



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Abstract

Proposed Topic

Judicial Vouching for Expert Witnesses

Sponsoring Subcommittee

Reporting and Testimony Subcommittee

Type of Work Product Proposed

Views Document

Statement of the Issue

Some litigators, following the witness' qualifications testimony, request the trial judge to declare a witness to be an expert in the presence of the jury. This practice has the potential of misleading the jury into believing that the court is vouching for the credibility of the witness and the content of the witness's testimony. This practice should be prohibited.

Background

A number of courts, both state and federal, prohibit the trial court from declaring a witness to be a witness before the jury. All such rulings should be made outside the hearing of the jury and there should be no declaration that the witness is an "expert."

The determination that a witness is an expert is not an express imprimatur of special credence; rather, it is simply a decision that the witness possesses the qualifications, training, education or experience necessary to testify to matters concerning 'scientific, technical, or other specialized knowledge.'

The no-declaration-of-expertise policy is limited. The jury still hears the witness's qualifications. The judge still decides the qualifications of an expert. If the witness's qualifications are challenged, the judge simply rules on the witness' qualifications outside the presence of the jury. Permitting the witness to testify does not require a judicial declaration of expertise in the jury's presence. In the absence of an objection to the witnesses testimony, the objection would be deemed to have been waived.