



## Engineering Sciences Section – 2004

### C29 Some Comments on the Distinctions Between Experts

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The goals of this research project are to provide some comment on the alternative roles of an expert witness.

This presentation will impact the forensic community and/or humanity by providing information about the role of the expert witness.

Anyone who has been asked the question as to the proportion of work they do for plaintiffs compared to defense attorneys has probably given some thought to this problem of "Seeing Both Sides of the Coin" and wondered if it truly makes any difference. The ways in which I have personally found them to differ are in the nature of the assignment and the level of resources that are brought to the case. Typically as a plaintiffs expert one is trying to find out exactly what happened whereas as an expert for the defense it is usually a case of simply defending against the hypothesis. This is not always true because some defense attorneys like to present an alternative scenario to a jury but in general the approaches are rather different, the expert for the plaintiff is a detective and the expert for the defense is a critic. Doing both is certainly more interesting than being confined to one, but the task of the plaintiffs expert is invariably more difficult and in most cases more rewarding intellectually. The advantage to being a defense expert comes from the fact that it is much easier to be critical than creative which brings us to the subject of resources since despite this advantage there is invariably more time invested by experts in the defense of a case than by the plaintiff. Indeed things are usually on a much less grandiose scale when working for the plaintiff and this probably has more to do with the distinctions in the way subrogation firms and defense attorneys conduct business than legal strategy. The team concept is generally more common as a defense strategy but is used by both, particularly when multiple defendants or plaintiffs are involved and they pool their resources. Even with large insurance companies as a plaintiff there is a tendency to stress frugality presumably because the good name of the organization is not at stake. Also when there are multiple experts they tend to be brought in at different times in plaintiff cases but all at once in the defense strategy, which creates a different type of working environment. Indeed I think it is fair to conclude that the work of the plaintiff's expert is not only inherently more difficult but it is also performed under more difficult circumstances.

A final question that one might address is whether there is any difference in the reliability of experts hired by plaintiffs as opposed to defendants. We have all probably come across some pretty strange theories in the course of civil litigation, which raises some serious questions about the professional competency of some experts, but the ones I have come across have been about equally divided between the two camps. Some examples that I will be happy to share include the spontaneous separation of gases and the explosive defoliation of chickens but there are also some examples where the scientific distinctions are so nice that one could not confidently expect to be able to satisfactorily explain them to a jury although they are nonetheless still very wrong. From my own experience. However, I have generally found that about half of the cases brought to me by plaintiffs have merit and this proportion is unchanged in the cases that are also brought to me by defense attorneys. How this reflects on the difference between being an expert for the Plaintiff and opposed to the Defense is probably worthy of some discussion.

#### Expert, Plaintiff, Defense