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Expert Witnessing: Milking the Cash Cow

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Description

Does the current system encourage lawyers and expert witnesses to cheat their clients?

Body

Expert witnesses are often required to reconstruct accidents during lawsuits. The accident victim hires a lawyer to bring the lawsuit to court. The lawyer, in turn, hires an expert witness, often an engineer, to provide evidence in support of his client's accident claim. The expert witness must prepare a formal, technical report which describes (1) the facts available, (2) the methodology and analysis used in the investigation, (3) the technical results, and (4) the “expert witness opinion” which is based on the results of the scientific investigation. Expert witnesses usually offer their services for a flat fee that, supposedly, covers all of these activities; this fee includes a report that (more or less) concludes the services.

If the report is complete and unambiguous, the lawyers and other legal constituents can settle the matter quickly, and the expert witness is done with the case. However, if the report lacks logical continuity or calculations are left out, then the

lawyer and client have a choice: either they must get rid the expert witness and hire another or ask the expert witness for further calculations to support the conclusions and opinions asserted in the report. The expert witness can take advantage of this situation by asking for an extra fee (above and beyond the flat fee) to perform this "extra" service. In fact, the expert witness may be tempted to leave out results in order to prod the client to ask for more information and, of course, pay more money for this information. The expert witness thus milks the cash cow.

To be fair, lawyers can also take advantage of this practice. If they charge the client on an hourly basis, they can increase their own fees. They simply take advantage of the fact that all official communication with the expert witness takes place through them; if the client needs more information, they can also increase their own fees and get a piece of the action. The client often is not in a position to realize what is going on.

Sometimes expert witnesses has good reasons for leaving out calculations and technical information; they may, for example, decide that certain information is not necessary for the case. If the case is resolved quickly this assumption pays off by allowing the engineer to avoid extra work, especially work that is too complex and technical for the lawyer and client to understand. This discretionary judgment opens the possibility that an expert witness might leave out information that later (due to an unexpected change in circumstances) becomes relevant to a lawsuit.

Questions:

1. Who (or what) are the stakeholders in this case? What are their stakes?
2. What ethical problem (or problems) is raised by this case? What are the ethical issues present in the case?
3. Does this practice adequately protect the economic and ethical stakes of all the participants?
4. If not, how can it be changed to better meet these economic and ethical stakes?

Notes

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