f, Boundaries of competence, 3.05c, Human Relations, 3.10c, Informed Consent; 9.01a, Bases for Assessments; 9.03c, Informed

Consent in Assessments; 9.04b, Release of Test Data; 9.10, Explaining Assessment Results; and 10.02b, Therapy Involving Couples.

Engineering Guidelines

National Academies (2002). [The Age of Expert Testimony: Science in the Courtroom, Report of a Workshop](#)

Offers some guidance for expert witnesses from a workshop convened in 2002 by the Scientific Research Council.

Bibliography

“Expert Witness Bibliography.” In Online Ethics Center for Engineering and Science. Last modified June 2016.

As experts in all fields can find themselves filling the role of expert witness, this bibliography includes a number of references from the scientific literature of these fields.

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