

CONCEPTUAL CHALLENGE OF EXPERT TESTIMONY

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【Abstract】 The relationship between expert knowledge and the trial pattern is examined. In general, trials are educational events in which the fact finder is expected to comprehend, process, and reflect on the evidence, and to reach rational conclusions as a result. This process reflects the fundamental importance of the accuracy of fact finding at trial, without which rights and obligations are essentially meaningless. Expert evidence often involves a deferential rather than an educational mode of proceeding and to that extent can be in opposition to the normal aspirations of trials. This article discusses the development process, forming reason and its consequences. The alternative is advanced that all evidence should be presented in an educational mode if the aspirations of trials are to be realized. If evidence cannot be presented in such a pattern, then the matter to which the evidence is pertinent plausibly cannot be litigated consistent with the normal aspirations of trials.

【Key Words】 expert testimony, factual accuracy, deferential mode, educational mode, aspirations of trials

It is a great pleasure each time I return to China to see my many students and how well they are doing. As I will discuss later in this paper, those of you studying evidence and procedure are critical to the continued progress of your country. My lecture tonight involves the conceptual challenge of expert testimony. This is important in its own right, because you cannot decide how to use expert testimony without understanding the difficulties that it poses, but that in turn means you must think about the nature of the legal system and how expert testimony advances or challenges the deepest aspirations you should hold for your legal system. The challenge will be to address all these issues in a systematic way, so let us begin.

The law of all countries of which I am aware contains relatively complex taxonomies of the types of information that conceivably may be pertinent to the resolution of a legal dispute. For example, American evidence law refers to scientific, technical and other specialized knowledge.¹ The Federal Rules of

Evidence, compounding the complexity, go on to specify various ways in which a person might become an expert, which involves the acquisition in any manner of “knowledge, skill, experience, training, or education” that...

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1Federal Rules of Evidence (FRE) 702.