



Jurisprudence Section - 2016

F3 Ethical Responsibilities for Strengthening the Court System by Requiring a Basic Understanding of an Individual Forensic Science Discipline — The Judge, the Lawyers, and the Expert Witness

Joseph P. Bono, MA, PO Box 2509, Leesburg, VA 20177; Linda L. Chezem, JD*, Purdue University, 530 Denny Drive, Mooresville, IN 46158; Ted R. Hunt, JD*, Jackson County (Kansas City) Prosecutor's Office, 415 E 12th Street, Fl 11, Kansas City, MO 64106; and Betty Layne DesPortes, JD, MS*, Benjamin & DesPortes, PC, PO Box 2464, Richmond, VA 23218*

After attending this presentation, attendees will be able to better recognize the ethical and legal responsibilities of all parties involved in the courtroom to grasp the significant capabilities and limitations of the basic science related to what is being presented as expert witness testimony.

This presentation will impact the forensic science community by raising the level of awareness for judges, lawyers, and forensic scientists in understanding and, just as importantly, acknowledging inherent ethical responsibility related to expert witness testimony.

In “Daubert states” and in federal courts, the judge is required to serve as the gatekeeper in determining whether to admit expert witness testimony. The proponent of the expert witness testimony has the responsibility of arguing for the admission of expert witness testimony. The opposing party has a similar responsibility of arguing against expert witness testimony when they believe the testimony is irrelevant or unreliable. Are these responsibilities strictly ethical or do they cross over into legal requirements? Are there ethical responsibilities on the part of the judges to possess a basic knowledge of the science that is being introduced to the court and which they must “judge”? Do both advocates for the parties they represent have a corresponding ethical responsibility to understand and adhere to probable limits of the expert witness testimony they are introducing?

For the expert witness, are the sources of the expert witnesses’ income relevant and under what conditions should a salaried person be required (much as consultants are required) to disclose pay and benefits for their testimony? Does the expert witness have an ethical responsibility to ensure that, no matter who is paying the bill, their testimony must be complete and unbiased by evaluating or at least acknowledging alternate explanations?

The adversarial nature of the courtroom will not, nor should it, change; however, is there a higher responsibility for all participants in the judicial process to adhere to an ethical code that requires more than a pro forma “keep it moving, attack without understanding the scientific basics” mentality whenever scientific testimony is introduced? Is the science really too complicated for the jurist? If so, is this a mitigating factor absolving lawyers and judges of an ethical responsibility to learn the basics of the discipline they are “judging,” introducing, or countering? Does the forensic scientist have an ethical responsibility and a corresponding legal responsibility to ensure that unbiased standards for what is supposed to be opinion testimony are the primary guiding principles for rendering an opinion? If not, does the forensic scientist become a part of what those with alternative views are oftentimes accused of — operating on a win-at-any-cost mentality? Can scientific and legal ethics be taught at the university level to students who are preparing for a career as forensic scientists or are in law school? Is the current requirement for ethics instruction to obtain accreditation of the forensic science program adequate? If not, what is the alternative?

This panel session will bring together a judge, a prosecutor, a defense attorney, and a forensic scientist to present their views and to discuss how ethical requirements of those who testify as expert witnesses may be strengthened. This discussion will also include whether there should be ethical and legal requirements on the parts of all non-scientists to demonstrate a basic understanding of the science which they are responsible for admitting, presenting, or counter-arguing against in the courtroom.

Ethical Responsibilities, Expert Witness, Judges and Lawyers