

**An Observation of Differences in the Transparent Objectivity of  
Forensic Accounting Expert Witnesses**

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Forensic accounting experts are usually classified among the following three groups; expert witness (testifying expert), consulting expert, and fact witness. An expert witness generally appears before a Trier of fact (Judge and/or Jury) and provides an opinion by deposition or testimony before the court. A consulting expert can advise on an attorney's work product by providing additional support in resolving a case. When an accounting expert is called to testify as a fact finding witness, he or she is expected to offer only factual analysis regarding the case without rendering an opinion (Michaelson, 2005). The main differences lie between the testifying expert and consulting expert. The testifying expert must be mindful of the Daubert standard, which is codified in the Federal Rules of Evidence 702 and states; a witness may only testify if, the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case. This standard creates an environment where an expert's opinion should maintain a character of transparent objectivity. Conversely, a consulting expert owes objectivity to the client rather than the Trier of fact. A consulting expert advocates their position on a client's behalf (Michaelson, 2005).

The perception of objectivity is an important element for a forensic accountant engaging in expert testimony. The transparency of an experts' impartiality is vital from a critical position because this ultimately establishes the credibility of the expert's findings. As exemplified in *Monsanto v. Tidball* (2009) (Monsanto), the defendant retained an accountant and tax professor

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to consult on economic damages claimed. The expert eventually testified in the case. According to the Court, there were reservations regarding the expert's objectivity and ultimately deemed the report "unreliable and unable to assist the jury." The expert was referred as a consultant and expert throughout the case literature. These dual roles likely occur as the litigation process develops and the mounting costs conceivably prohibit the addition of a second expert exclusively for testimony. This quandary compels litigation attorneys to put forward an expert initially retained in a consulting role hoping for the best result (Pedneault 2009).

Further evidence in Tax Court questioning expert credibility could be seen in *Wagner Construction, Inc. v. CIR* (2001). The Court rejected the testimony of both experts and the Court determined that "the reports and testimony of the experts in this case are so dissimilar that the reliability of the experts is brought into question." Beatty, Riffe and Thompson (1999) previously confirmed similar behavior also in the Tax Court. Their results suggest that experts advocate during expert testimony in support of valuation estimates to minimize the tax payments of the group compensating them.

While there is limited research on the forensic accountant acting in an expert witness capacity, there have been studies on the skills of a forensic accountant (DiGabriele, 2008), and the educational outcome of forensic accounting curriculum development (Rezaee, Crumbley and Elmore, 2004). The common thread within both pieces of research is the necessary skill of a forensic accountant to effectively engage in expert testimony.

This paper reports the views of forensic accountants, attorneys, and accounting academics concerning the perception of forensic accounting expert witness transparency. A survey instrument was prepared containing 10 statements; 9 based upon the motivating factors

illustrated in actual testimony and limited literature and 1 statement identifying the survey participant.

This research makes several contributions to the academic research on forensic accounting experts participating in expert testimony. First, this study provides important information regarding the opinions of three major stakeholders in forensic accounting testimony. This knowledge could influence future behavior of forensic accountants engaging in expert testimony. Second, the knowledge from this study offers evidence of areas where there is potential disconnect between perceptions of the forensic accountant's role in expert testimony. Third, the results of this study can also serve the academic community by introducing additional insight into the discipline of forensic accounting as courses continue to populate contemporary Universities. Finally, this paper fills a void of the sheer lack of research in this area while contributing directly to practice development for this professional niche.

The manuscript is organized as follows; the next section reviews the literature that motivates the statements in the survey instrument. Section III describes the methodology with section IV illustrating the results. Section V will discuss the findings of the study, and the final section concludes the paper.

## **I. Review of the Literature**

Forensic accounting expert testimony has been experiencing a higher level of assessment since the codification of the Daubert standard within the Federal Rules of Evidence under rule 702. Harrison (2001) identifies this issue by using judicial opinions evaluating expert witness' testimony and suggests that many judges have become increasingly skeptical of the neutrality of expert witnesses. A leading cause for this incredulous perception of the expert witness from the Court is when legal counsel seeks to contain litigation costs by having the forensic accounting expert participate in dual roles. The term dual roles in this context is demonstrated as a sole forensic accounting expert performing consulting and expert witnessing services for the compensating litigant. Pedneault (2009) has recognized, in "everyday litigation" attorneys are inclined to use a single expert in both roles of consultant and expert for economic reasons. This type of monetary compromise during the pre-trial stages of the litigation cycle does not emerge without potential threats to an expert's lack of prejudice.

Pedneault (2009), Adroque and Ratliff (2006) acknowledge that there are risks and disadvantages associated with the cost savings of using a single expert. An example is when a testifying expert attends a deposition and/or trial testimony. The expert should limit any notes they take while attending depositions and trial testimony because they are discoverable if considered substantive information used in forming their opinion (Pedneault 2009), Adroque and Ratliff 2006). This is problematic for a testifying expert if such notes include facts or data relied on while providing strategic suggestions to counsel. This could be perceived as a breach of impartiality. For this reason an attorney could prohibit a testifying expert from attending the depositions and portions of trials to preserve expert objectivity. Pedneault (2009) suggests that counsel should consider in every matter whether it makes sense to engage two experts, a

consulting expert to assist counsel in strategy and a testifying expert should testimony be required in the matter.

As a case makes its way through the litigation life cycle, the costs of the proceedings escalate at a more rapid rate than anticipated by participating litigants (Adroque and Ratliff, 2006). The corollary of this is attorneys often resort to case management cost containment to avoid additional fees (Hill, et. al., 2009). This pressure provides an additional influence on forensic accounting experts to participate in the dual roles of consultant and expert. Experienced forensic accountants understand this quandary and believe they can preserve their objectivity as a holistic occupational risk (Adroque and Ratliff, 2006). However, cross examining attorneys have recognized this as an opportunity to impeach the experts and ultimately undermine the findings (Hill, et. al., 2009).

Attorney influence also plays a role that impacts a testifying expert's opinion (Weil, et. al, (2007). There are times when attorney's include the expert in trial preparation and review their specific line of questioning that reveals their verdict preference. The byproduct of this exercise is the potential persuasion it can have on the expert's testimony. Prior research on this issue indicates that it does. Ricchiute (2004) found that hints of an attorney's position in cases of auditor liability directly influence an accounting expert's testimony regarding auditor compliance with generally accepted auditing standards (GAAS). This study used 45 participants from the litigation services department of a Big 5 CPA firm. The author simulated an auditor liability case environment that included audit working papers from a previously tried Big 5 auditor liability case and found that attorneys indeed influence accounting expert testimony. According to Weil, et. al, (2007), due to the innate nature of an advocate's position it is common practice for an attorney to reveal their verdict preference when preparing for trial to the expert witness.

This suggests the prospect of merging agendas between the attorney and the forensic accounting expert where the expert is perceived as an advocate rather than impartial. This is a distinct hazard that needs to be navigated with much care by the expert (Pedneault, 2009). Often in expert testimony debatable areas are exposed in the assumptions that drive conclusions. The expert can be perceived by a Trier of fact to have shifted from objective to partial when debatable methods are in the apparent favor of the side the expert is testifying for (Michaelson, 2005). Merging agendas in this context could be considered as questionable assumptions in support of the legal position of the employing client or attorney in order to advance their standing.

Ivkovic and Hans (2003) refer to this scenario from the attorney's viewpoint as the orchestration of a "performance." In this setting the lawyer usually hires the expert (performer) and attempts to control the performance to unify the audience (juror/judge) observations to the verdict preference through "staging" and "scripting" (Ivkovic and Hans 2003) . The authors presented a questionnaire to jurors that included the statement; "Lawyers can always find an expert who will back up their client's point of view no matter what." The response of 269 civil jurors was 16% strongly agree, 56% agreed, 15% neither agreed or disagreed, 10% disagreed, and 2% strongly disagreed. The jury's impression of the expert in this study offers further credence to the notion of merging agendas. The resulting implications for the expert could mean much higher expectations in order to convince the trier of fact of their conclusions.

There are three important factors that seem to influence forensic accounting expert transparency, the participation in dual roles of consultant and testifying expert, case management cost containment to control escalating litigation costs, and the merging of agenda between the attorney and forensic accounting expert witness. This study presents the views of three significant stakeholders and attempts to provide an important understanding that could be

effective in shaping the discipline of forensic accounting expert testimony. Insight from accounting academics is important since this group is responsible for educating future forensic accountants and this knowledge is valuable in the classroom. The view of forensic accountants is vital since they are in the forefront and are able to provide information that is explanatory to identify potential areas of misunderstanding that instinctively translates into growth. Attorney perspectives are essential because they hire forensic accountants and understand the rules governing expert witnesses.

## **II. Methodology.**

A nationwide survey was conducted for a random sample of 1,425 accounting academics, forensic accounting practitioners, and attorneys. The sample was compiled as follows; 475 random e-mail addresses were retrieved for faculty members from accounting departments of various universities across the nation that offered forensic accounting courses. For the Universities that listed faculty members teaching courses in fraud or forensic accounting they were selected. The Universities that offered forensic accounting courses but, did not offer instructor information, the survey was sent to a member of the accounting department and asked if the appropriate faculty member would participate. Finally, a Google search was performed using the term “accounting academic expert witness.” There were also several outlets to retrieve the 475 random e-mail addresses of forensic accounting practitioners. Professional membership databases were searched that included; the National Association of Certified Valuation Analysts (NACVA), American Board of Forensic Accounting (ABFA), the American Institute of Certified Public Accountants (AICPA) Forensic and Valuation Services section (FVS). The members of these organizations frequently participate in expert testimony as the credentials they confer frequently appear in published court cases. A Google search was also performed using the terms

“forensic accountants” and “expert witness.” Finally, 475 random e-mail addresses were retrieved from a Google search of attorneys practicing commercial litigation, economic damages, and matrimonial dissolution. These types of attorneys often use forensic accountants for expert opinions in cases involving commercial/economics damages, business valuation, and fraud. The survey instrument employed was prepared, pre-tested and e-mailed. Late responses were compared to early responses and no significant differences were found. The instrument is contained in Appendix A. Participants were e-mailed using [www.surveymonkey.com](http://www.surveymonkey.com) and were asked the extent to which they agreed with the survey statements regarding forensic accounting expert witness transparency. The agreement ratings were made on a five-point Likert scale ranging from “strongly agree” to “strongly disagree.” The following scores were assigned to each response: strongly agree, 1; agree, 2; neither agree nor disagree, 3; disagree, 4; strongly disagree, 5.

Descriptive statistics were computed for the responses to nine statements (percentages within each category for each group), the tenth statement asked for the participant to identify themselves as either a forensic accountant, accounting academic or attorney. A principal component analysis was then performed to examine the underlying structure of the nine items. The eigenvalues-greater-than-one rule was used to determine the number of components to extract and rotate. Descriptive statistics (ranges, means, standard deviations, and internal consistency reliability coefficients) were then computed for the composite scores resulting from the principal component analysis. A principal component analysis was conducted to examine the dimensionality of the nine survey items. For this analysis, all items were scored so that higher values were indicative of an attitude demonstrating a higher level of transparent objectivity. The principal component analysis yielded two components with eigenvalues-greater-than-one (5.35



for the first component explaining 59.4% of the variance and 1.00 for the second component explaining an additional 11.2% of the variance). However, when a varimax rotation was applied to the first two components, the second component consisted of a single item (“A forensic accountant is court appointed as a testifying expert. The forensic accountant is perceived to be more objective than an expert retained by the plaintiff or defendant”). Despite the fact that this item produced a second component, it was positively correlated with all other items (with Pearson  $r$ 's ranging from .13 to .45), indicating that it was reasonable to include it in the overall composite score. Thus, it was concluded that there was a single interpretable component among the nine items, with eight of the nine items having their highest loading on this component. The internal consistency reliability coefficient for the composite score consisting of all nine items was .91. Kruskal-Wallis tests were performed to compare the responses of the three groups with a series of Mann-Whitney tests as a post hoc procedure.

### **III. Results**

#### *Descriptive Statistics*

A total of 258 individuals completed surveys. Of these, there were 85 academics (32.9%), 87 forensic accountants (33.7%), and 86 attorneys (33.3%). The overall response rate was 18.11%.

Table 1 shows the percentage of participants in each of the three groups (and overall) responding with each option to each of the nine survey items. Overall, the statements that the participants agreed most strongly with were “Two independent forensic accountants are retained for the same case. One is retained as a consulting expert and the other as a testifying expert. This scenario may preserve objectivity” (with 46.9% strongly agreeing and 31.8% agreeing), and “A forensic accountant who is retained predominately by a specific attorney may appear to

demonstrate less transparent objectivity” (with 41.4% strongly agreeing and 34.9% agreeing).

The participants disagreed most strongly with the statements “A forensic accountant is retained as a testifying expert. During cross examination the forensic accountant becomes aware of information that was initially requested from the retaining attorney that was deemed “unavailable” at the time of request. It is best for the forensic accountant to “stick” to their opinion even though this information may change the results of the expert report on which they are testifying” (with 55.8% strongly disagreeing and 36.8% disagreeing) and “A forensic accountant retained as a testifying expert can advocate on a client’s behalf in their expert report and/or testimony” (with 47.3% strongly disagreeing and 29.1% disagreeing).

#### *Inferential Analyses on Group Differences*

Table 2 shows the results of Kruskal-Wallis tests comparing the three groups on their responses to each of the nine items. In each case, the Kruskal-Wallis test was statistically significant, with all p values less than .01. This indicated that the three groups were not equivalent in their responses to any of the nine items. In addition to the nonparametric Kruskal-Wallis tests, one-way ANOVAs were performed comparing the three groups on their mean response to these items. All nine one-way ANOVAs were statistically significant, confirming the results from the Kruskal-Wallis tests.

To follow up the Kruskal-Wallis tests, a series of Mann-Whitney tests were performed comparing academics to forensic accountants, academics to attorneys, and forensic accountants to attorneys. Given the number of statistical Mann-Whitney tests performed, a Bonferroni correction was applied in which each result was considered statistically significant only if the p value fell below .0167 (.05 / 3).

The results of these tests are shown in Table 3. Forensic accountants differed from both attorneys and academics in terms of their level of agreement with the statement “A forensic accountant can be a testifying expert and consulting expert on the same case without compromising objectivity.” The percentages in Table 1 indicated that forensic accountants were more likely to strongly agree with this statement than academics (with 21.8% of forensic accounts strongly agreeing compared to 2.4% of academics) and than attorneys (of which only 4.7% strongly agreed). Academics and attorneys did not differ in their level of agreement with this statement.

The next section of Table 3 shows that forensic accountants differed from academics and attorneys in their level of agreement to the statement “If a forensic accounting expert prepares an expert report and is present at an opposing expert’s deposition to consult their retaining attorney, such actions may compromise the expert’s objectivity.” Table 1 shows that 42.4% of academics and 54.7% of attorneys strongly agreed with this statement, while only 20.7% of forensic accountants strongly agreed. Academics and attorneys did not differ from each other.

Forensic accountants differed from the two other groups in their level of agreement with the statement “Two independent forensic accountants are retained for the same case. One is retained as a consulting expert and the other as a testifying expert. This scenario may preserve objectivity.” Attorneys were most likely to strongly agree with this statement (with 65.1% strongly agreeing compared to 45.9% of academics and only 29.9% of forensic accountants). Attorneys and academics did not differ with respect to their level of agreement with this statement.

Forensic accountants differed from both academics and attorneys in their level of agreement with the statement “A forensic accountant is retained as a testifying expert. In a

conversation with the attorney the forensic accountant requests documents; the attorney also discusses their line of argument. This discussion may prejudice the testifying expert's conclusions in their expert report." Table 1 shows that again it was attorneys who were most likely to strongly agree with this statement (62.8%) followed by academics (45.9%), with only (21.8%) of forensic accountants strongly agreeing with this statement. Again, academics and attorneys did not differ with respect to their level of agreement with this statement.

Attorneys differed from both academics and forensic accountants on their level of agreement with the statement "A forensic accountant retained as a testifying expert can advocate on a client's behalf in their expert report and/or testimony." Attorneys were more likely to strongly disagree with this statement (60.5%) than either forensic accountants (40.2%) or academics (41.2%). Academics and forensic accountants did not differ.

All three groups differed in terms of their responses to the statement "A forensic accountant who is retained predominately by a specific attorney may appear to demonstrate less transparent objectivity." Table 1 shows that attorneys were more likely to strongly agree with this statement (60.5%) than academics (43.5%), with only (19.5%) of forensic accountants strongly agreeing.

Attorneys differed from forensic accountants on their level of agreement with the statement "A forensic accountant is retained as a testifying expert. During cross examination the forensic accountant becomes aware of information that was initially requested from the retaining attorney that was deemed "unavailable" at the time of request. It is best for the forensic accountant to "stick" to their opinion even though this information may change the results of the expert report on which they are testifying." Attorneys were more likely to strongly disagree with

this statement (68.6%) than forensic accountants (46.0%). Academics did not differ from either attorneys or forensic accountants in their level of agreement with this statement.

All three groups differed with respect to their level of agreement with the statement “A review of a forensic accountant’s curriculum vitae indicates that their retention for expert testimony is predominately for plaintiff work. This history indicates the perception that the expert’s objectivity is compromised towards decisions in the plaintiff’s favor.” As seen in Table 1, 62.8% of attorneys strongly agreed with this statement, followed by 38.8% of academics, with only 17.2% of forensic accountants strongly agreeing. For the final statement, “A forensic accountant is court appointed as a testifying expert. The forensic accountant is perceived to be more objective than an expert retained by the plaintiff or defendant,” attorneys differed from forensic accountants. Table 1 shows that nearly all of the attorneys agreed (94.2%) or strongly agreed (3.5%) with this statement, compared to 62.1% of forensic accountants (with 48.3% agreeing and 13.8% strongly agreeing).

The final analysis consisted of a comparison of the three groups on a composite score based on all nine survey items. As was the case for the principal component analysis discussed above, all items were scored so that higher values were indicative of an attitude demonstrating a higher level of concern for transparent objectivity prior to computing the composite score. A one-way ANOVA was performed comparing the three groups on this composite score, and the result was statistically significant,  $F(2, 255) = 43.79, p < .001$ . Follow up Tukey HSD tests indicated that all three groups were significantly different from each other ( $p < .05$  based on the Type I error protection offered by the HSD test). Examining the means indicated that attorneys ( $M = 39.58, SD = 6.04$ ) had the highest scores, followed by academics ( $M = 36.74, SD = 6.89$ ), with forensic accountants having the lowest scores ( $M = 29.89, SD = 7.95$ ).

#### **IV. Discussion**

Survey statements were presented to forensic accounting practitioners, accounting academics, and attorneys to obtain their views on circumstances that can be interpreted or perceived as a potential departure from forensic accounting expert impartiality. In addition to the views of these three groups, the technology of using an electronic survey instrument provided an opportunity for respondents to include commentary regarding their response. As a result, participant provided insightful observations.

##### *Representative Comments*

A greater component of the results indicated that the use of a forensic accounting expert in the dual roles of expert and consultant can compromise the effectiveness of their findings. Comments from forensic accounting practitioner survey participants indicate that a consulting expert often becomes a testifying expert and should therefore remain objective in both roles. Accounting academic and attorney remarks suggest that the forensic accounting expert should remain impartial in the expert role and allow the attorney to be the advocate. If the expert is participating in case strategy as a consultant, impartiality will naturally shift to favor the compensating client. The views of forensic accountants significantly differed from academics and attorneys on the first three survey statements which had the implication of the perception of the forensic accounting expert participating in dual roles. A potential factor for this disagreement perhaps lies within the forensic accountant and their perception of being effective in their work product. This effectiveness naturally leads to the belief that future engagements should follow.

The view of forensic accounting expert objectivity can also present itself in what can be construed as an innocuous proposition. Survey statements centered on conversations with retaining attorneys, testifying for a majority of either plaintiffs or defendants, and merely being engaged predominantly by a particular attorney also appear to imply objectivity issues for

forensic accounting experts. Commentary from attorney participants that remained in the forefront of the dialog on this issue include, “attorneys always want to prejudice experts with the intention of obtaining a favorable verdict for their client.” This can be counterintuitive to case results. The most prevalent consequence of this technique is jeopardizing the expert’s credibility. The remarks from academics and forensic accountants on this general topic ranged from “a forensic accountant should remain impartial regardless” to “it depends”.

However, the issue of the forensic accountant being repeatedly retained by the same attorney and testifying in favor of a particular litigating position was met with very interesting observations. Attorney’s stated that asking questions in depositions regarding the majority of the type of work an expert engages in (plaintiff or defendant) and how many times the expert has been retained by an attorney are “front line questions” that intend to undermine expert credibility. Whereas academics believed that objectivity in appearance could be impaired but, not necessarily in fact. The forensic accountants remarked that this is just a common tactic by the defense.

*Comments from Litigation Attorney’s Interviews*

A small group of five litigation attorneys were presented with the results of the survey separately and asked what they believed were the driving factors motivating differences between the forensic accountants and attorneys since the groups disagreed on every survey item. Attorney number one considered differences between the forensic accounting and attorney group to be inherent to their discipline. Attorneys exist in a world of debate while accountants are trained in a narrow reality where circumstances viewed are based on a straightforward, mutually exclusive position. Attorney number two believed the differences are based on that accountants are

indoctrinated with the appearance of independence and deem they are innately perceived as always neutral. The third litigation attorney thought that the divergence in responses to the statements between the two groups has its basis in notion of artificial objectivity. Accountants are not used to the preservation of artificial objectivity that is a natural balancing act of an expert witness. The fourth attorney considers the following reason for differences between the groups. Attorneys overshoot the probability of impeaching an expert based upon routine litigation subtleties. For example; there are regular expectations of a forensic accounting expert such as, providing assistance to the attorney for the deposition of the opposing expert and providing a critique of the opposing experts' report weaknesses. The fifth attorney viewed the differences as an adaptability issue. Attorneys will expert shop for the best opinion to support their case. Forensic accountants for their own preservation should understand this litigation dynamic without compromising the perception of objectivity.

## **V. Conclusion**

Suggestions to curb issues such as expert impartiality in expert testimony have been proposed in the medical expert witness system. Jiang (2006) recommends a system built around court-appointed experts. Under the current adversarial system, the parties are incentivized to hire favorable experts which contribute to objectivity issues. A reasonable solution proposed by Jiang (2006) is to change partisan selection to appointment by the court. The use of court-appointed experts could perhaps reduce these types of issues to some extent however, still be challenging. The courts inherently do not have the time or resources that the parties do to select experts appropriately. The Court has also expressed, "appointing experts conflicts with the sense of the judicial role, which is to trust the adversaries to present information and arguments" (Jiang, 2006).



As an update to Federal Rule of Civil Procedure 26 becomes effective on December 1, 2010, draft reports will no longer be discoverable (Carroll, 2010). In addition, experts will be required to disclose, compensation received, facts or data considered that were provided by counsel and assumptions relied on provided by counsel (Carroll, 2010). However, forensic accounting experts should not view this amendment as an opportunity to proffer a spate of unhindered communication that can result in a Daubert challenge. In fact, the issues enveloped in this research will aid experts navigating this new amendment by further understanding perceptions of compromising conditions.

Forensic accounting is expected to experience rapid growth over the foreseeable future (Stimpson 2007). In consideration of the issues exposed by this study, academic curriculum and forensic accounting organizations conferring certifications in the discipline might consider implementing education requirements that refine and clarify objectivity issues. It could be said that such requirements are explicit in the codes of conduct of all organizations granting forensic accounting certifications. However, there are subtleties within the forensic accounting discipline that need to be reinforced through future academic courses and continuing professional education. One such example is the mandatory ethics course that is now required by regulatory authorities for Certified Public Accountants to maintain licensure. A similar requirement can be implemented by forensic accounting organizations awarding certifications.

Future research in this area could progress to experimental designs that measure the influence of additional education on topics such as Daubert standard updates and contemporary issues in court testimony.

The limitation of the current study, as an inherent attribute with survey research, is non-response bias. The only way to evaluate this was to test late responses to earlier results. There were no significant differences.

## REFERENCES

- Adroque, S. & Ratliff, A. (2006). The Care and Feeding of Experts: Accountants, Lawyers, Investment Bankers, and Other Non-Scientific Experts. *South Texas Law Review*. Summer. 47, 881, 1-28.
- Beatty, R. P. Riffe, S. M. and Thompson R. (1999). The method of comparables and tax court valuations of private firms: An empirical investigation. *Accounting Horizons*. September. 13, 3, 177-199.
- Carroll, J.L. (2010). Proportionality in Discovery: A Cautionary Tale. *The Campbell Law Review*. 32, 455, 1-21.
- DiGabriele, J.A. (2008). The Adversarial Bias of Accounting Experts in Financial Litigation: An Empirical Analysis of Compromised Objectivity in Accounting Expert Testimony. *Journal of Accounting, Ethics & Public Policy*. 8, 1, 1-22.
- Harrison, J.L. (2001). Reconceptualizing the Expert Witness: Social Costs, Current Controls and Proposed Responses. *Yale Journal on Regulation*. 18, 253, 1-46.
- Hill, J.W, Hogan, P., Karam, Y., and Langvardt, A.D. (2009). : Increasing Complexity and Partisanship in Business Damages Expert Testimony: The Need for a Modified Trial Regime in Quantification of Damages. *University of Pennsylvania Journal of Business Law*. 11, 297, 1-76.
- Ivkovic, S.K. & Hans, V.P. (2003). Jurors' Evaluation of Expert Testimony: Judging the Messenger and the Message. *Law & Social Inquiry*. 28, 2, 441-482.
- Jiang, Y. (2006) Reconsidering the Medical Expert Witness System. University of Georgia School of Law. Thesis; Master of Laws. 1-70.
- Michaelson, W.M. (2005). Advocacy and the Expert Witness. *Expert Witnessing in Forensic Accounting*. 1, 1, 63-70.
- Monsanto v. Tidball* 2009 WL 2757047 (E.D. Mo.)
- Pedneault, S. (2009). *Fraud 101 Techniques and Strategies for Understanding Fraud*. John Wiley & Sons Inc. Hoboken, NJ.
- Rezaee, Z. Crumbely, L.D. & Elmore, R.C. (2004). *Forensic accounting education: a survey of academicians and practitioners*. *Advances in Accounting Education*. Forthcoming.
- Ricchiute, D.N. (2004). Effects of an Attorney's Line of Argument on Accountants' Expert Witness Testimony. *The Accounting Review*. 79, 1, 221-245.
- Stimpson. J. (2007) *Forensic Accounting: Exponential Growth*. WebCPA.  
[http://www.webcpa.com/prc\\_issues/2007\\_2/23165-1.html](http://www.webcpa.com/prc_issues/2007_2/23165-1.html)

*Wagner Construction, Inc. v. CIR, T.C. Memo. 2001-160*

Weil, R.L., Hughes, C.W., Wagner, M.J. and Frank, P.B. (2009) The Role of the Financial Expert in Litigation Services.

Table 1

*Responses to Survey Items as a Function of Group (N = 258)*

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
A forensic accountant can be a testifying expert and consulting expert on the same case without compromising objectivity.					
Academics	2.4%	12.9%	3.5%	25.9%	55.3%
Forensic Accountants	21.8%	41.4%	2.3%	9.2%	25.3%
Attorneys	4.7%	7.0%	1.2%	23.3%	64.0%
Total	9.7%	20.5%	2.3%	19.4%	48.1%
If a forensic accounting expert prepares an expert report and is present at an opposing expert's deposition to consult their retaining attorney, such actions may compromise the expert's objectivity.					
Academics	42.4%	32.9%	8.2%	12.9%	3.5%
Forensic Accountants	20.7%	11.5%	0.0%	41.4%	26.4%
Attorneys	54.7%	30.2%	2.3%	9.3%	3.5%
Total	39.1%	24.8%	3.5%	21.3%	11.2%
Two independent forensic accountants are retained for the same case. One is retained as a consulting expert and the other as a testifying expert. This scenario may preserve objectivity.					
Academics	45.9%	45.9%	7.1%	1.2%	0.0%
Forensic Accountants	29.9%	24.1%	27.6%	12.6%	5.7%
Attorneys	65.1%	25.6%	8.1%	1.2%	0.0%
Total	46.9%	31.8%	14.3%	5.0%	1.9%

*table continues*

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
<p>A forensic accountant is retained as a testifying expert. In a conversation with the attorney the forensic accountant requests documents; the attorney also discusses their line of argument. This discussion may prejudice the testifying expert's conclusions in their expert report.</p>					
Academics	45.9%	32.9%	4.7%	14.1%	2.4%
Forensic Accountants	21.8%	4.6%	11.5%	44.8%	17.2%
Attorneys	62.8%	23.3%	2.3%	10.5%	1.2%
Total	43.4%	20.2%	6.2%	23.3%	7.0%
<p>A forensic accountant retained as a testifying expert can advocate on a client's behalf in their expert report and/or testimony.</p>					
Academics	8.2%	15.3%	7.1%	28.2%	41.2%
Forensic Accountants	5.7%	13.8%	11.5%	28.7%	40.2%
Attorneys	1.2%	7.0%	1.2%	30.2%	60.5%
Total	5.0%	12.0%	6.6%	29.1%	47.3%
<p>A forensic accountant who is retained predominately by a specific attorney may appear to demonstrate less transparent objectivity.</p>					
Academics	43.5%	37.6%	4.7%	12.9%	1.2%
Forensic Accountants	19.5%	33.3%	10.3%	33.3%	3.4%
Attorneys	60.5%	33.7%	2.3%	1.2%	2.3%
Total	41.1%	34.9%	5.8%	15.9%	2.3%

*table continues*

Statement	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
<p>A forensic accountant is retained as a testifying expert. During cross examination the forensic accountant becomes aware of information that was initially requested from the retaining attorney that was deemed “unavailable” at the time of request. It is best for the forensic accountant to “stick” to their opinion even though this information may change the results of the expert report on which they are testifying.</p>					
Academics	1.2%	1.2%	4.7%	40.0%	52.9%
Forensic Accountants	1.1%	1.1%	8.0%	43.7%	46.0%
Attorneys	0.0%	1.2%	3.5%	26.7%	68.6%
Total	.8%	1.2%	5.4%	36.8%	55.8%
<p>A review of a forensic accountant’s curriculum vitae indicates that their retention for expert testimony is predominately for plaintiff work. This history may indicate the perception that the expert’s objectivity is compromised towards decisions in the plaintiff’s favor.</p>					
Academics	38.8%	35.3%	9.4%	15.3%	1.2%
Forensic Accountants	17.2%	34.5%	10.3%	29.9%	8.0%
Attorneys	62.8%	31.4%	4.7%	1.2%	0.0%
Total	39.5%	33.7%	8.1%	15.5%	3.1%
<p>A forensic accountant is court appointed as a testifying expert. The forensic accountant is perceived to be more objective than an expert retained by the plaintiff or defendant.</p>					
Academics	11.8%	72.9%	8.2%	7.1%	0.0%
Forensic Accountants	13.8%	48.3%	19.5%	16.1%	2.3%
Attorneys	3.5%	94.2%	1.2%	1.2%	0.0%
Total	9.7%	71.7%	9.7%	8.1%	.8%

Table 2

*Results of Kruskal-Wallis Tests for Group Differences*

Statement	$\chi^2$	<i>df</i>	<i>p</i>
A forensic accountant can be a testifying expert and consulting expert on the same case without compromising objectivity.	51.95	2	<.001
If a forensic accounting expert prepares an expert report and is present at an opposing expert's deposition to consult their retaining attorney, such actions may compromise the expert's objectivity.	52.92	2	<.001
Two independent forensic accountants are retained for the same case. One is retained as a consulting expert and the other as a testifying expert. This scenario may preserve objectivity.	36.96	2	<.001
A forensic accountant is retained as a testifying expert. In a conversation with the attorney the forensic accountant requests documents; the attorney also discusses their line of argument. This discussion may prejudice the testifying expert's conclusions in their expert report.	59.59	2	<.001
A forensic accountant retained as a testifying expert can advocate on a client's behalf in their expert report and/or testimony.	13.60	2	.001
A forensic accountant who is retained predominately by a specific attorney may appear to demonstrate less transparent objectivity.	45.87	2	<.001
A forensic accountant is retained as a testifying expert. During cross examination the forensic accountant becomes aware of information that was initially requested from the retaining attorney that was deemed "unavailable" at the time of request. It is best for the forensic accountant to "stick" to their opinion even though this information may change the results of the expert report on which they are testifying.	9.49	2	.009
A review of a forensic accountant's curriculum vitae indicates that their retention for expert testimony is predominately for plaintiff work. This history may indicate the perception that the expert's objectivity is compromised towards decisions in the plaintiff's favor.	54.31	2	<.001
A forensic accountant is court appointed as a testifying expert. The forensic accountant is perceived to be more objective than an expert retained by the plaintiff or defendant.	13.09	2	.001



Table 3

*Results of Mann-Whitney Follow Up Tests for Group Differences*

Statement	Academics v. Forensic Accountants		Academics v. Attorneys		Forensic Accountants v. Attorneys	
	<i>z</i>	<i>p</i>	<i>z</i>	<i>p</i>	<i>z</i>	<i>p</i>
A forensic accountant can be a testifying expert and consulting expert on the same case without compromising objectivity.	-5.82	<.001	-1.16	.244	-6.35	<.001
If a forensic accounting expert prepares an expert report and is present at an opposing expert's deposition to consult their retaining attorney, such actions may compromise the expert's objectivity.	-5.71	<.001	-1.71	.087	-6.56	<.001
Two independent forensic accountants are retained for the same case. One is retained as a consulting expert and the other as a testifying expert. This scenario may preserve objectivity.	-4.32	<.001	-2.18	.029	-5.59	<.001
A forensic accountant is retained as a testifying expert. In a conversation with the attorney the forensic accountant requests documents; the attorney also discusses their line of argument. This discussion may prejudice the testifying expert's conclusions in their expert report.	-5.84	<.001	-2.15	.032	-7.04	<.001
A forensic accountant retained as a testifying expert can advocate on a client's behalf in their expert report and/or testimony.	-.08	.937	-3.20	.001	-3.27	.001

*table continues*

Statement	Academics v. Forensic Accountants		Academics v. Attorneys		Forensic Accountants v. Attorneys	
	<i>z</i>	<i>p</i>	<i>z</i>	<i>p</i>	<i>z</i>	<i>p</i>
A forensic accountant who is retained predominately by a specific attorney may appear to demonstrate less transparent objectivity.	-4.24	<.001	-2.63	.009	-6.57	<.001
A forensic accountant is retained as a testifying expert. During cross examination the forensic accountant becomes aware of information that was initially requested from the retaining attorney that was deemed “unavailable” at the time of request. It is best for the forensic accountant to “stick” to their opinion even though this information may change the results of the expert report on which they are testifying.	-1.00	.317	-2.07	.039	-3.03	.002
A review of a forensic accountant’s curriculum vitae indicates that their retention for expert testimony is predominately for plaintiff work. This history may indicate the perception that the expert’s objectivity is compromised towards decisions in the plaintiff’s favor.	-3.82	<.001	-3.81	<.001	-7.25	<.001
A forensic accountant is court appointed as a testifying expert. The forensic accountant is perceived to be more objective than an expert retained by the plaintiff or defendant.	-2.39	.017	-.77	.438	-3.46	.001

## **Appendix A.**

Forensic Accountants are frequently engaged in litigating matters to assist in analyzing, interpreting, summarizing and finally presenting their expert opinion to assist a Trier of Fact (Judge and/or Jury). The following statements present conditions that may arise during expert testimony before a Trier of Fact; address each statement in this context (an expert testifying before a Trier of Fact) and indicate whether you would agree strongly, agree, neither agree nor disagree, disagree or disagree strongly with the interpretation and/or perception of the expert's transparency.

1. A forensic accountant can be a testifying expert and consulting expert on the same case without compromising objectivity.
2. If a forensic accounting expert prepares an expert report and is present at an opposing expert's deposition to consult their retaining attorney, such actions may compromise the expert's objectivity.
3. Two independent forensic accountants are retained for the same case. One is retained as a consulting expert and the other as a testifying expert. This scenario may preserve objectivity.
4. A forensic accountant is retained as a testifying expert. In a conversation with the attorney the forensic accountant requests documents; the attorney also discusses their line of argument. This discussion may prejudice the testifying expert's conclusions in their expert report.
5. A forensic accountant retained as a testifying expert can advocate on a client's behalf in their expert report and/or testimony.
6. A forensic accountant who is retained predominately by a specific attorney may appear to demonstrate less transparent objectivity.
7. A forensic accountant is retained as a testifying expert. During cross examination the forensic accountant becomes aware of information that was initially requested from the retaining attorney that was deemed "unavailable" at the time of request. It is best for the forensic accountant to "stick" to their opinion even though this information may change the results of the Expert Report on which they are testifying.
8. A review of a forensic accountant's curriculum vitae indicates that their retention for expert testimony is predominately for plaintiff work. This history may indicate the perception that the expert's objectivity is compromised towards decisions in the plaintiff's favor.
9. A forensic accountant is court appointed as a testifying expert. The forensic accountant is perceived to be more objective than an expert retained by the plaintiff or defendant.
10. Please identify yourself: Academic, Forensic Accountant, Attorney