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Expert Witnessing in New Technologies **Forensic Engineering for Courts of Law**

Symposium “**Court computerization and legal data bases: Latest trends**”,
Centre of International and European Economic Law in Greece (CIEEL),
The Greek Ministry of Justice and the Bulgarian Ministry of Justice
Sofia (Bulgaria) on September 26-27, 2002

First of all, I would like to thank you for this invitation. Let me expressly show here my gratitude to Ms. Natalia Papasteriadou, Project Coordinator, and Professor P. Naskou – Perraki, Secretary of the CIEEL. They have been kind and efficient in the preparation of all the details for this event, and I will undertake any responsibility, with my company www.cita.es for any mistake arising from now on. Within the following minutes, I shall do my best to share with you some “*expert witnessing points of view*” from many Courts of Law experiences. Of course, we do not have time enough to consider many of the main problems related to Justice, so we shall focus only on new technologies in Courts of Law and also on litigation in new technology conflicts too, as a dual expert witnessing approach.

Please, let me clearly point out that I am not presently acting in an official character –i.e., I do not speak on behalf of any governmental entity- or any Spanish Court of Law. Sometimes I am just a “victim” of the Spanish Computing System LIBRA for Courts of Law. As an independent expert witness, I am only aware of the so many problems of LIBRA, although I know very little about LIBRA’s design and software engineering, except that it is usually working on Unix machines with old VT-100 dumb terminals, and that it has been developed using UNIFACE by CompuWare and Ernst&Young. However, I am quite interested in any European coordination for computing in Courts of Law because, after many years working as an Expert Witness in Forensic Computing, I have learned some key lessons that, now, I would like to share with officials and expert witnesses elsewhere. Please tell me more!

In order to understand what we can do and what we cannot do (please, also consider carefully what we can do but we must not do) in “*Court computerization and legal data bases*” I honestly think that any approach for this aim must be a smart equilibrium between ethics and technology. Old procedure codes and heavy courts traditions make things much more difficult, but some universal legal principles must be accepted in every European country. Here is my concern on

the right(s) “to know” before it is legally too late *for any citizen*

Expert witnessing “business” is to provide right knowledge at the right time in the right place. **Where** are the problems? **How** can we “legally” know where and when can we be useful? **Why**? I invite you to focus your attention on expert witnessing in criminal cases in several European countries. There are some useful books for a comparative overview of “our” procedure codes¹, but there are a few international expert witnessing references, as far as we know at www.cita.es

¹ Spanish, Italian, French, English (and Wales), Portuguese and German criminal laws are compared in the book “Sistemas Procesales Penales Comparados” by Edmundo S. Hendler, AD-HOC, Buenos Aires, Argentina, 1999.

HOW TO BE AN EXPERT WITNESS (here and now)

Legal facts and evidences are, or at least usually must be, legal facts and evidences everywhere. Expert witness and lawyers intelligence has several limits (commonly, too many limits indeed). However, silly, lazy and malicious people or malpractices know no limits at all anywhere.

In some “First World” countries², “every person is an expert witness: people from every stratum of life, every occupation, job, or hobby on any subject matter qualify as experts”. However, in “not so well developed” countries, it is very difficult to become an expert witness in any Court³.

Sometimes it is funny to remember that the richest and most important person in the computer industry had no academic qualifications, while he can easily know much more than anybody else about what can be done in any computer system of any Court of Law, all over the World.

“We all have knowledge in our minds, knowledge of the contents of other minds, and knowledge of the shared environment.... All three varieties of knowledge are, however, objective in the sense that their truth is independent of their being believed to be true”⁴. Please think about this.

Data computing, information, intelligence and knowledge are tools for modern expert witnessing and technologies which let us offer **remote expert witnessing** here and now, seriously speaking.

OUR PROPOSAL TO ALL EUROPEAN COURTS OF LAW AND JUSTICE SYSTEMS

In our honest opinion, expert witnessing in Spain is neither efficient nor trusted enough for legal responsibilities. Most frequently, expert witnessing problems are nobody’s personal fault but the system’s. Moreover, a lot of money is wrongly spent on expert witness fees in many countries. Right now many lawyers, public prosecutors and judges are asking expert witnessing questions. Unfortunately, it is not possible to know who is making the right questions before it is too late.

If you can imagine a list of unsolved expert witnessing questions, no matter in which Court of Law, you can also imagine reasonable procedures to find an appropriate expert witness for each Court of Law efficiently. The first step is to improve the legal questions formats because I know pretty well how different can be the circumstances and priorities of any legal case can be. However, if lawyers, public prosecutors and judges would like to think more about how to ask for expert witnessing, our professional task would be much easier, cheaper and trusted. We need better questions, with better rules, and **a Website with “calls for expert witnessing specific tenders” in any Court of Law.**

² How to be an Expert Witness. Credibility in Oral Testimony, by Dennis G. Merenbach, Attorney at Law, page 13, but in order to understand better “American Way” of Legal Expert Witnessing, I also recommend “Sue the Bastards! Everything you need to know to go to –or stay out of- Court”, by Gerard P. Fox, Esq., with Jeffrey A. Nelson.

³ I personally visited several Courts of Law in Spain and Latin America where the Judge seems to be the only one allowed to decide with no responsibility at all who is (and also who is not) an expert witness. I also participated in some international forensic science and expert witnessing congress like the last one from 6th to 9th August 2002, in Buenos Aires, Argentina, published at <http://www.decriminalistica.com.ar/congreso.html>

⁴ “Subjective, Intersubjective, Objective” by Donald Davidson, OXFORD University Press, 2001, page XIII.

Finally, let me offer some “Bulgarian legal food” for “expert witnesses thinking”. Here it is:

EXPERTISE in Bulgaria. Cases in which expertise shall be appointed⁵

Article 117 (1) (Amended, SG No. 70/1999) Where special knowledge is necessary in the field of science, art or technology, for the purpose of elucidating some circumstances in the case, the court or the body of pre-trial proceedings shall appoint expertise.

(2) The expertise shall be mandatory where there is doubt about:

1. the cause of death;
2. the nature of the bodily injury;
3. the responsibility of the accused or the suspect;
4. the capability of the accused or suspect to correctly perceive facts of significance in the case, in view of his/her physical or mental status, and to give reliable explanations about them;
5. the capability of the witness to correctly perceive facts of significance in the case, in view of his/her physical or mental status, and to give reliable testimony on them.

Contents of the act for appointment of expertise (Amended, SG No. 70/1999)

Article 118 (Amended, SG No. 28/1982, 70/1999) The act for appointment of expertise shall set forth: the reasons which necessitate expertise; the object and purpose of the expertise; the materials placed at the disposal of the expert; full name, education, specialty, academic degree, academic title and position of the expert or name of the institution in which the expertise will have to be performed, name of the medical institution in which hospital observations shall be made and the term for submission of findings.

Taking samples for comparative tests

Article 119 (1) The body appointing the expertise shall have the right to request of the accused and the suspect samples of their handwriting or other samples for comparative tests.

(2) The preceding paragraph shall also apply to witnesses, should it be necessary to check whether they have left traces at the place of the crime or on the pieces of material evidence.

Persons who shall be charged with the expertise

Article 120 (Amended, SG No. 28/1982) (1) The expertise shall be assigned to specialists from the appropriate institution or organization.

(2) (Amended, SG No. 70/1999) A copy of the act for appointment of expertise shall be sent to the head of the institution or organization, who shall ensure conditions for its implementation.

(3) Where it is impossible to appoint an expert pursuant to paragraph (1), the body who appoints the expertise may assign it to specialists outside the respective institution or organization.

Persons who may not be experts

Article 121 (1) Experts may not be: 1. persons with regard to whom the circumstances under Article 25, subparagraphs 1 - 5 and 7 - 9 are at hand;

2. witnesses in the case;
3. persons of official or other dependence upon the accused or the defense counsel thereof, upon the aggrieved party, the private complainant, the civil claimant, the civil defendant or upon their attorneys;
4. (Amended, SG No. 70/1999) the persons who performed the inspection, the materials of which served as grounds for commencing the investigation;
5. persons who do not possess the required professional qualifications, if such qualifications are required.

(2) In cases under the preceding paragraph the experts shall be obliged to withdraw on their own.

(3) The interested parties shall make their challenges before the body who appointed the expertise.

Before you make any question, I would like to ask you something, which I am deeply interested in knowing. **How can I be an expert witness in Bulgaria?** Please notice, and remember that I am just a Mining Engineer with doctoral studies on Computing Science and Cryptology, *still working* on a Thesis with 2 diplomas in Criminology and International Affairs.

Now, I study Philosophy in Madrid.

Thank you for your kind attention, and *in advance* for data, ideas, new contacts or references.

⁵ Thanks to the Spanish Embassy Commercial Office in Sofia that sent by e-mail this PENAL PROCEDURE CODE