

Court Appointed Scientific Experts

Handbook for Judges

Version 3.0

**A Demonstration Project of the
American Association for the Advancement of Science**

Dear Colleague:

Thank you for participating in *Court Appointed Scientific Experts (CASE)*, a demonstration project of the American Association for the Advancement of Science (AAAS). This innovative project is intended to assist district judges in identifying highly qualified scientists and engineers to serve as court appointed experts in cases where the judge believes that assistance or information beyond the traditional method will serve the interests of a complete, balanced and objective perspective on science and technology issues. I am pleased that a scientific society of the stature of AAAS will serve as the link between the federal judiciary and the scientific/engineering communities.

As you know, science and technology issues are increasingly important in federal litigation. In addition, judges have a “gatekeeper” role to assure that scientific and technological evidence is based on scientifically valid and relevant reasoning and methodology. *CASE* was designed – with the participation of federal judges, lawyers, and scientists – to help courts meet the challenges of dealing with complicated science issues.

At the same time, scientists are often reluctant to participate in judicial proceedings. Because it will be an independent appointment, we hope that highly qualified scientists and engineers will be willing to serve as court appointed experts.

The Project Advisory Committee, which I chair, is not involved in day-to-day operations and has no role in selection of cases or identification of experts. However, we provide overall advice and guidance as staff works to develop materials and procedures that we hope are useful to both the courts and to the scientific community.

This handbook provides information about *CASE*, including court/staff interactions and the independent evaluation that is being conducted by the Federal Judicial Center. If you have any questions, please contact the Project Manager, Deborah Runkle, at 202-326-8964. We look forward to your participation in this important project.

Sincerely,

Pamela Ann Rymer
Chair, Project Advisory Committee

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1200 New York Avenue, NW, Washington, DC 20005

INTRODUCTION

The American Association for the Advancement of Science (AAAS) has established *Court Appointed Scientific Experts (CASE)*, an innovative project to establish a cooperative effort between the scientific and engineering communities and the judiciary. The project will assist federal district judges in identifying highly qualified, independent scientists, engineers, and health care professionals for appointment as court experts. While providing federal judges with a valuable resource within the scientific community itself, *CASE* also offers scientists an opportunity to perform an important public service.

THE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE

Founded in 1848, the American Association for the Advancement of Science is an independent, multi-disciplinary scientific membership society. AAAS's approximately 143,000 members are scientists, engineers, science educators, and policy makers, making it the largest general scientific society in the world. AAAS is also the world's largest federation of scientific and engineering societies, with nearly 300 affiliate organizations. *Advancing Science, Serving Society* is the AAAS mission. This is accomplished through furthering the work of scientists; facilitating cooperation among them; fostering scientific freedom and responsibility; improving the effectiveness of science in the promotion of human welfare; advancing education in science; and increasing public understanding and appreciation of the importance and promise of the methods of science in human progress.

AAAS is also world-renowned as the publisher of *Science*, the world's leading peer-reviewed general scientific journal. Founded by Thomas Edison in 1880, *Science* has been the official journal of AAAS since 1900. As well as being one of the most frequently cited scientific journals in the world, *Science* has won numerous awards for its news coverage.

In 1974, AAAS established a formal program of activities at the science/law interface, and is the only scientific society to have a formal relationship with the legal community. The science/law program falls under the aegis of the National Conference of Lawyers and Scientists (NCLS), a joint standing committee of AAAS and the American Bar Association Science and Technology Law Section. Among its many activities, NCLS has a long-standing interest in finding ways to improve the quality and reliability of scientific evidence and testimony in the courts. It is this interest that motivated the initiation of *Court Appointed Scientific Experts*.

COURT APPOINTED SCIENTIFIC EXPERTS: BACKGROUND AND HISTORY

As courts are more often encountering complex and novel scientific and technical issues, members of the judiciary and the broader legal community have addressed ways to help judges meet these challenges. For example, in its April 1990 Report, the Federal Courts Study Committee noted that "economic, statistical, technological, and natural and social scientific data are becoming increasingly important in both routine and complex

litigation” and, among other recommendations, urged an examination of “ways to improve the ability of judges...and juries to comprehend [scientific information].”

That same year, the Carnegie Commission on Science, Technology, and Government looked at this issue through its Task Force on Judicial and Regulatory Decision Making.¹ The Task Force asked AAAS to recommend ways in which scientific and engineering societies could improve the scientific information available to the federal judiciary. In examining this issue, AAAS was well aware that many observers, including members of the judiciary, often believe that experts retained by parties sometimes become advocates for the side that hired them, thereby calling into question the value of their testimony. Thus, AAAS recommended the initiation of a demonstration, or pilot, project that would assess the feasibility of establishing a link between the scientific and engineering communities and the courts. The purpose of this project would be to respond to district judges’ requests for assistance in identifying independent scientific experts available for appointment as experts to the court.

Although federal judges have long had the ability to appoint their own experts, there is a difference of opinion about the use of court experts. Some observers are concerned that using such experts is not consistent with the traditional role of the judge and, in some instances, the jury. In order to hear a variety of opinions, a planning conference was held to advise AAAS on important issues to consider in designing such a project. Individuals attending this November 1993 conference were drawn from members of the federal judiciary; attorneys from the plaintiffs’ and defense bars, academia, and the federal government; and scientists and engineers, as well as representatives from their professional societies. While conference participants expressed a variety of views regarding court appointed experts, most encouraged AAAS to go forward and implement a demonstration project.

A working group co-chaired by the Honorable Louis Pollak, Senior Judge, U.S. District Court for the Eastern District of Pennsylvania, the Honorable Ruth Burg, Administrative Judge, Armed Services Board of Contract Appeals (Ret.), and Dr. Francisco Ayala, Department of Ecology and Evolutionary Biology, University of California, Irvine, produced a draft project design. This document was subsequently reviewed by a 37-person steering committee made up of federal district judges, attorneys from the plaintiffs’ and defendants’ bars, academia, and the federal government; and scientists and engineers.

In 1998, Stephen Breyer, Associate Justice of the U.S. Supreme Court, endorsed *CASE* in an address at the Annual Meeting commemorating the Association’s 150th anniversary year:

I believe that in this age of science we must build legal foundations that are sound in science as well as in law. [AAAS has] offered their

¹ In 1988, the Carnegie Commission on Science, Technology, and Government was established to study the mechanisms by which each branch of government incorporates scientific and technological knowledge into its decisions and to propose improvements in process and organization.

help. We in the legal community should accept that offer...The result, in my view, will further not only the interests of truth but also those of justice. The law will work better to resolve many of the most important human problems of our time.

GOALS OF CASE

Much of the scientific community echoes the concerns of judges regarding the resolution of scientific disputes. Additionally, many scientists perceive service as an expert for a party in legal proceedings as incompatible with deeply held professional norms. Because legal and scientific goals and procedures differ in several respects, those scientists accustomed to presenting their opinions in traditional scientific arenas often are unwilling to serve as an expert retained by a party. The result is that the judiciary may be deprived of the very people best able to inform a judge or jury about the issues in dispute. We believe that *CASE* will provide scientists with an opportunity to render a valuable public service.

In order to address the concerns of judges regarding the objectivity and reliability of parties' experts, noted above, *CASE* will respond to requests from federal district judges by identifying highly qualified, independent scientists, engineers, and health care professionals to serve as court appointed experts in cases where the judge believes that a court appointed expert would facilitate the court's, parties' or jurors' understanding of scientific or technical issues.²

PROJECT ORGANIZATION

An Advisory Committee, chaired by the Honorable Pamela Ann Rymer, U.S. Court of Appeals for the Ninth Circuit, provides guidance on the overall structure, objectives, and direction of the project.³ The Advisory Committee also selects individuals to serve on subcommittees that assist with specific aspects of the project – education, professional standards, and evaluation – and reviews the efforts of these subcommittees. Additionally, a Scientific Recruitment and Screening Panel has been established to assist staff in identifying experts in response to requests for assistance from district judges.

The Advisory Committee is not involved in the day-to-day operations of the project. Specifically, the committee has no role in the selection of cases or in the identification

² In seeking “independent experts,” *CASE* intends to provide judges with individuals disinterested in the outcome of the litigation at issue. In reality, very few experts are completely neutral regarding adherence to one scientific theory over another. The experts' overriding objective, therefore, is not to approach the scientific issues in the case without opinion, but to educate the judge and/or jury on the scientific issues while being disinterested in the case's outcome.

³ A list of the members of the Advisory Committee is attached as Appendix A.

and recruitment of experts for these cases. The committee will be notified only after a judge has appointed an expert, and that appointment is part of a public record.

REQUESTING ASSISTANCE FROM CASE

When a judge, or an individual calling on behalf of a judge, contacts us, staff will ask a few questions to determine whether the requested assistance appears to fall within the project scope.⁴ These questions will ensure that we do not take up the court's time on requests that we cannot accept. For example, we will not accept cases if the expert sought is not a scientist, engineer or health care professional.

If the request seems appropriate, staff will send a questionnaire for the court to fill out. This additional information will permit a determination on whether to accept the case for the project and how to proceed in identifying an expert. In addition to the nature of the case and of the expertise sought, staff constraints and the time available in which to identify an expert will be important variables in staff's decision. Staff will be in touch with the court if more information is needed. Typically, a decision about accepting a case will be made soon after receiving the completed questionnaire.

Upon the recommendation of AAAS counsel, staff asks that judges wishing to use our services be encouraged to issue an Order requesting that staff proceed in a "good faith effort" to identify an expert and that project staff consult with organizations or individuals outside the Association, as necessary to fulfill this request. While the possibility of untoward legal complications arising from the Association's leadership of this project is very remote, such an order may serve as added protection. A Model Order is attached as Appendix B for the court's consideration, although *CASE* assistance is not contingent on the issuance of this or any other order.

During the course of our search, it may be necessary for staff to have further conversations with the court. Additionally, we encourage the court to keep us informed of developments in the case that may affect our efforts, such as serious settlement discussions.

Because *CASE* is supported by foundation grants, the court is not charged for our services. However, the experts we recruit in response to a judge's request should be paid for their service. The amount and scheduling of this compensation, as well as the source of the funds, are to be worked out between the court and the expert.

⁴ If we receive a request from a party to litigation or a party's attorney, we will provide the caller with general, publicly available information only. Should the caller be interested in having an expert appointed, we will refer the party to the judge presiding over the litigation. Similarly, during the course of the litigation, absent judicial instruction, we will not communicate in any way with parties or their counsel regarding this matter.

RECRUITMENT AND SCREENING OF EXPERTS

Several methods will be used to identify experts for referral to the court. In addition to database searches, staff will rely on the following resources:

Scientific and engineering societies and educational organizations : A variety of scientific and engineering disciplines, as well as educational organizations, have signed on to assist *CASE* staff in responding to judges' requests. These societies and organizations have designated contact persons who are prepared to use their societies' resources to identify qualified individuals that match the type of expertise the judge has requested. Among these organizations are the National Academy of Sciences, the Institute of Medicine, and the National Academy of Engineering.

Recruitment and Screening Panel: A panel of 26 distinguished scientists and engineers has also agreed to assist *CASE*.⁵ When a case has been accepted for the project, staff will contact appropriate individuals from this panel. Panel members may suggest names of potential experts, as well as use their wide contacts in their disciplines to identify individuals that match the needs of the court. Because project staff may also find names of potential experts from sources other than panel members, the panel's other important role is to screen the recommended scientists, engineers or physicians. The panel's screening will include such considerations as scientific merit, reputation, and ability to communicate highly technical information to non-scientific audiences. In order to insure the Advisory Committee's independence from the identification of experts, members of the Recruitment and Screening Panel were selected by project staff.

CASE project staff is not assembling a list or roster of scientists from which names will be pulled. Because each request is unique to the current litigation, we can best fulfill a judge's request by initiating a specific search in response to the court's needs.

CONFLICTS OF INTEREST

When we have identified scientists whose professional qualifications match the expertise that the court is seeking, staff will send those individuals a Potential Sources of Bias and Conflict of Interest Questionnaire.⁶ This questionnaire elicits information about employment or financial relationships between potential experts and members of their families and parties to the litigation. It also inquires into affiliations with interest or advocacy organizations whose views may be pertinent to the issues before the court. A Subcommittee on Professional Standards has advised staff in formulating policies regarding conflicts.⁷

The names of individuals with obviously disqualifying conflicts, such as current or very recent employment by one of the parties, will not be forwarded to the court. Absent very

⁵ A list of the members of the Recruitment and Screening Panel is attached as Appendix C.

⁶ A copy of this questionnaire is attached as Appendix D.

⁷ A list of members of the Subcommittee on Professional Standards is attached as Appendix E.

obvious conflicts, staff will provide the court with the completed questionnaires of the potential experts whose names are forwarded. Please note that project staff makes no attempt to verify the information contained in the questionnaire. If the court has further questions regarding the matters addressed in this form, we encourage the court to contact the potential experts directly.⁸

Those members of the Recruitment and Screening Panel who are asked to assist in identifying and vetting potential experts will be asked to complete a similar questionnaire prior to making contacts on behalf of the project. If a panel member has an obvious disqualification, staff will not employ that individual in response to that request. For every request we receive from the court, we will attempt to forward two or three names for consideration.

It is important for the court to be aware that situations that appear to be conflicts in a legal setting do not necessarily appear so to members of the scientific and technical communities. Once the court has appointed an expert, we will provide the expert with the *CASE Handbook for Experts*, which advises the expert to be sensitive to conflicts that might arise during the course of his or her assignment.⁹ (For that reason, AAAS should be notified when an appointment is made.) Therefore, we urge the court to issue clear guidelines to experts it has appointed regarding permissible or advisable activities – or their opposite – during their service. We strongly urge the court to issue written instructions and encourage the experts to be in touch with the court if any questions arise in their minds about such activities.¹⁰ *CASE* staff will not advise experts regarding the propriety of specific activities, but will refer all such questions to the court.

CONFIDENTIALITY

Project staff has adopted a policy of confidentiality regarding our participation in this project. Staff members have signed a confidentiality agreement, and individuals from outside organizations who assist us in identifying an expert will be required to sign a similar form. We will not publicly discuss requests from judges until and unless an actual appointment is made. Further, all matters discussed between the court and staff will be kept strictly confidential. Similarly, we are very sensitive to the need to protect the privacy of scientists whom we consider as candidate experts. We will inform

⁸ In the course of its conflicts screening, *CASE* staff inquire into relationships with the parties named in the litigation only. If appropriate, the court may want to alert the experts to the identity of subsidiaries of the parties or other related entities, such as parent companies.

⁹ A copy of the Handbook for Experts is enclosed.

¹⁰ In its report on the use of the neutral scientific panel appointed in *In re Silicone Gel Breast Implants Products Liability Litigation, MDL-926*, the Federal Judicial Center (FJC) notes that the presiding Judge, Sam C. Pointer, Jr., “concluded that it would have been better to have provided written instructions on conflicts of interest rather than oral instructions. He said he should have clarified and reasserted the conflicts screening initially performed [in the selection process]. He also said he should have spent more time preparing special instructions on conflicts of interest and periodically reemphasizing these issues.” (Hooper, Loral, Joe Cecil, and Thomas Willging, *Neutral Science Panels: Two Examples of Panels of Court-Appointed Experts in the Breast Implants Product Liability Litigation*, Federal Judicial Center, 2001, p. 49.) A copy of the FJC report is included with this Handbook.

scientists who agree to have their names submitted to the courts that project staff will not disclose either the financial or employment information they provide to us, except to the judge. However, if their name is submitted to the court, parties to litigation will likely be allowed access to this information and will be free to question the expert about it during litigation proceedings.

EDUCATION OF EXPERTS AND JUDGES

Many of the individuals that *CASE* recommends to the court will have had little or no previous experience with judicial proceedings. For that reason, we have prepared a handbook to provide them with background information about the civil litigation process. (We expect that most of the cases accepted for the project will involve civil litigation. Nevertheless, because we will consider especially compelling criminal cases, an addendum to the handbook is being prepared that will provide similar background on criminal proceedings in federal courts.) This document is available at the following website: <http://case.aaas.org>, or a paper copy will be made available upon request.

The handbook covers a broad range of topics that may be important for a scientist who has been appointed to serve the court, such as depositions, the nature of examination and cross-examination, and the purpose and scope of discovery.¹¹ Nevertheless, the

¹¹ The court may find it useful to read William Schwarzer and Joe Cecil, "Management of Expert Evidence," *Reference Manual on Scientific Evidence, Second Edition*. Federal

Working with the Expert

The Court may wish to communicate to the expert and, in some situations, to the parties as well, the following information, both orally and in writing:

1. An explanation of the type and scope of participation expected (advise court, testify at a deposition or trial, etc.).
2. An explanation of the work product expected.
3. Instructions on what the expert should do with notes or drafts written during the course of service, especially if it is not the expert's habit to keep preparatory materials.
4. A timetable of the trial schedule and relevant deadlines.
5. An explanation of whom the expert can and cannot contact regarding the case (judges, parties, other scientists, etc.) and what to do if the expert believes assistance from another scientist, a research assistant, or other is needed.
6. Instructions on how the expert should communicate with the court, e.g., phone, email.
7. Instructions on how the expert should handle potential conflicts of interest that may arise during the course of service.
8. Discussion of whether or not an attorney will be appointed for the expert.
9. The method by which the expert will request and receive documents, exemplars, evidence, etc., that the expert needs to fulfill his duty to the court.
10. The method by which the expert will be paid.

Judicial Center, 2000, pp. 39-66, which is enclosed.

handbook is not intended to be a substitute for the court’s “education” of its experts. It is important to note that experts appointed by the court, unlike parties’ experts, will not have an attorney whom they can call on with questions and concerns.¹² We hope that the court will fill in some gaps by, for example, remembering that terminology familiar in the courtroom may seem like “jargon” to the expert, that instructions regarding matters such as the duties and expectations of the court be in writing, and that the court encourage the expert to call if clarification of assignment or of other issues is needed.¹³

The *Handbook for Experts*, as well as this document, has been prepared with the assistance of a Subcommittee on Education.¹⁴

CASE’S ROLE FOLLOWING THE EXPERT’S APPOINTMENT

Once the judge has appointed an expert, project staff will no longer have an active role in the litigation. To avoid the appearance of influencing the outcome of a particular case, staff will refer all questions about an expert’s assignment and other related activities to the court. However, because *CASE* is a demonstration project, we are interested in the progress of judicial proceedings in which we have assisted the court. We hope that by observing the ways in which courts use the experts we recommend, we will learn more about this innovative effort to increase cooperation between the federal judiciary and the scientific and engineering communities. For that reason, we would appreciate receiving copies of documents relevant to the use of the expert and notices of hearings or other proceedings that are open to the public. Project staff often finds it useful to attend these proceedings. This information gained will also aid in the evaluation process that is described below.

PROJECT EVALUATION

It is important that the court participate in the evaluation, conducted by the Federal Judicial Center, that is an important aspect of *Court Appointed Scientific Experts*. Part of the evaluation will be quantitative and descriptive, and will answer such questions as the

¹² In some cases, particularly complex or lengthy litigation, the court may find it useful to appoint counsel to assist the expert.

¹³ In the *MDL-926* litigation, “Judge Pointer delivered oral instructions at a conference designed to orient the panel members...He discussed the panelists’ roles as expert witnesses, the procedures they should follow in seeking advice or information from nonparties, the ground rules about contacting representatives of other parties, and the procedures that would be involved in the discovery and trial depositions. This informal discussion was on the record, but later events suggest that some panel members may not have understood the issues and guidelines framed by Judge Pointer.” *Id.* at p. 16. In fact, in a follow-up interview, “[o]ne expert commented that the oral instructions seemed fine at the time, but the panel later realized that all instructions should have been written and affirmed by all involved.” *Id.* at pp. 18-19. The experts in the *MDL-926* litigation found the following matters especially difficult: what constituted a conflict of interest during the course of their service; the discovery potential of notes, drafts, or other materials used in preparing their reports and testimony; and the rules and expectations governing their communications with colleagues about matters involved in the litigation.

¹⁴ A list of members of the Subcommittee on Education is attached as Appendix F.

number of requests received, the types of cases and the kinds of experts sought, and how the experts were used. The qualitative aspect of the evaluation will involve interviews with individuals who have participated in *CASE*, including judges, experts, and project staff. This part of the evaluation will focus on how the project worked, where it succeeded, and what improvements can be made in the process.

Following the evaluation, a report will be released to the public. This report may form the basis for future decisions on how best to assist federal judges with complex scientific cases on a permanent basis.

Appendix A

Court Appointed Scientific Experts Advisory Committee

Pamela Ann Rymer (**Chair**)
Judge
U.S. Court of Appeals for the Ninth
Circuit

Martin L.C. Feldman
Judge
U.S. District Court for the Eastern
District of Louisiana

William Hendee, PhD
Senior Associate Dean and Vice
President
Medical College of Wisconsin

Gilbert Omenn, MD, PhD
Executive Vice President
Medical Affairs
University of Michigan

Louis Pollak
Senior Judge
U.S. District Court for the Eastern
District of Pennsylvania

Susan Poulter, JD, PhD
Professor
University of Utah
College of Law

Paul D. Rheingold, Esquire
Partner
Rheingold, Valet, Rheingold &
Shkolnik, P.C.
New York, NY

Edward W. Warren, Esq.
Partner
Kirkland & Ellis
Washington, DC

Sheila Widnall, PhD
Abby Rockefeller Mauze Professor
of Aeronautics and Astronautics
Massachusetts Institute of Technology

STAFF

Mark S. Frankel, Ph.D.
Project Director

Deborah Runkle
Project Manager

Kristina Schaefer
Program Associate

request the assistance of third-parties (the “Assisting Parties”) in (1) identifying and assisting in the selection of persons qualified for appointment as experts, and (2) evaluating and improving the identification and selection process. The Association (including its representatives, employees, agents and members) and such Assisting Parties, while aiding the Association, shall be considered to be acting at the request of the Court.

The Association shall undertake all acts required to so assist the Court and provide the Court with a list of persons deemed by the Association to be qualified for appointment. Such list shall contain information sufficient to aid the Court in making a selection, including, but not limited to, information regarding each person’s (i) educational background; (ii) occupational history; (iii) prior experience as an expert in proceedings in any court; and (iv) publications.

SO ORDERED

Appendix C

Court Appointed Scientific Experts **Recruitment and Screening Panel**

R. Stephen Berry, Ph.D.
James Franck Distinguished Service
Professor of Chemistry
University of Chicago

John Ferguson, M.D.
Former Director of the Office of
Medical Applications of Research
National Institutes of Health

Katherine Bick, Ph.D.
Former Deputy Director,
Extramural Research
National Institutes of Health

Bruce Fowler, Ph.D.
Director of University of Maryland
Program in Toxicology and Professor
of Pathology
University of Maryland School of
Medicine

D. Allan Bromley, Ph.D.
Sterling Professor of the Sciences and
Dean of Engineering
Yale University

Marye Anne Fox, Ph.D.
Chancellor
North Carolina State University

Patricia Buffler, M.P.H., Ph.D.
Professor of Epidemiology and Dean
Emerita
School of Public Health
University of California, Berkeley

Bernard Goldstein, M.D.
Senior Vice-Chancellor for the Health
Sciences
University of Pittsburgh

John Cairns, Jr., Ph.D.
University Distinguished Professor of
Environmental Biology Emeritus,
Department of Biology and
Director Emeritus, University Center
for Environmental and Hazardous
Materials Studies
Virginia Polytechnic Institute and State
University

Richard Goldstein, Ph.D.
Regents and James J. Ryan Professor
of Mechanical Engineering
University of Minnesota

John Doull, M.D., Ph.D.
Professor Emeritus of Pharmacology
and Toxicology
University of Kansas Medical School

Philip Guzelian, M.D.
Head of Section of Medical
Toxicology and Co-Head of
Hepatobiliary Research Center in
Divisions of Gastroenterology and
Clinical Pharmacology
University of Colorado Health
Sciences Center

Lee Hollaar, Ph.D.
Professor, School of Computing
University of Utah

Robert Lawrence, M.D.
Edyth Schoenrich Professor of
Preventative Medicine and Associate
Dean for Professional Education &
Programs
Johns Hopkins School of Hygiene and
Public Health, Professor of Medicine,
Johns Hopkins School of Medicine

Joshua Lederberg, Ph.D.
President-Emeritus and Sackler
Foundation Scholar
Rockefeller University

Leon Lederman, Ph.D.
Pritzker Professor of Science
Illinois Institute of Technology

Judith McDowell, Ph.D.
Senior Scientist, Biology Department
Woods Hole Oceanographic Institute

Elena Nightingale, M.D., Ph.D.
Scholar-in-Residence, National
Research Council and Institute of
Medicine, National Academy of
Sciences
Adjunct Professor of Pediatrics,
Georgetown University Medical Center
and George Washington University
Medical Center

J.A. Padgett, Jr., M.E.C.E.
GeoServices Corp.

David Petering, Ph.D.
Professor of Chemistry and Director,
National Institute of Environmental
Health Science Marine and Freshwater
Biomedical Science Center
University of Wisconsin/Milwaukee

David Savitz, Ph.D.
Professor and Chair, Department of
Epidemiology
University of North Carolina

Howard Schachman, Ph.D.
Professor of Molecular and Cell Biology
University of California, Berkeley

Kenneth Shine, M.D.
President, Institute of Medicine,
National Academy of Sciences

Stephen Stigler, Ph.D.
Ernest DeWitt Burton Distinguished
Service Professor, Department of
Statistics
Member, Committee on the Conceptual
Foundations of Science
University of Chicago

Kenneth Wachter, Ph.D.
Professor of Demography and
Statistics and Chair of Department of
Demography
University of California, Berkeley

Noel Weiss, M.D., Ph.D.
Professor of Epidemiology
University of Washington and
Fred Hutchinson Cancer Research
Center

Appendix D

POTENTIAL SOURCES OF BIAS AND CONFLICT OF INTEREST QUESTIONNAIRE FOR PROSPECTIVE EXPERTS

The case is _____. The plaintiff in the case is _____.
The defendants is/are _____. The case is being heard by
_____, in the _____ District of _____. The legal issue(s) is/are

The attorneys for the parties are:

Plaintiff

Defendant:

The experts for the parties are:

Plaintiff

Defendant:

About Bias and Conflict of Interest

Before you begin this questionnaire, please review the introductory information provided on the following pages, as well as the list of plaintiffs and defendants listed above.

Do not skip any questions. If you need clarification of any of the items on the questionnaire, contact either Deborah Runkle, Project Manager, or Kristina Schaefer, Program Associate, for assistance. They can be reached at 202/326-8964 or case@aaas.org.

When you have completed the questionnaire, sign and return it to:

Kristina Schaefer
Program Associate
Court Appointed Scientific Experts
American Association for the Advancement of Science
1200 New York Avenue, NW
Washington, DC 20005

If you have any changes or additions to the information reported on this form while you are being considered for service as an independent expert, please contact Kristina Schaefer. If any changes or additions to this form occur while you are serving as an independent expert, please report them to the judge you are assisting.

Once AAAS receives the completed questionnaire, the information contained in it will be kept confidential within the Association, and will be disseminated only to *CASE* staff and the Federal Judicial Center, which is conducting an evaluation of the project. However, should your name be forwarded to the court, this questionnaire will be among the materials reviewed by the judge and the parties. The parties are typically free to use the information in preparing their case.

What Are Biases and Conflicts of Interest in the Legal Arena and Why Are They Important?

As you know, court appointed – or independent – experts are appointed by, and report to, the judge, rather than to either the plaintiff or the defendant. As an independent expert, you will receive written instructions from the judge regarding the role you will play in the litigation. (An instruction of this kind is referred to as a “charge.”) Because the parties involved in the litigation have a great deal at stake, it is very important that you be free from disqualifying financial conflicts of interest or significant bias regarding the issues and parties involved in the litigation. It is also important that you be free from the appearance of these kinds of biases or conflicts. The information asked for in this questionnaire is needed for the judge to determine whether you are indeed independent. It is important to provide as much information as possible in this questionnaire so that unanticipated conflicts do not arise when the judge and parties ask you questions at a later date. *CASE* staff will use this questionnaire to identify obvious conflicts. The judge presiding over the case will ultimately be responsible for choosing the expert, and will determine whether more subtle conflicts are disqualifying.

Bias in the legal setting has a meaning different from that used either in common usage or in the scientific field. Bias in the legal arena generally refers to substantive views you hold, whether or not they have been published or otherwise presented. Occasionally, the term might apply to the views of a professional society, advocacy group or even an individual with whom you are closely associated, either personally or professionally. An example of a potentially problematic form of bias is an independent expert who is asked for an opinion on a matter that he or she has taken a position on or is identified with. Some examples of this kind of bias are public statements (e.g., testimony, speeches, interviews, lectures), publication (e.g., articles, books), close identification or association with the positions or perspectives of a particular group, or through other personal or professional activities.

It should be stressed that “bias,” as the term is used here, is not pejorative. Moreover, bias of the sort discussed here is not automatically disqualifying. For example, a judge might well conclude that the fact that an expert has already formed an opinion about one of the questions presented in the litigation does not preclude learning the basis for the expert’s opinion.

Conflict of interest means any financial or other interest that could preclude an individual from offering independent and objective advice on an issue. An example of a conflict of interest is a court appointed expert who has a family member or close friend who is a

party to the litigation, or who is otherwise associated with the litigation (e.g., a family member who is an attorney involved in the litigation). If an expert is a senior officer of a professional society with a strong public position on the issue, that can also be thought of as a conflict of interest.

An illustrative example of direct economic benefit is an independent expert (or member of his or her immediate family) who has a significant financial investment or other close tie to a party. (Highly diversified mutual funds do not constitute a significant investment.) An example of indirect economic benefit would occur if the case for which the expert is being considered has the potential to affect the expert's career advancement.

The examples above are illustrative only, and an affirmative answer would not necessarily disqualify you from serving as a court appointed expert. It's important to remember that conflicts can affect – or appear to affect – an expert's opinion inadvertently. If you have any questions about the existence or appearance of bias or conflicts, please bring these matters to the attention of Deborah Runkle.

Instructions for Completing the Questionnaire

Please note that the following questions refer variously to “you,” “you or your immediate family,” or most broadly to “you, members of your immediate family or staff of your employer.”

Any reference to an “interested party” refers to:

- plaintiffs, defendants or the judge in the current litigation; or
- individuals or organizations that are otherwise substantially involved in the current litigation (e.g., law firms).

Please provide all relevant details for any questions answered in the affirmative on additional sheets of paper, noting the number of the question you are answering. Also, please include any other factors that you believe could serve as a potential bias or conflict of interest that have not been covered in this questionnaire. An affirmative response to one or more questions does not automatically disqualify you from serving as an independent expert. Further explanations may, however, be requested.

Contact Information

Name: _____

Telephone/
Fax: _____

Email: _____

Title: _____

Employer: _____

Address: _____

REMINDER: IF YOU ANSWER ANY QUESTION IN THE AFFIRMATIVE, PLEASE PROVIDE RELEVANT DETAILS ON AN ADDITIONAL SHEET OF PAPER, NOTING THE NUMBER OF THE QUESTION YOU ARE ANSWERING.

1. Are you, family members, or close friends currently plaintiffs in this litigation [or employed by plaintiff], defendants [or employed by defendant], attorneys involved in this litigation, or otherwise interested parties in the pending litigation?

___Yes ___No

2. Have you or any family members ever been employed by any of the parties, or provided services for compensation by any of the parties?

___Yes ___No

3. If so, how long ago?

___Within the past year ___1-3 years ago ___More than 3 years ago

4. Period of employment or service:

___Less than one year ___1-3 years ___More than 3 years

5. Have you or any members of your immediate family ever been employed or otherwise paid by any organizations that have taken positions related to the core issues or policy implications of the litigation?

Yes No

6. Are you or members of your immediate family associated, on an unpaid basis, with any organizations that have taken positions or interests related to the core issues or policy implications of the litigation? These relationships could include professional societies, trade associations, public interest or civic groups.

Yes No

7. Have you or members of your immediate family been contacted by any party or attorney regarding this litigation?

Yes No

8. Have you or members of your immediate family ever received any research funds, graduate support, or any other funds (awards, honoraria, speaking or consulting fees, etc.) from any interested party?

Yes No

9. Do you or members of your immediate family currently have investments in any of the interested parties' corporations in the form of stocks, bonds, etc.?

Yes No

10. Do you or members of your immediate family favor any of the parties in this litigation?

Yes No

11. Do you or members of your immediate family hold substantive views regarding the issue(s) in this litigation, whether or not these views have been made public?

Yes No

12. Have you ever served as an expert in litigation?

Yes No

REMINDER: IF YOU ANSWER ANY QUESTION IN THE AFFIRMATIVE, PLEASE PROVIDE RELEVANT DETAILS ON AN ADDITIONAL SHEET OF PAPER, NOTING THE NUMBER OF THE QUESTION YOU ARE ANSWERING.

13. If so, approximately how many times?

14. For whom did you work, i.e., plaintiff and/or defendant and/or independent expert for the court?

15. If you can recall, please provide the name(s) of the case(s), what issues the case(s) involved, and the nature of your testimony. If you need more space, please provide the information on additional sheets of paper.

16. Have you, members of your immediate family, or your employer been employed by the attorneys in this litigation or provided services for compensation to these attorneys?

Yes

No

17. Have you or members of your immediate family ever employed the attorneys in this litigation?

Yes

No

18. Are you, members of your immediate family, or your employer associated with the parties' experts in this litigation or taken part in other litigation these experts have been involved in?

Yes

No

19. Are there any factors not addressed above that could create an appearance of conflict or bias, should you be selected to serve in this case?

Yes

No

REMINDER: IF YOU ANSWER ANY QUESTION IN THE AFFIRMATIVE, PLEASE PROVIDE RELEVANT DETAILS ON AN ADDITIONAL SHEET OF PAPER, NOTING THE NUMBER OF THE QUESTION YOU ARE ANSWERING.

20. Is there any reason not addressed by the above questions that you cannot give an independent opinion in this particular case?

Yes

No

I have read the “General Statement Concerning Bias and Conflict of Interest” and the “Instructions for Completing the Questionnaire,” and have answered the above questions in light of those statements completely and to the best of my ability.

SIGNATURE

DATE

Appendix E

Court Appointed Scientific Experts **Professional Standards Subcommittee**

Arthur Bryant, Esq.
Trial Lawyers for Public Justice

Ruth Greenstein, Esq.
Vice President, Administration & Finance
Institute for Defense Analyses

Susan Poulter, J.D., Ph.D.
College of Law
University of Utah

Honorable Barbara Jacobs Rothstein
Judge
U.S. District Court for the
Western District of Washington

Dr. William A. Wulf
President
National Academy of Engineering

Honorable Rya Zobel
Judge
United States District Court
for the District of Massachusetts

Appendix F

Court Appointed Scientific Experts **Education Subcommittee**

Bert Black, Esq.
Diamond, McCarthy, Taylor & Finley, L.L.P.
Dallas, TX

JoAnn Bordeaux, Esq.
Deputy Director, Torts Branch
United States Department of Justice

Dr. David Eaton
University of Washington
Department of Environmental Health

Patrick Malone, Esq.
Stein, Mitchell & Mezines
Washington, DC

Dr. Richard Marshall
Association of Trial Lawyers of America

The Honorable William Schwarzer
Senior Judge
U.S. District Court for the Northern District of California