E15 Effectively Challenging the Forensic Expert in Court: The Role of Deontology, Logic Systems, and Deconstruction

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After attending this presentation, attendees will acquire an understanding of the multifactorial procedures for impeaching the credibility or weight of an opposing expert witness' testimony and avoiding the same pitfalls with their own.

This presentation will impact the forensic community and/or humanity by demonstrating how to become more effective at evaluating experts, their qualifications, reports, opinions, and value to the trial regardless of the side that has called the expert. This also bears directly upon the structure and theory of the case as opined by the jurist.

Practicing jurists frequently encounter experts intending to testify on a wide variety of scientific matters. Today's courtroom is open to many different types of experts from the "hard" sciences to those encompassing the entire scope of "soft" sciences with the extremes of science at one end and art at the other. *Daubert*, or F.R.E. 702, is not a gatekeeper in preventing erroneous expert testimony. Although the diversity of subjects qualifying as a science may be large, the philosophical structures defining the scientific method are fundamental and universal, thus holding any so-called science to a common denominator for assessment of adherence to the scientific method. When these basic principles are applied to the expert's opinion, report or methodologies, the identification of error and fallacy are made more obvious. Beyond this, an experts' credibility also depends upon their integrity as portrayed not only in the ethical soundness and reasonableness of their opinions when compared to their peers, but the presentation of professional credentials in their Curriculum Vitae as well.

"Deontology" (from the Greek *deon*, duty) is the duty of drawing ethical conclusions from one's observations and actions and is something rarely discussed in American forensic literature, but widely so in Europe. There, it is referred to as a code governing the practices of medicine and other disciplines with the philosophy that the correctness of an action lies within itself and neither the outcome nor the consequences are of any influence. While it does not possess a legal authority, it does serves as a standard; there to guide the practices of the professional and the objectivity of their opinions. By virtue of its being a duty applied to the arts and sciences of medicine, it must by definition be a product of the application of the scientific method to arrive at valid conclusions. The recent movement towards Evidence-Based Medicine (EBM) by clinicians in North America is a step in this direction yet remains largely unaddressed in forensics, and its absence constitutes an inherent weakness when forming an opinion.

Scientific method is founded solely upon the objectivity of observations, the formation of hypotheses to explain the observation followed by valid objective testing to support, deny or refine the hypothesis. From this evolved a logic system based upon deductive reasoning and tested by the syllogism: which is a true major premise and a true minor premise leading to a valid conclusion regarding a specific object or issue. By contrast is the influence of inductive reasoning, based upon intuition or unsubstantiated dogmatic teachings. There are also a series of errors in thinking as a consequence of the failure to properly apply the syllogism, resulting in fallacies of logic. Identifying these in court can be devastating to the witness's credibility

The critical evaluation of a forensic expert by a jurist is vital to controlling what is said and what is challenged in open court, regardless if the expert is one of yours, or comes from the opposing side. It employs additional formal techniques from Europe, based upon "text analysis" and "deconstruction" these are concise descriptions of what often happens in preparing for a case, but by virtue of its discipline, provides a format that promotes thoroughness of research and identifies strengths, weaknesses and helps sculpt strategies.

Deconstruction is designed to take something apart down to the level where it no longer makes sense. The object, be it a curriculum vitae, a report of analysis or an opinion is not destroyed, rather it is disassembled into components, giving insight as to how it was built initially. This in turn gives access to how the author thinks. This is also where text analysis enters, for the meaning of a sentence may vary from writer to reader, and the sequence of the sentence may give insight as to its weight in the opinion of the writer. This can open up alternative, or even opposing explanations the expert must then attempt to clarify or defend in open court. Applied to the curriculum vitae, deconstruction leaves no stone unturned in the vetting of each claim of expertise, case load, employment, training, faculty and other appointments, publications and previous court experience.

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The explanation and demonstration of the above will be through illustrative case studies.

Jurisprudence, *Daubert*, Forensic Science

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