

**THE RIGHT STUFF:
CHOOSING EXPERT WITNESSES**

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The Right Stuff: Choosing Expert Witnesses ©

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I. INTRODUCTION. The first section of this article discusses legal requirements for the admissibility of expert testimony. The second section of the article lists experts by geographical area in Texas. The third section of the article sets out short resumés for each listed expert.

II. QUALIFICATIONS, GENERAL ACCEPTANCE, RELIABILITY, RELEVANCE & HELPFULNESS. For expert testimony to be admissible, the proponent must establish the expert's qualifications and the expert's methodology must be shown to be reliable. Additionally, the expert's testimony must be relevant to the issues to be decided in the case, and the expert testimony must assist the jury in deciding a matter they could not decide without expert evidence.

A. QUALIFICATIONS. Under TRE 702, a person may testify as an expert only if (s)he has knowledge, skill, experience, training or education that would assist the trier of fact in deciding an issue in the case. *See Broders v. Heise*, 924 S.W.2d 148, 149 (Tex. 1996). This requirement involves the expert's "qualifications." In gauging an expert's qualifications, it must be remembered that a person who is degreed or licensed in a particular field is not necessarily qualified to give expert testimony regarding all areas of that field. *Broders v. Heise*, 924 S.W.2d 148, 149 (Tex. 1996).

Whether an expert is qualified to testify under Rule 702 involves two factors: (1) whether the expert has knowledge, skill, etc.; and (2) whether that expertise will assist the trier of fact to decide an issue in the case. Courts sometimes evaluate the first prong, of adequate knowledge, skill, etc., by asking whether the expert possesses knowledge and skill not possessed by people generally. *Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996). *See Duckett v. State*, 797 S.W.2d 906, 914 (Tex. Crim. App. 1990) ("The use of expert testimony must be limited to situations in which the issues are beyond that of an average juror"); John F. Sutton, Jr., *Article VII: Opinions and Expert Testimony*, 30 HOUS. L.REV. 797, 818 (1993) [Westlaw cite 30 HOULR 797].

The second prong, assisting the trier of fact, requires that the witness's expertise go to the very matter on which the expert is to give an opinion. *Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996), citing *Christopherson v. Allied Signal Corp.*, 939 F.2d 1106, 1112-1113 (5th Cir.), *cert. denied*, 503 U.S. 912, 112 S. Ct. 1280, 117 L.Ed.2d 506 (1992). The test then for qualifications is whether the expert has knowledge, skill, experience, training or education regarding the specific issue before the court which would qualify the expert to give an opinion on the particular subject. *Broders v. Heise*, 924 S.W.2d 148, 153 (Tex. 1996).

The Supreme Court considered whether an expert was qualified in *Helena Chemical Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2003). The expert had a Ph.D. in plant physiology, and worked in the field on the physiology of plants, malnutrition, the way the environment affects plants. The Supreme Court held the witness to be qualified, against a challenge that he was not a plant pathologist.

In *Garnac Grain Co., Inc. v. Blackley*, 932 F.2d 1563 (8th Cir. 1991), a corporate client sued its auditors for malpractice and breach of contract for failing to adhere to Generally Accepted Auditing Standards (GAAS) with the result that the corporation did not catch an employee who was embezzling from the corporation. The trial court was affirmed in its exclusion of proposed expert testimony of the plaintiff's president and director of accounting that the accounting firm had failed to comply with GAAS, on the grounds that the witnesses were not qualified under FRE 702 to give expert testimony. Although the president had a business degree, he had never taken courses in auditing or internal controls, he had taken only a basic accounting course, and he was not a CPA. The director of accounting had attended only one year of college, had taken only a few noncredit night courses in auditing or internal controls, had had only a basic accounting course, and was not

a CPA. The court also found that the witnesses' experience was not an adequate basis for expert testimony. However, the trial court was reversed for excluding the testimony of a professor at the University of Kansas who taught auditing courses for almost 40 years, but whose work experience consisted of four years at an auditing firm in the 1940's, and whose CPA license lapsed in 1981. The professor was deemed to have sufficient expertise despite his lack of work experience in the industry.

B. GENERAL ACCEPTANCE. For some 70 years, the rule in American courts has been that expert opinion based on scientific evidence is admissible only where the methodology used by the expert has gained "general acceptance" in the relevant scientific community. This rule traces back to a short opinion issued by the D.C. Circuit Court of Appeals in *Frye v. United States*, 54 App. D.C. 46, 47, 293 F. 1013, 1014 (1923). The "general acceptance" standard for admissibility of scientific evidence continues to be used in a number of states, such as: California, see *People v. Leah*, 8 Cal.4th 587 (1994); Florida, see *Flanagan v. State*, 625 So.2d 827 (Fla. 1993); Illinois, see *Donaldson v. Central Illinois Public Service Co.*, 767 N.E.2d 314 (Ill. Feb. 22, 2002); and New York, see *People v. Wesley*, 83 N.Y.2d 417, 611 N.Y.S.2d 97, 633 N.E.2d 451 (1994). Where the evidence is not "scientific," the states adhering to the "general acceptance" standard tend to diverge when articulating standards for admissibility of non-scientific expert testimony. Almost universally, however, the trial court has broad discretion on when to admit expert testimony. *Robinson v. Astra Pharmaceutical Products, Inc.*, 765 So.2d 378, 382 (La. App. 1 Cir. 3/31/00), writ denied, 763 So.2d 607 (La.6/2/00) ("The trial court has great discretion in determining whether to qualify a witness as an expert, and such discretion will not be disturbed on appeal in the absence of manifest error").

C. RELIABILITY OF METHODOLOGY.

1. Daubert. In the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L.Ed.2d 469 (1993), the U.S. Supreme Court held that FRE 702 overturned earlier case law requiring that expert scientific testimony must be based upon principles which have "general acceptance" in the field to which they belong. See *Frye v. U.S.*, 293 F. 1013 (D.C. Cir. 1923) (establishing the "general acceptance" test for scientific expert testimony). Under Rule 702, the expert's opinion must be based on "scientific knowledge," which requires that it be derived by the scientific method, meaning the formulation of hypotheses which are verified by experimentation or observation. The Court used the word "reliability" to describe this necessary quality. The U.S. Supreme Court's opinion in *Daubert* applies in all federal court proceedings.

In *Daubert*, the Supreme Court gave a non-exclusive list of factors to consider on the admissibility of expert testimony in the scientific realm: (1) whether the expert's technique or theory can be or has been tested; (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied; (4) the existence and maintenance of standards and controls; and (5) whether the technique or theory has been generally accepted in the scientific community.

2. Kumho Tire. In *Kumho Tire Co. v. Carmichael*, 526 U.S.137, 11 S. Ct. 1167, 143 L.Ed.2d 238 (1999), the Supreme Court said that the reliability and relevancy principles of *Daubert* apply to all experts, not just scientists, and where objection is made the court must determine whether the evidence has "a reliable basis in the knowledge and experience of [the relevant] discipline." The trial court has broad discretion in determining how to test the expert's reliability. *Id.* *Kumho Tire* acknowledged that the list of factors in *Daubert* did not apply well to certain types of expertise, and that other factors would have to be considered by the court in such instances.

Thus, under the FRE, the court must determine the appropriate criteria of reliability and relevancy for all experts who testify, and as a preliminary matter must determine that those criteria are met before the expert is permitted to testify.

3. Robinson and Gamill. The Texas Supreme Court adopted the *Daubert* analysis for TRE 702, requiring that the expert's underlying scientific technique or principle be reliable. *E.I. du Pont de Nemours v. Robinson*, 923 S.W.2d 549 (Tex. 1995). The Texas Supreme Court listed factors for the trial court to consider: (1) the extent to which the theory has been or can be tested; (2) the extent to which the technique relies upon the subjective interpretation of the expert; (3) whether the theory has been subjected to peer review and/or publication; (4) the technique's potential rate of error; (5) whether the underlying theory or technique has been

generally accepted as valid by the relevant scientific community; and (6) the non-judicial uses which have been made of the theory or technique. *Robinson*, 923 S.W.2d at 557. See *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497 (Tex. 1995) (Gonzalez, J., concurring) (applying the *Daubert* analysis to an expert's testing of pigs' feet and rejecting the test results as not being sufficiently scientific); *America West Airline Inc. v. Tope*, 935 S.W.2d 908 (Tex. App.--El Paso 1996, no writ) (somewhat unorthodox methods of mental health worker did not meet the admissibility requirements of *Robinson*). Ordinarily, the burden is on the party offering the evidence, to establish the admissibility of such scientific evidence. *Du Pont*, at 557.

In *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713 (Tex. 1998), the Texas Supreme Court announced that the reliability and relevance requirements of *Robinson* apply to all types of expert testimony. In *Gammill* a unanimous Supreme Court said:

We conclude that whether an expert's testimony is based on "scientific, technical or other specialized knowledge," *Daubert* and Rule 702 demand that the district court evaluate the methods, analysis, and principles relied upon in reaching the opinion. The court should ensure that the opinion comports with applicable professional standards outside the courtroom and that it "will have a reliable basis in the knowledge and experience of [the] discipline." [FN47]

We agree with the Fifth, Sixth, Ninth, and Eleventh Circuits that Rule 702's fundamental requirements of reliability and relevance are applicable to all expert testimony offered under that rule. Nothing in the language of the rule suggests that opinions based on scientific knowledge should be treated any differently than opinions based on technical or other specialized knowledge. It would be an odd rule of evidence that insisted that some expert opinions be reliable but not others. All expert testimony should be shown to be reliable before it is admitted. [FN48]

Gammill, 972 S.W.2d at 725-26.

After noting that the reliability criteria announced in *Daubert* may not apply to experts in particular fields, the Texas Supreme Court noted that nonetheless there are reliability criteria of some kind that must be applied.

The Court said:

[E]ven if the specific factors set out in *Daubert* for assessing the reliability and relevance of scientific testimony do not fit other expert testimony, the court is not relieved of its responsibility to evaluate the reliability of the testimony in determining its admissibility.

Gammill, 972 S.W.2d at 724.

The Texas Court of Criminal Appeals, which established a reliability requirement even before the U.S. Supreme Court decided *Daubert* (see *Kelly v. State*, 824 S.W.2d 568 (Tex.Crim.App. 1992)), has extended reliability requirements to *all* scientific testimony, not just novel science. See *Hartman v. State*, 946 S.W.2d 60 (Tex. Crim. App. 1997) (applying *Kelly*-reliability standards to DWI intoxilyzer). In the case of *Nenno v. State*, 970 S.W.2d 549 (Tex. Crim. App. 1998), the Court extended the *Kelly*-reliability standards to mental health experts, but indicated that the *Robinson* list of factors did not apply. Instead, the Court of Criminal Appeals suggested the following factors be applied to fields of study outside of the hard sciences (such as social science or fields relying on experience and training as opposed to the scientific method): (1) whether the field of expertise is a legitimate one; (2) whether the subject matter of the expert's testimony is within the scope of that field; (3) whether the expert's testimony properly relies upon and/or utilizes the principles involved in the field. *Nenno*, 970 S.W.2d at 561.

Texas courts in both civil and criminal cases must determine the appropriate criteria of reliability for all experts who testify.

4. Recent Texas Supreme Court Decisions. The reliability requirement for expert testimony has become one of the most controversial evidentiary issues, nationwide. Virtually every week some court in the USA makes a ruling on *Daubert* or *Robinson*-like issues.

Recent Texas Supreme Court cases on expert witness reliability include:

- *Helena Chemical Co. v. Wilkins*, 47 S.W.3d 486, 499 (Tex. 2001)--the Court held that a plant scientist and consultant was qualified and his testimony reliable on the issue of suitability of grain sorghum seed for dry land farming and its susceptibility to charcoal rot disease.
- *Guadalupe-Blanco River Authority v. Kraft*, 77 S.W.3d 805, 808 (Tex. 2002)--the Supreme Court rejected the testimony of a real estate appraiser due to flawed methodology when the comparable sales used by the appraiser "were not comparable to the condemned easement as a matter of law."
- *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623 (Tex. 2002)--the Court ruled inadmissible real estate valuation testimony relating to a condemned parcel of land, where the expert calculated his value based on the condemnation project which, under the project-enhancement rule, is not a value for which a landowner may recover.

5. *Daubert* and Non-*Daubert* Jurisdictions. Not all states have adopted the *Daubert* analysis for state court proceedings. For example, the California Supreme Court rejected the *Daubert* standard in California criminal prosecutions. See *People v. Leah*, 8 Cal.4th 587 (1994). The Florida Supreme Court also declined to adopt *Daubert* in Florida courts, in *Flanagan v. State*, 625 So.2d 827 (Fla. 1993). And the Supreme Court of Illinois rejected the *Daubert* standard and continues to use the "general acceptance" test for areas of expertise that are new. See *Donaldson v. Central Illinois Public Service Co.*, 767 N.E.2d 314 (Ill. Feb. 22, 2002). The New York Court of Appeals rejected the *Daubert* standard of scientific reliability, and retained the *Frye* general acceptance test. *People v. Wesley*, 83 N.Y.2d 417, 611 N.Y.S.2d 97, 633 N.E.2d 451 (1994). The following states have adopted *Daubert* or a similar standard for the admissibility of expert testimony: Alaska, Arkansas, Colorado, Connecticut, Delaware, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Montana, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wyoming. Alice B. Lustre, *Post-Daubert Standards for Admissibility of Scientific and Other Expert Evidence in State Courts*, 90 A.L.R.5th 453 (2001).

D. RELEVANCE. *Daubert* contains a relevancy requirement, to be applied to expert evidence. As explained in *Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 720 (Tex. 1998):

The requirement that the proposed testimony be relevant incorporates traditional relevancy analysis under Rules 401 and 402 of the Texas Rules of Civil Evidence. To be relevant, the proposed testimony must be "sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." Evidence that has no relationship to any of the issues in the case is irrelevant and does not satisfy Rule 702's requirement that the testimony be of assistance to the jury. It is thus inadmissible under Rule 702 as well as under Rules 401 and 402.

Some courts and commentators call this connection the "fit" between the evidence and the issues involved in the case.

E. ASSISTING THE TRIER OF FACT. Rule 702 requires that the expert's testimony "assist the trier of fact." There are some issues where the jury is capable of making its own determination, without the assistance of expert testimony. In those instances, expert testimony is not admissible. *K-Mart Corp. v. Honeycutt*, 24 S.W.3d 357, 360 (Tex. 2000) ("When the jury is equally competent to form an opinion about the ultimate fact issues or the expert's testimony is within the common knowledge of the jury, the trial court should exclude the expert's testimony.") As noted in *Assiter v. State*, 58 S.W.3d 743, 751-52 (Tex. App.--Amarillo 2000, no pet.):

Two themes are prevalent within the language of the rule allowing the use of expert testimony. First, the jury must not be qualified to intelligently and to the best possible degree determine the particular issue without benefit of the expert witness's specialized knowledge. Second, the use of expert testimony must be limited to situations in which the expert's knowledge and experience on a relevant issue are beyond that of an average juror. See *Duckett*, 797 S.W.2d at 914. When the jury is equally competent to form an opinion about the ultimate fact issues as is the expert, or the expert's testimony is within the common knowledge of the jury, the trial court should exclude the expert's testimony. *K-Mart Corp. v. Honeycutt*, 24 S.W.3d 357, 360 (Tex. 2000) (per curiam).

F. ADVISORY COMMITTEE COMMENT TO FRE 702 (2000). The lengthy Advisory Committee Comment to the 2000 Amendment to FRE 702 sheds light on the federal conception of the *Daubert* requirement.

2000 Amendments

Rule 702 has been amended in response to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and to the many cases applying *Daubert*, including *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167

(1999). In *Daubert* the Court charged trial judges with the responsibility of acting as gatekeepers to exclude unreliable expert testimony, and the Court in *Kumho* clarified that this gatekeeper function applies to all expert testimony, not just testimony based in science. See also *Kumho*, 119 S.Ct. at 1178 (citing the Committee Note to the proposed amendment to Rule 702, which had been released for public comment before the date of the *Kumho* decision). The amendment affirms the trial court's role as gatekeeper and provides some general standards that the trial court must use to assess the reliability and helpfulness of proffered expert testimony. Consistently with *Kumho*, the Rule as amended provides that all types of expert testimony present questions of admissibility for the trial court in deciding whether the evidence is reliable and helpful. Consequently, the admissibility of all expert testimony is governed by the principles of Rule 104(a). Under that Rule, the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence. See *Bourjaily v. United States*, 483 U.S. 171 (1987).

Daubert set forth a non-exclusive checklist for trial courts to use in assessing the reliability of scientific expert testimony. The specific factors explicated by the *Daubert* Court are (1) whether the expert's technique or theory can be or has been tested--that is, whether the expert's theory can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability; (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied; (4) the existence and maintenance of standards and controls; and (5) whether the technique or theory has been generally accepted in the scientific community. The Court in *Kumho* held that these factors might also be applicable in assessing the reliability of non-scientific expert testimony, depending upon "the particular circumstances of the particular case at issue." 119 S.Ct. at 1175.

No attempt has been made to "codify" these specific factors. *Daubert* itself emphasized that the factors were neither exclusive nor dispositive. Other cases have recognized that not all of the specific *Daubert* factors can apply to every type of expert testimony. In addition to *Kumho*, 119 S.Ct. at 1175, see *Tyus v. Urban Search Management*, 102 F.3d 256 (7th Cir. 1996) (noting that the factors mentioned by the Court in *Daubert* do not neatly apply to expert testimony from a sociologist). See also *Kannankeril v. Terminix Int'l, Inc.*, 128 F.3d 802, 809 (3d Cir. 1997) (holding that lack of peer review or publication was not dispositive where the expert's opinion was supported by "widely accepted scientific knowledge"). The standards set forth in the amendment are broad enough to require consideration of any or all of the specific *Daubert* factors where appropriate.

Courts both before and after *Daubert* have found other factors relevant in determining whether expert testimony is sufficiently reliable to be considered by the trier of fact. These factors include:

(1) Whether experts are "proposing to testify about matters growing naturally and directly out of research they have conducted independent of the litigation, or whether they have developed their opinions expressly for purposes of testifying." *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1317 (9th Cir. 1995).

(2) Whether the expert has unjustifiably extrapolated from an accepted premise to an unfounded conclusion. See *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (noting that in some cases a trial court "may conclude that there is simply too great an analytical gap between the data and the opinion proffered").

(3) Whether the expert has adequately accounted for obvious alternative explanations. See *Claar v. Burlington N.R.R.*, 29 F.3d 499 (9th Cir. 1994) (testimony excluded where the expert failed to consider other obvious causes for the plaintiff's condition). Compare *Ambrosini v. Labarraque*, 101 F.3d 129 (D.C. Cir. 1996) (the possibility of some uneliminated causes presents a question of weight, so long as the most obvious causes have been considered and reasonably ruled out by the expert).

(4) Whether the expert "is being as careful as he would be in his regular professional work outside his paid litigation consulting." *Sheehan v. Daily Racing Form, Inc.*, 104 F.3d 940, 942 (7th Cir. 1997). See *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1176 (1999) (*Daubert* requires the trial court to assure itself that the expert "employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field").

(5) Whether the field of expertise claimed by the expert is known to reach reliable results for the type of opinion the expert would give. See *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1175 (1999) (*Daubert*'s general acceptance factor does not "help show that an expert's testimony is reliable where the discipline itself lacks reliability, as for example, do theories grounded in any so-called generally

accepted principles of astrology or necromancy."), *Moore v. Ashland Chemical, Inc.*, 151 F.3d 269 (5th Cir. 1998) (en banc) (clinical doctor was properly precluded from testifying to the toxicological cause of the plaintiff's respiratory problem, where the opinion was not sufficiently grounded in scientific methodology); *Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188 (6th Cir. 1988) (rejecting testimony based on "clinical ecology" as unfounded and unreliable).

All of these factors remain relevant to the determination of the reliability of expert testimony under the Rule as amended. Other factors may also be relevant. See *Kumho*, 119 S.Ct. 1167, 1176 ("[W]e conclude that the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable."). Yet no single factor is necessarily dispositive of the reliability of a particular expert's testimony. See, e.g., *Heller v. Shaw Industries, Inc.*, 167 F.3d 146, 155 (3d Cir. 1999) ("not only must each stage of the expert's testimony be reliable, but each stage must be evaluated practically and flexibly without bright-line exclusionary (or inclusionary) rules."); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1317, n.5 (9th Cir. 1995) (noting that some expert disciplines "have the courtroom as a principal theatre of operations" and as to these disciplines "the fact that the expert has developed an expertise principally for purposes of litigation will obviously not be a substantial consideration.").

A review of the caselaw after *Daubert* shows that the rejection of expert testimony is the exception rather than the rule. *Daubert* did not work a "seachange over federal evidence law," and "the trial court's role as gatekeeper is not intended to serve as a replacement for the adversary system." *United States v. 14.38 Acres of Land Situated in Leflore County, Mississippi*, 80 F.3d 1074, 1078 (5th Cir. 1996). As the Court in *Daubert* stated: "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." 509 U.S. at 595. Likewise, this amendment is not intended to provide an excuse for an automatic challenge to the testimony of every expert. See *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1176 (1999) (noting that the trial judge has the discretion "both to avoid unnecessary 'reliability' proceedings in ordinary cases where the reliability of an expert's methods is properly taken for granted, and to require appropriate proceedings in the less usual or more complex cases where cause for questioning the expert's reliability arises.").

When a trial court, applying this amendment, rules that an expert's testimony is reliable, this does not necessarily mean that contradictory expert testimony is unreliable. The amendment is broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise. See, e.g., *Heller v. Shaw Industries, Inc.*, 167 F.3d 146, 160 (3d Cir. 1999) (expert testimony cannot be excluded simply because the expert uses one test rather than another, when both tests are accepted in the field and both reach reliable results). As the court stated in *In re Paoli R.R. Yard PCB Litigation*, 35 F.3d 717, 744 (3d Cir. 1994), proponents "do not have to demonstrate to the judge by a preponderance of the evidence that the assessments of their experts are correct, they only have to demonstrate by a preponderance of evidence that their opinions are reliable.... The evidentiary requirement of reliability is lower than the merits standard of correctness." See also *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1318 (9th Cir. 1995) (scientific experts might be permitted to testify if they could show that the methods they used were also employed by "a recognized minority of scientists in their field."); *Ruiz-Troche v. Pepsi Cola*, 161 F.3d 77, 85 (1st Cir. 1998) ("*Daubert* neither requires nor empowers trial courts to determine which of several competing scientific theories has the best provenance.").

The Court in *Daubert* declared that the "focus, of course, must be solely on principles and methodology, not on the conclusions they generate." 509 U.S. at 595. Yet as the Court later recognized, "conclusions and methodology are not entirely distinct from one another." *General Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Under the amendment, as under *Daubert*, when an expert purports to apply principles and methods in accordance with professional standards, and yet reaches a conclusion that other experts in the field would not reach, the trial court may fairly suspect that the principles and methods have not been faithfully applied. See *Lust v. Merrell Dow Pharmaceuticals, Inc.*, 89 F.3d 594, 598 (9th Cir. 1996). The amendment specifically provides that the trial court must scrutinize not only the principles and methods used by the expert, but also whether those principles and methods have been properly applied to the facts of the case. As the court noted in *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 745 (3d Cir. 1994), "any step that renders the analysis unreliable ... renders the expert's testimony inadmissible. This is true whether the step completely changes a reliable methodology or merely misapplies that methodology."

If the expert purports to apply principles and methods to the facts of the case, it is important that this application be conducted reliably. Yet it might also be important in some cases for an expert to educate the factfinder about general principles, without ever attempting to apply these principles to the specific facts of the case. For example, experts might instruct the factfinder on the principles of thermodynamics, or blood

clotting, or on how financial markets respond to corporate reports, without ever knowing about or trying to tie their testimony into the facts of the case. The amendment does not alter the venerable practice of using expert testimony to educate the factfinder on general principles. For this kind of generalized testimony, Rule 702 simply requires that: (1) the expert be qualified; (2) the testimony address a subject matter on which the factfinder can be assisted by an expert; (3) the testimony be reliable; and (4) the testimony "fit" the facts of the case.

As stated earlier, the amendment does not distinguish between scientific and other forms of expert testimony. The trial court's gatekeeping function applies to testimony by any expert. See *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1171 (1999) ("We conclude that Daubert's general holding--setting forth the trial judge's general 'gatekeeping' obligation--applies not only to testimony based on 'scientific' knowledge, but also to testimony based on 'technical' and 'other specialized' knowledge."). While the relevant factors for determining reliability will vary from expertise to expertise, the amendment rejects the premise that an expert's testimony should be treated more permissively simply because it is outside the realm of science. An opinion from an expert who is not a scientist should receive the same degree of scrutiny for reliability as an opinion from an expert who purports to be a scientist. See *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 991 (5th Cir. 1997) ("[I]t seems exactly backwards that experts who purport to rely on general engineering principles and practical experience might escape screening by the district court simply by stating that their conclusions were not reached by any particular method or technique."). Some types of expert testimony will be more objectively verifiable, and subject to the expectations of falsifiability, peer review, and publication, than others. Some types of expert testimony will not rely on anything like a scientific method, and so will have to be evaluated by reference to other standard principles attendant to the particular area of expertise. The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and not speculative before it can be admitted. The expert's testimony must be grounded in an accepted body of learning or experience in the expert's field, and the expert must explain how the conclusion is so grounded. See, e.g., American College of Trial Lawyers, *Standards and Procedures for Determining the Admissibility of Expert Testimony after Daubert*, 157 F.R.D. 571, 579 (1994) ("[W]hether the testimony concerns economic principles, accounting standards, property valuation or other non-scientific subjects, it should be evaluated by reference to the 'knowledge and experience' of that particular field.").

The amendment requires that the testimony must be the product of reliable principles and methods that are reliably applied to the facts of the case. While the terms "principles" and "methods" may convey a certain impression when applied to scientific knowledge, they remain relevant when applied to testimony based on technical or other specialized knowledge. For example, when a law enforcement agent testifies regarding the use of code words in a drug transaction, the principle used by the agent is that participants in such transactions regularly use code words to conceal the nature of their activities. The method used by the agent is the application of extensive experience to analyze the meaning of the conversations. So long as the principles and methods are reliable and applied reliably to the facts of the case, this type of testimony should be admitted.

Nothing in this amendment is intended to suggest that experience alone--or experience in conjunction with other knowledge, skill, training or education-- may not provide a sufficient foundation for expert testimony. To the contrary, the text of Rule 702 expressly contemplates that an expert may be qualified on the basis of experience. In certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony. See, e.g., *United States v. Jones*, 107 F.3d 1147 (6th Cir. 1997) (no abuse of discretion in admitting the testimony of a handwriting examiner who had years of practical experience and extensive training, and who explained his methodology in detail); *Tassin v. Sears Roebuck*, 946 F.Supp. 1241, 1248 (M.D.La. 1996) (design engineer's testimony can be admissible when the expert's opinions "are based on facts, a reasonable investigation, and traditional technical/mechanical expertise, and he provides a reasonable link between the information and procedures he uses and the conclusions he reaches"). See also *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1178 (1999) (stating that "no one denies that an expert might draw a conclusion from a set of observations based on extensive and specialized experience.").

If the witness is relying solely or primarily on experience, then the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts. The trial court's gatekeeping function requires more than simply "taking the expert's word for it." See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 43 F.3d 1311, 1319 (9th Cir. 1995) ("We've been presented with only the experts' qualifications, their conclusions and their assurances of reliability. Under Daubert, that's not enough."). The more subjective and controversial the expert's inquiry, the more likely the testimony should be excluded as unreliable. See *O'Conner v. Commonwealth Edison Co.*, 13 F.3d 1090 (7th Cir. 1994) (expert testimony based on a completely subjective methodology held properly excluded). See also *Kumho Tire Co. v. Carmichael*, 119 S.Ct. 1167, 1176 (1999) ("[I]t will at times be useful to ask even of a witness whose expertise is based purely on experience, say, a perfume tester able to

distinguish among 140 odors at a sniff, whether his preparation is of a kind that others in the field would recognize as acceptable.").

Subpart (1) of Rule 702 calls for a quantitative rather than qualitative analysis. The amendment requires that expert testimony be based on sufficient underlying "facts or data." The term "data" is intended to encompass the reliable opinions of other experts. See the original Advisory Committee Note to Rule 703. The language "facts or data" is broad enough to allow an expert to rely on hypothetical facts that are supported by the evidence. *Id.*

When facts are in dispute, experts sometimes reach different conclusions based on competing versions of the facts. The emphasis in the amendment on "sufficient facts or data" is not intended to authorize a trial court to exclude an expert's testimony on the ground that the court believes one version of the facts and not the other.

There has been some confusion over the relationship between Rules 702 and 703. The amendment makes clear that the sufficiency of the basis of an expert's testimony is to be decided under Rule 702. Rule 702 sets forth the overarching requirement of reliability, and an analysis of the sufficiency of the expert's basis cannot be divorced from the ultimate reliability of the expert's opinion. In contrast, the "reasonable reliance" requirement of Rule 703 is a relatively narrow inquiry. When an expert relies on inadmissible information, Rule 703 requires the trial court to determine whether that information is of a type reasonably relied on by other experts in the field. If so, the expert can rely on the information in reaching an opinion. However, the question whether the expert is relying on a sufficient basis of information--whether admissible information or not--is governed by the requirements of Rule 702.

The amendment makes no attempt to set forth procedural requirements for exercising the trial court's gatekeeping function over expert testimony. See Daniel J. Capra, *The Daubert Puzzle*, 38 Ga.L.Rev. 699, 766 (1998) ("Trial courts should be allowed substantial discretion in dealing with Daubert questions; any attempt to codify procedures will likely give rise to unnecessary changes in practice and create difficult questions for appellate review."). Courts have shown considerable ingenuity and flexibility in considering challenges to expert testimony under Daubert, and it is contemplated that this will continue under the amended Rule. See, e.g., *Cortes-Irizarry v. Corporacion Insular*, 111 F.3d 184 (1st Cir. 1997) (discussing the application of Daubert in ruling on a motion for summary judgment); *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 736, 739 (3d Cir. 1994) (discussing the use of in limine hearings); *Claar v. Burlington N.R.R.*, 29 F.3d 499, 502-05 (9th Cir. 1994) (discussing the trial court's technique of ordering experts to submit serial affidavits explaining the reasoning and methods underlying their conclusions).

The amendment continues the practice of the original Rule in referring to a qualified witness as an "expert." This was done to provide continuity and to minimize change. The use of the term "expert" in the Rule does not, however, mean that a jury should actually be informed that a qualified witness is testifying as an "expert." Indeed, there is much to be said for a practice that prohibits the use of the term "expert" by both the parties and the court at trial. Such a practice "ensures that trial courts do not inadvertently put their stamp of authority" on a witness's opinion, and protects against the jury's being "overwhelmed by the so-called 'experts.'" Hon. Charles Richey, *Proposals to Eliminate the Prejudicial Effect of the Use of the Word "Expert" Under the Federal Rules of Evidence in Criminal and Civil Jury Trials*, 154 F.R.D. 537, 559 (1994) (setting forth limiting instructions and a standing order employed to prohibit the use of the term "expert" in jury trials).

The new FRE 702 was criticized in the following terms in Michael W. Shore & Kenneth E. Shore, *Civil Evidence*, 54 SMU L. Rev. 1167, 1171-72 (2001):

The Evidence Advisory Committee's (the "Committee") comment notes for revised Rule 702 state that "this amendment is not intended to provide an excuse for an automatic challenge to the testimony of every expert." [FN29] The Committee also explained that it was not attempting to set procedural requirements for Daubert proceedings and emphasized that trial courts shall enjoy broad discretion in fashioning their analytical methods. [FN30] On its face, however, the revised Rule 702 does add a component to a trial court's gatekeeper duties--a quantitative assessment of the foundations for the expert's opinions.

The three new factors will likely do little to clear up the confusion and inconsistency in Rule 702's application. The revised rule's first new factor, whether testimony is based upon "sufficient facts or data," adds unnecessary incentives for advocates to "pile up" foundation evidence, ensuring Rule 702's application will become more time-consuming and expensive. The Committee's notes say very little about this requirement other than it is a "quantitative rather than qualitative analysis." [FN31] Judges already look at the amount of data analyzed by an expert and then make their own determination, under an abuse of discretion standard, whether these facts or data

are "sufficient." How has this change helped? It likely has only ensured that litigants will add excessive amounts of background data and "foundation" evidence to the trial record to ensure that their experts are quantitatively qualified. This will add cost and time to an already burdensome and expensive process.

The second and third new factors in revised Rule 702 require the trial court to first determine the reliability of the principles or methods underlying the expert's testimony and then determine whether the expert has applied those principles or methods reliably to the facts of the case. Thus, the new rule essentially codifies the Daubert/ Kumho Tire analysis. Under Daubert, the trial court would analyze the relevance and reliability of the expert's testimony. [FN32] Under Kumho, the trial court was directed to first analyze the reliability of the principle or method, and then determine whether the expert "has applied the principles and methods reliably." [FN33]

III. BASES OF EXPERT OPINION. TRE 703 governs the bases of opinion testimony by experts. TRE 703 reads:

Rule 703. Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by, reviewed by, or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

IV. OPINION ON ULTIMATE ISSUE. TRE 704 reads:

Rule 704. Opinion on Ultimate Issue

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

V. DISCLOSURE OF UNDERLYING FACTS. TRE 705 reads:

Rule 705. Disclosure of Facts or Data Underlying Expert Opinion

(a) Disclosure of Facts or Data. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event disclose on direct examination, or be required to disclose on cross-examination, the underlying facts or data.

(b) Voir dire. Prior to the expert giving the expert's opinion or disclosing the underlying facts or data, a party against whom the opinion is offered upon request in a criminal case shall, or in a civil case may, be permitted to conduct a voir dire examination directed to the underlying facts or data upon which the opinion is based. This examination shall be conducted out of the hearing of the jury.

(c) Admissibility of opinion. If the court determines that the underlying facts or data do not provide a sufficient basis for the expert's opinion under Rule 702 or 703, the opinion is inadmissible.

(d) Balancing test; limiting instructions. When the underlying facts or data would be inadmissible in evidence, the court shall exclude the underlying facts or data if the danger that they will be used for a purpose other than as explanation or support for the expert's opinion outweighs their value as explanation or support or are unfairly prejudicial. If otherwise inadmissible facts or data are disclosed before the jury, a limiting instruction by the court shall be given upon request.

VI. FORBIDDEN OPINIONS.

A. OPINIONS ON THE LAW. Experts cannot testify what the law of the forum state is. They can, however, testify to the law of sister states and foreign countries. *Cluett v. Medical Protective Co.*, 829 S.W.2d 822 (Tex. App.--Dallas 1992, writ denied), was a contract case, involving scope of coverage under an insurance policy. The court of appeals ruled that an expert could not render an opinion on whether a particular event was or was not within the scope of an insurance policy. The court cited an earlier case which held that the question of "whether or not a legal duty exists under a given set of facts and circumstances is a question of law for the court." *See St. Paul Ins. Co. v. Rahn*, 641 S.W.2d 276, 284 (Tex. App.--Corpus Christi 1982, no writ). In *Texas Workers' Compensation Com'n v. Garcia*, 862 S.W. 2d 61, 105 (Tex. App.--San Antonio 1993), *rev'd on other grounds*, 893 S.W.2d 504 (Tex. 1995), the appellate court held that expert testimony of a law professor as to the constitutionality of a statute was not admissible, since it was opinion testimony on a legal issue. However, in *Transport Ins. Co. v. Faircloth*, 861 S.W.2d 926, 938-39 (Tex. App.--Beaumont 1993),

rev'd on other grounds, 898 S.W.2d 269 (Tex. 1995), the appellate court held that expert testimony of a former Texas Supreme Court justice regarding the proper procedure for settling a personal injury claim of a minor child, and whether it had been followed in this instance, was admissible. And in *Lyondell Petrochemical Co. v. Fluor Daniel, Inc.*, 888 S.W.2d 547, 554 (Tex. App.--Houston [1st Dist.] 1994, writ denied), a former OSHA compliance officer could testify whether a training regimen did or did not comply with OSHA regs, since that was a mixed fact law question involving the application of OSHA regs to the facts of the case.

See *Fleming Foods of Texas, Inc. v. Sharp*, 951 S.W.2d 278 (Tex. App.--Austin 1997, writ denied) (former Attorney General Waggoner Carr not permitted to testify that changes to the Texas Tax Code were substantive, since statutory construction is a pure question of law).

B. EXPERT APPLYING THE LAW TO THE FACTS. While it is generally improper for an expert to testify on a question of pure law, experts can apply the given law to particular facts and arrive at opinions based on that analysis.

In *Welder v. Welder*, 794 S.W.2d 420 (Tex. App.--Corpus Christi 1990, no writ), a divorce case involving tracing of commingled separate and community funds, the appellate court held the trial court properly refused to let Wife's attorney cross-examine Husband's CPA as to the CPA's understanding of the community-money-out-first presumption under the case of *Sibley v. Sibley*, 286 SW2d 657 (Tex. Civ. App.--Dallas 1955, writ dismissed). However, the court noted a "host of legal problems" raised by the rule permitting a witness to testify on mixed fact-law questions. Where the "law part" is debatable, one party's right to elicit expert testimony on mixed fact-law questions collides with the opponent's right to cross-examine, all in the context of the trial court's power to restrict cross-examination to avoid jury confusion.

The court, in *Crum & Forster, Inc. v. Monsanto Co.*, 887 S.W.2d 103, 134 (Tex. App.--Texarkana 1994, writ dismissed by agr.), explores the distinction between an expert testifying on mixed fact-law questions and pure law questions. The court posited the following definition of a mixed fact-law question:

[A]n opinion or issue involves a mixed question of law and fact when a standard or measure has been fixed by law and the question is whether the person or conduct measures up to that standard.

Id. at p. 134. This definition works well for liability cases, but not so well for matrimonial cases.

In *Holden v. Weidenfeller*, 929 S.W.2d 124 (Tex.App.--San Antonio 1996, writ denied), the trial judge excluded expert testimony from a law school professor, who was Board Certified in Real Estate Law, based upon the pleadings, depositions, and documents on file in the case, as to whether an easement appurtenant, an easement by estoppel or a public dedication existed in the case. The appellate court held that the opinion offered was not one of pure law, but rather of mixed fact-law. However, since the trial was to the court without a jury, it was not an abuse of discretion to exclude the testimony since it was not "helpful to the trier of fact," as required by TRE 702. This is because the trial court, being a legal expert himself, was "perfectly capable of applying the law to the facts and reaching a conclusion without benefit of expert testimony from another attorney." *Id.* at 134.

In *De Jager Const., Inc. v. Schleininger*, 938 F.Supp. 446, 449 (W.D. Michigan 1996), the federal district judge considered the admissibility of the testimony of a CPA who was offered to establish damages incurred by allegedly fraudulent behavior of various defendants. The federal district judge excluded the testimony, saying the following about the expert CPA:

The first problem with Humes' testimony is that it blurs the distinction between substantive liability and a calculation of damages. This Court is convinced that Humes' testimony, as presented to this Court on April 9, 1996, is as much substantive assertions and arguments about the liability of the defendants as it is a calculation of damages. As explained by Schellenberg, Humes' testimony assembled a group of facts from which a conclusion would be drawn that defendants were engaging in the wrongful acts alleged in the complaint. As explained in *Berry v. City of Detroit*, 25 F.3d 1342, 1353 (6th Cir.1994), cert. denied, 513 U.S. 1111, 115 S.Ct. 902, 130 L.Ed.2d 786 (1995), an expert cannot opine on the ultimate liability of defendants even though an expert may, under some circumstances, give the jury all of the information from which it can draw inferences as to the ultimate issue. This Court holds that if the plaintiff intends to prove the existence of kickbacks and other types of wrongful behavior, plaintiff must do so by using facts introduced into evidence, as distinguished from an expert opinion based upon facts which may or may not have been admitted into evidence. It is the jury's responsibility to determine if the defendants did the things that plaintiff claims, and the jury is to make this decision based on evidence. Much of plaintiff's case will turn on the jury's determination as to the credibility of witnesses. Expert testimony is not needed to determine whether a declarant or witness is telling the truth. If Humes' testimony is permitted to come into evidence as it was presented to this Court during the April 9 hearing, a jury would almost certainly be confused into believing that Humes' calculations of losses are evidence that the charged wrongful conduct actually occurred. Thus, Humes' opinion

does not meet the threshold test of assisting the trier of fact to understand the evidence or to determine a fact in issue. Fed.R. Evid. 702. More importantly, after listening to Humes testify and discovering the basis for his opinions, this Court is convinced that Humes is seeking to weave a story. In doing so, Humes has selected those portions of the available material which support his client's position, and has deliberately ignored other portions that do not support his client's claim.

C. EXPERT TESTIFYING TO MEANING OF CONTRACT TERMS. The construction of written agreements is reserved to the court, and witnesses are not permitted to testify as to the legal effect of the agreements. *Marx & Co., Inc. v. Diners' Club, Inc.*, 550 F.2d 505, 509-510 (2d Cir. 1977). Thus, an expert witness may not testify simply regarding his reading of a contract. "The question of interpretation of the contract is for the jury and the question of legal effect is for the judge. In neither case do we permit expert testimony." *Loeb v. Hammond*, 407 F.2d 779, 781 (7th Cir.1969). However, experts are allowed to testify to the custom and usage in an industry. *Energy Oils, Inc. v. Montana Power Co.*, 626 F.2d 731, 737 (9th Cir. 1980).

In *Phillips Oil Co. v. OKC Corp.*, 812 F.2d 265, 279 (5th Cir. 1987), the issue was presented in the following way:

Over the objection of OKC, the district court accepted the testimony of its own expert and the two expert witnesses produced by Aminoil. The court's own expert, appointed pursuant to Rule 706 of the Federal Rules of Evidence, was Julian P. Brignac. Brignac is an attorney and certified public accountant who retired in 1982 from his position as a partner in the accounting firm of Peat Marwick Mitchell & Company and is now special counsel to a law firm. Aminoil's experts were Ronald Bannister and William Powell, partners in the accounting firm of Price Waterhouse & Co. Bannister and Powell testified to their extensive accounting experience in general and, in particular, to their oil and gas accounting experience. They were accepted by the court as experts in oil and gas accounting.

Powell and Bannister testified that the net profits accounting provisions in the Farmout at issue in this case, as with similar accounting provisions, are consistently interpreted to exclude interest unless interest is specifically designated as a chargeable item. [FN29] With regard to OKC's charge against the net profits account for litigation expenses, Powell and Bannister testified that such accounting language, under accepted accounting practices in the oil and gas industry, never includes legal expenses related to a dispute between the contracting parties. [FN30]

The trial court in the *Phillips Oil Co.* case said that, while the experts were interpreting net profits accounting provisions, it was an accounting interpretation based on their training and experience, which they were explaining in aid of the court's legal determination of the issue of whether OKC has improperly charged legal expenses and interest. The appellate court held that "the admission of the expert testimony of the individuals experienced in the oil and gas accounting field for the purpose of obtaining explanation of the technical meaning of terms used in the net profits accounting provisions of the Farmout seems prudent." *Id.* at 281.

In one federal district court case, the defendant attempted to establish a special meaning for the words "excess funds" as they appeared in paragraph 4 of a workout agreement. The defendant asked one of the contracting parties, as well as the defendant's accountant, in his capacity as an expert about the meaning of the term. The trial judge excluded the testimony because the defendant did not establish that these words, as used by the parties, were given a specialized usage requiring expert aid to determine their meaning, and also because the accountant did not purport to render an accounting interpretation of these words, but instead offered only his own interpretation, resting upon the of these words context within the agreement. *United States v. Gregory Park, Section II, Inc.*, 373 F.Supp. 317, 333 (D.N.J. 1974).

D. OPINION ON TRUTHFULNESS. Courts around the country agree that mental health experts should not be allowed to testify as to whether another person is or is not telling the truth. *Duckett v. State*, 797 S.W.2d 906, 907 (Tex. Crim. App. 1990) (expert testimony which assists the jury in determining an ultimate fact is admissible, but expert testimony which decides an ultimate fact for the jury, such as "a direct opinion on the truthfulness of the child," crosses the line and is not admissible under Rule 702); *Lessard v. State*, 719 P.2d 227 (Wyo. 1986) (testimony as to truthfulness not helpful to the jury). As explained by the Supreme Court of New Jersey:

The question of whether a particular witness is testifying in a truthful manner is one that must be answered in reliance upon inferences drawn from the ordinary experiences of life and common knowledge as to the natural tendencies of human nature, as well as upon observations of the demeanor and character of the witness. The phenomenon of lying, and situations in which prevarications might be expected to occur, have traditionally been regarded as within the ordinary facility of jurors to assess. For this reason, the question of a witness' credibility has routinely been regarded as a decision reserved exclusively for the jury.

State v. J.Q., 599 A.2d 172 (App. Div. 1991).

VII. ACCOUNTING STANDARDS. An application of *Daubert* reliability principles to accounting is reflected in *Garnac Grain Co., Inc. v. Blackley*, 932 F.2d 1563 (8th Cir. 1991), a case handed down before *Daubert* was decided. As noted above, there a corporate client sued its auditors for negligently failing to conduct audits in accordance with GAAS. The corporation hired a new auditing firm to review the old auditing firm's work, and the new auditing firm concluded that the old auditors failed to adhere to GAAS only during the fiscal year ending 1-1-82. At trial, plaintiff offered the testimony of an accounting professor who opined that the auditors violated GAAS for a period of six years. Although the second auditing firm spent 600 hours in arriving at its conclusion as compared to the 20 hours spent by the professor, and although the second auditors looked at the first auditors' work papers while the professor looked only at the second auditors' report before arriving at his opinion, the appellate court ruled that the professor's opinion was admissible under FRE 702 and 703. The appellate court noted that the professor later reviewed the first auditors' work papers and reaffirmed his earlier conclusion. Note that in *Garnac Grain Co.*, the standard of care was admittedly set by GAAS; the issue was whether the plaintiff's experts had the qualifications and used the proper methodology in determining whether the defendant breached that standard of care.

To establish the qualifications of accountant witnesses, it is necessary to know something about the licensing and professional standards in the accounting field. To lay the predicate for an expert opinion, it is necessary to become familiar with sources of authority in the accounting field.

A. LICENSING.¹ Certified Public Accountants (CPAs) are licensed professionals in the broad field of accounting. After passing a uniform national CPA examination, CPAs are licensed and governed by state (and related U.S. jurisdictions such as the District of Columbia, etc.). Boards of Accountancy that set forth their own education, experience and other requirements. These State Boards are given broad powers to adopt regulations, promulgate rules of conduct for the proper administration of the law, and ensure that the public is served by qualified professional accountants. They are generally made up of practicing CPAs plus attorneys, economists, state officials and public members among others. The State Boards of Accountancy are generally guided by their respective governments, the American Institute of Certified Public Accountants (AICPA), and to a lesser extent the Securities and Exchange Commission (SEC). Authorized Edition of The AICPA's Uniform CPA Exam – 1991; Information for CPA candidates section, page xiii.

In Texas, for example, the Texas State Board of Public Accountancy has been given the legal authority to govern the practice of public accountancy in Texas. The Board has adopted many of the AICPA professional standards as their own professional conduct rules. The Texas State Board of Accountancy requires that a CPA have a Bachelor's Degree and complete not fewer than 150 semester hours (of which 30 semester hours are accounting courses), and pass a test administered by the Texas State Board of Accountancy.

Most states provide for periodic peer review of CPAs' accounting and auditing practices. The AICPA has promulgated "Standards for Performing and Reporting on Peer Reviews." These standards have been adopted in various states.

In some states it is permissible for a person to render bookkeeping services without being licensed.

Some states have additional categories of accounting practitioners, such as public accountants or registered accountants, who are not certified but who are otherwise licensed to offer certain types of services to the general public.

D. Edward Martin, ATTORNEY'S HANDBOOK OF ACCOUNTING, AUDITING AND FINANCIAL REPORTING § 1.01[1] at 1-4 (1996), cited in *Ferriso v. NLRB*, 125 F.3d 865, 871 (D.C.Cir. 1997). For example, Federal law permits audits of employee benefit plans and publicly traded firms to be performed either by certified public accountants or by licensed public accountants. *Ferriso v. NLRB*, 125 F.3d 865, 871 (D.C.Cir. 1997).

B. THE AICPA. The American Institute of Certified Public Accountants (AICPA) describes itself as the premier national professional association for CPAs in the United States. The AICPA has more than 330,000 members.

To qualify for admission to membership in the American Institute, a CPA must:

– possess a valid and unrevoked CPA certificate issued by the legally constituted authorities of the states, the District of Columbia, territories, or territorial possessions of the United States;

¹The author received assistance in preparing this section from Patrice L. Ferguson, of Ferguson, Camp & Poll, Houston, Texas. Ms. Ferguson is both an attorney and a CPA, and has a forensic and accounting practice throughout Texas, with her office being located in Houston.

- have passed an examination in accounting and other related subjects satisfactory to the AICPA Board of Directors, which the board has resolved is the Uniform CPA Examination;
- practice in a firm enrolled in Institute-approved practice monitoring programs as long as one is engaged in public accounting as a proprietor, partner, or shareholder, or as an employee who has been licensed as a CPA for more than two years;
- agree to abide by the AICPA Bylaws and the Code of Professional Conduct.

In order to retain membership in the AICPA, a member in public practice for each three-year reporting period must complete 120 hours of continuing professional education with a minimum of 20 hours each year. A member not engaged in public practice must, during the each three year reporting period complete 90 hours of continuing professional education with a minimum of 15 hours in each year.

C. STANDARDS GOVERNING ACCOUNTANTS. CPAs doing audits, financial statements, or income reporting ordinarily use Generally Accepted Accounting Principles (GAAP) and Generally Accepted Auditing Standards (GAAS). CPAs who are performing consulting or valuation services don't have "generally accepted" guidelines.

1. FASB Standards. The Financial Accounting Standards Board (FASB) is a 7-person committee which sets standards for financial accounting and reporting in the USA. The members of the FASB are selected by the Financial Accounting Foundation. The Financial Accounting Standards Advisory Council (FASAC), made up of 30+ members who are broadly representative of preparers, auditors and users of financial information, consults with the FASB on technical issues.

The FASB standards are officially recognized as authoritative by the Securities and Exchange Commission (Financial Reporting Release No. 1, Section 101) and the American Institute of Certified Public Accountants (Rule 203, Rules of Professional Conduct, as amended May 1973 and May 1979). See *PNC Bancorp, Inc. v. Commissioner*, 212 F.3d 822, 824 (3d Cir. 2000) (the Securities and Exchange Commission recognizes the FASB's financial accounting standards as authoritative.).

In *General Elec. Co. v. Delaney*, 251 F.3d 976, 979 (Fed. Cir., 2001), the court said:

Standard financial accounting practice recognizes a hierarchy of generally accepted accounting principles. The highest authorities in the system of accounting norms are the statements published by the Financial Accounting Standards Board (FASB).

2. GAAP. Generally Accepted Accounting Principles ("GAAP") are the official standards adopted by the American Institute of Certified Public Accountants (the "AICPA"), based on the decisions of three groups it has established: the Committee on Accounting Procedure; the Accounting Principles Board (the "APB"); and the Financial Accounting Standards Board. See *Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 168-69 (2d Cir. 2000).

The AICPA Professional Standards Vol. 1 AU §411.05 describes the sources of established accounting principles that are generally accepted in the United States as:

- (1) Pronouncements of an authoritative body designated by the American Institute of Certified Public Accountants (AICPA) Council to establish accounting principles pursuant to Rule 203 of the AICPA Code of Professional Conduct, including the Financial Accounting Standards Board (FASB) Statements of Financial Accounting Standards, FASB Interpretations; Accounting Principles Board (APB) Opinions, and AICPA Accounting Research Bulletins;
- (2) Pronouncements of groups of expert accountants that deliberate accounting issues in public forums and have been exposed for public comment for the purpose of establishing accounting principles or describing existing accounting practices that are generally accepted;
- (3) Pronouncements of groups of expert accountants organized by an authoritative body that deliberates accounting issues in public forums but have not been exposed for public comment for the purpose of interpreting or establishing accounting principles or describing existing accounting practices that are generally accepted;
- (4) Practice or pronouncements that are widely recognized as being generally accepted because they represent prevalent practice in a particular industry.

The U.S. Supreme Court has noted that GAAP are far from being a canonical set of rules that insure identical accounting treatment of similar transactions. Instead, GAAP tolerates a range of reasonable treatments, leaving the choice among the alternatives to company management. *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 99 S.Ct. 773, 58 L.Ed. 2d 785 (1979).

Thus, GAAP does not prescribe a fixed set of rules, but rather represent "the range of reasonable alternatives that management can use." *In re Burlington Coat Factory*, 114 F.3d at 1421 n. 10 (citing *Thor Power Tool Co. v. Commissioner*, 439 U.S. 522, 544 (1979)). The determination that a particular accounting principal is generally accepted can be difficult to establish since no single reference source exists for all such principles.

3. OCBOA.² The FASB has elected not to address accounting bases other than those prepared on a GAAP basis. Additionally, the AICPA's accounting standards executive committee has not issued any guidance in this area of other bases of accounting presentations.

The only guidance for the issuance of Other Comprehensive Bases of Accounting (OCBOA) financial statements is that issued by the AICPA in Statement of Accounting Standards No. 62, Special Reports. That statement identifies only the following four categories as being appropriate OCBOA presentations.

1. A basis of accounting that the reporting entity uses or expects to use to file its income tax return for the period covered by the financial statements.
2. The cash receipts and disbursements basis of accounting, and modifications of the cash basis having substantial support, such as recording depreciation on fixed assets or accruing income taxes.
3. A definite set of criteria having substantial support that is applied to all material items appearing in financial statements, such as the price- level basis of accounting.
4. A basis of accounting that the reporting entity uses to comply with the requirements or financial reporting provisions of a governmental regulatory agency to whose jurisdiction the entity is subject; for example, the basis of accounting that insurance companies use pursuant to the rules of a state insurance commission.

Non-authoritative guidance on OCBOA financial statements can be found in the AICPA's Technical Practice Aids, Section 1500, Financial Statements Prepared Under an Other Comprehensive Bases of Accounting (OCBOA).

4. GAAS. "Auditing" is the process whereby the independent CPA conducts an examination of management's financial statements to determine whether the statements present fairly the financial information which they purport to convey. *SEC v. Arthur Young & Co.*, 590 F.2d 785, 788 n. 2 (9th Cir.1979). "Generally accepted auditing standards ('GAAS') are the standards prescribed by the Auditing Standards Board of the . . . AICPA . . . for the conduct of auditors in the performance of an examination." *Ziembra v. Cascade Int'l, Inc.*, 256 F.3d 1194, 1200 n. 3 (11th Cir.2001). GAAS are general standards of conduct relating to the auditor's professional qualities as well as to the judgments exercised by him in the performance of his examination and issuance of his report. AICPA, Professional Standards, Statements on Auditing Standards No. 1, § 150.01. See *SEC v. Arthur Young & Co.*, 590 F.2d 785, 788 n. 2 (9th Cir. 1979); *Potts v. SEC*, 151 F.3d 810, 812 (8th Cir. 1998) (GAAS are "well-established norms of the accounting profession").

5. Financial Statements. Most businesses prepare financial reports to reflect the financial condition of the business. When the financial reports are prepared by the owners or managers of the company, there is no independent assurance of accuracy. When the financial reports are prepared by a certified public accountant, the rules imposed by the accounting profession regarding the accuracy of the financial reports can give a degree of assurance of accuracy, depending upon the extent of the involvement of the CPA.

From highest to lowest, the degree of assurance of a CPA-prepared financial report ranges from (1) audited (highest), to (2) reviewed, to (3) compiled (lowest). Financial reports prepared without input from a CPA are called "internally-generated" reports.

a. Audited. The objective of the ordinary audit of financial statements by the independent auditor is the expression of an opinion on the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows, in conformity with GAAP. The auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error

²The author received assistance in preparing this section from William C. Bradley, CPA/ABV, who has an accounting office and forensic practice in San Antonio, Texas.

or fraud. Because of the nature of audit evidence and the characteristics of fraud, the auditor is able to obtain reasonable, but not absolute, assurance that material misstatements are detected. As noted in *Potts v. SEC*, 151 F.3d 810, 812-13 (8th Cir. 1998), some of the standards required for an audit are:

[A]n auditor's opinion must have a reasonable basis in sufficient evidence. . . . An auditor must maintain "an appropriate level of professional skepticism." An auditor who has reason to suspect a material misstatement in the audited company's financial report must extend his or her audit accordingly. . . . The more important the item, or the greater the possibility of material misstatement, the stronger must be the grounds for the auditor's opinion.

b. Reviewed. The objective of the review is to perform inquiry and analytical procedures that provide the accountant with a reasonable basis to express limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with GAAP or, if applicable, an OCBOA (Other Comprehensive Basis of Accounting, e.g. cash basis or tax basis). A review differs from the audit in that a review does not provide the basis for the expression of an opinion because a review does not require the obtaining of an understanding of the internal control structure or assessing control risk, tests of accounting records and responses to inquiries by obtaining corroborating evidential matter through inspection, observation or confirmation, and certain other procedures ordinarily performed during an audit. Authorized Edition of The AICPA's Uniform CPA Exam – 1991; Information for CPA candidates section, page xiii., AR §100.04. As stated in *Prescott v. County of El Dorado*, 177 F.3d 1102, 1106-07 (9th Cir.1999):

In a review, an accountant relies on the representations of management to issue a report "stating that he or she is not aware of any material modifications that should be made to the financial statement in order for it to be in conformity with" generally accepted accounting principles.

c. Compiled. The objective of the compilation is to present in the form of financial statements information that is the representation of management without undertaking to express any assurance on the statements. A compilation differs from a review in that a review should provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements. No expression of assurance is contemplated in a compilation. Authorized Edition of The AICPA's Uniform CPA Exam – 1991; Information for CPA candidates section, page xiii., AR § 100.04. As stated in *Prescott v. County of El Dorado*, 177 F.3d 1102, 1106 (9th Cir.1999):

A compilation involves the preparation of a financial statement regarding which the accountant expresses no assurance of accuracy, completeness, or conformity with generally accepted accounting principles.

d. Internally Generated. The objective of the internally generated financial statement is to provide information to the client's management for use in its internal operations. The accountant may not report on financial statements that include one or more periods of client-prepared financial statements that have not been audited, reviewed, or compiled by the accountant.

6. Income Reporting. Tax accounting is different from ordinary accounting. The sources of authority for tax reporting principles include the Internal Revenue Code, Revenue Rulings, and court rulings. Tax laws are promulgated for purposes of federal revenue and not to make an accurate measure of the income and resources of a business.

7. SEC Disclosure Standards.³ The Securities and Exchange Commission imposes accuracy requirements on the financial statements of publicly-traded businesses. In general terms, the SEC requires that the accounting records and financial reports be kept in accordance with GAAP. Item 303 of Regulation S-K requires financial statements to include a narrative portion that makes certain disclosures. The disclosures include: (1) specific information about liquidity, capital resources, and results of operation; (2) known material events and uncertainties that make the historical financial information misleading; (3) the cause of material changes in line items of the prior period's financial report; (4) the effect of inflation and changing prices on the business; and (5) any other information the company feels is necessary to understand its financial condition. For purposes of matrimonial litigation, the reporting standards of the SEC are, as a general rule, not important, since any company coming under SEC reporting requirements will have a market for its publicly traded shares, and the market price probably will determine the value of the spouse's ownership interest in the business, as opposed to the financial statements. There will be exceptions to this when dealing with various types of stock options and stock restricted from the freely traded market due to certain SEC rules.

³The author received assistance in preparing this section from William C. Bradley, CPA/ABV, who has an accounting office and forensic practice in San Antonio, Texas.

D. SARBANES-OXLEY. The collapse of several major corporations in 2001-2002 in a “wave of accounting scandals,” prompted Congress to pass new legislation to enforce a higher degree of accuracy in corporate accounting. Pursuant to Section 302 of the Sarbanes-Oxley Act, which applies to public companies, the SEC has adopted Exchange Act Rules 13a-14 and 15d-14, which require a public company’s principal executive officer or officers and the principal financial officer or officers to certify, in each quarterly or annual report, among other things, that the report does not contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading, and the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the company. The accounting industry is in the process of strengthening its auditing approaches in response to the Enron and similar debacles, which will no doubt affect GAAS.

E. LITIGATION SERVICES, OR FORENSIC WORK.⁴ Litigation services are rendered by a CPA using accounting and consulting skills to assist a client in a matter that involves pending or potential litigation or dispute resolution proceedings with a trier of fact. These services may include fact-finding (including assistance in the discovery and analysis of data), damage calculations, document management, expert testimony, and other professional services required by the client or counsel. Application of AICPA Professional Standards in the Performance of Litigation Services, AICPA Consulting Services Special Report 93-1, 1993.

1. General Standards. The AICPA classifies litigation services as one of six types of consulting services and is therefore subject to the general standards of the AICPA Code of Professional Conduct. The general standards cover professional competence, due professional care, planning and supervision, and sufficient relevant data. The general standards are concerned with the quality of the performance of any professional service.

2. Consulting Standards. In addition to the general standards, specific consulting standards apply to the consulting process and are established by the Statement on Standards for Consulting Services (SSCS) under Rule 202 of the AICPA Code of Professional Conduct. The consulting standards apply specifically to the consulting process to guide practitioners in their relationships with consulting clients. These standards concern serving the client’s interest, entering into an understanding with the client, and communicating with the client

In Texas, the Texas Board of Public Accountancy has determined that the SSCS set the professional standards for practice in the consulting area and thus Texas CPAs are bound under the Board’s Rules to these AICPA standards.

3. No Forensic Standards, Per Se. The CPA organizations do not promulgate standards for much of the forensic work accountants do. CPAs testifying as to lost profits, business valuation, or the character of marital property as separate or community, are operating without controlling standards issued by the accounting profession. In June of 2003, the AICPA published a 33-page pamphlet, *Litigation Services and Applicable Professional Standards*, which discusses Rules of the AICPA Code of Professional Conduct that can apply to forensic work (independence, integrity and objectivity, professional competence, due professional care, sufficient relevant data, compliance with standards, etc.) Appendix F is the “Testimony Pyramid,” in which “Admissible Opinions” are derived from “Accepted Methodology, Reliably Applied” to “Data Analysis” based on “Source Data, Facts and Assumptions.”

VIII. REAL PROPERTY APPRAISERS. This section of the paper considers expert testimony of real property appraisers.

In *Gammill* we held that all expert testimony must be relevant and reliable under Evidence Rule 702. [FN7] This includes the testimony of expert appraisal witnesses in condemnation actions. Appraisal expertise is a form of “specialized knowledge [used to] assist the trier of fact to ... determine a fact in issue.” [FN8] It is therefore subject to *Gammill*’s relevance and reliability requirements.

Guadalupe-Blanco River Authority v. Kraft, 77 S.W.3d 805, 807 (Tex. 2002) (rejecting a real property appraiser’s opinion of value because the “comparables” he relied on were not truly comparable). An expert’s “bald assurance” that he was using that widely accepted approach was not sufficient to demonstrate that his opinion was reliable.” *Id.* at 808.

A. LICENSING IN TEXAS. In Texas, a real property appraiser can be, but is not required to be, licensed or certified by the Texas Appraiser Licensing and Certification Board. [See the Texas Appraiser Licensing and Certification Act, Tex.Admin. Code ch. 153.] The federal Financial Institution Reform and Recovery Act (FIRREA) requires an appraiser to be certified by the state if the transaction is subject to federal jurisdiction. But it is only when the appraisal is

⁴The author received assistance in preparing this section from William C. Bradley, CPA/ABV, who has an accounting office and forensic practice in San Antonio, Texas.

connected with a "federally related transaction" that the appraiser is required to be certified by the Board. *Smith v. Levine*, 911 S.W.2d 427, 433 (Tex. App.--San Antonio 1995, writ denied).

In Texas, only certified or licensed appraisers can do "certified appraisals" or "licensed appraisals." These kinds of appraisals must conform to USPAP. (See Section XV below for a discussion of USPAP). See TEX. ADMIN. CODE ANN. § 155.1, "Standards of Practice."

As far as appraising other types of assets, like personal property or business interests, no particular licensing is required.

B. METHODOLOGY OF VALUING REAL PROPERTY. Traditionally there are three approaches to valuing real property: cost, market, and income approaches. Valuation theory calls for real property appraisers to use all three methods for each valuation, and to "reconcile" the three results into a final estimate of value.

1. Cost Approach. An expert using the cost approach calculates the cost of replacing the subject property with equivalent property of similar quality, condition, etc. Factors in determining cost include legal and brokerage fees, site preparation, connecting to utilities, building materials, architectural and engineering costs, construction costs, etc. Because of changes in available building materials and construction techniques, the replacement cost is not necessarily the cost of reproduction. The replacement cost must be reduced by any physical deterioration, functional obsolescence and economic obsolescence of the subject property. This calculated replacement cost is added to the land value, to arrive at a total value for the property. The land value typically is determined using the market approach.

2. Market Approach. The market or comparable sales comparison approach compares the subject property to other properties of similar size, quality and location that have recently sold. Comparability is based on the time of sale, similarity of land (e.g., location and size) and improvements (age, condition, etc). After adjustments (positive and negative) for differences between the subject property and the comparable property, the market approach establishes the most probable price (not an average) for which the property could be sold.

Potential difficulties with comparables include: true sales price may not be known; terms of financing of the comparable may have affected sales price; tax considerations may have affected sales price; pressure to buy or sell may have affected sales price.

"Comparable sales are generally admissible unless it should appear that reasonable minds cannot differ from the conclusion that the evidence of the other sale lacks probative force because of its dissimilarity to the subject property." *State v. Harrison*, 97 S.W.3d 810, 813 (Tex. App.--Texarkana 2003, no pet.). In *Guadalupe-Blanco River Authority v. Kraft*, 77 S.W.3d 805, 808 (Tex. 2002), the Supreme Court rejected expert testimony on the value of land subject to condemnation, because "a review of [the expert]'s 'underlying data' reveals that the local sales he relied on were not comparable to the condemned easement."

3. Income Approach. Income valuation methods, whether capitalization of earnings or discounted future cash flows, are based on the concept that the money an investor will pay for an asset is a function of the amount of income or cash the investor will receive over time as a benefit of ownership. The appraiser must develop a projection of the stream of earnings or cash flows, and then apply the appropriate capitalization rate to the stream of earnings, or discount rate to the stream of cash, to get to a single present value of the future earnings/cash flows.

The income approach to real property estimates value based on the expected rate of return if the property were to be leased. The fundamental factors are the projected income or cash flows, including changes over time, and the uncertainty or risk that the projected income or cash flows will not be maintained. Because of the assumption that the property will be used to generate income, the income approach is typically not important in valuing residential properties. In using the income method, the appraiser estimates the annual income or cash flows of the subject property based on rates obtained from comparable properties. Then the appraiser finds recent sales of comparable income-generating properties. The price-to-earnings ratio (or capitalization rate or discount rate) taken from sales of comparable income-generating properties is then adjusted for differences between the subject property and the comparable. Adjustments would be made based on the type of tenant, degree of landlord involvement, economic conditions, vacancy rates, property management costs, etc. This price-to-earnings ratio, discount rate, or capitalization rate is then applied to the projected income stream of future cash flows from the subject property to estimate the value.

In some applications, the appraiser will determine a cap rate or a discount rate by calculating a weighted average for the cost of capital and the cost of equity. The cost of capital is the interest that must be paid on the portion of the purchase price to be paid with borrowed funds. The cost of equity is the rate of return that would be required to attract an investor to invest in the component of the land to be paid by down payment. The cost-of-equity assessment involves comparing the rates of return for other investments, the degree of risk in each investment, the liquidity of each investment, etc. The

weighted average cost of capital is used to capitalize the expected net income or discount the expected cash flows from the property back to present value.

4. Highest and Best Use. Appraisal theory requires that real property always be valued on the basis of its highest and best use, which may or may not be its present use. Highest and best use is defined in the *DICTIONARY OF REAL ESTATE APPRAISAL* (10th Ed.) as:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.

The current use of the property is presumed to be its highest a best use, but another use can be considered if there is a reasonable probability that the property is adaptable and needed or would likely be needed in the near future for another use. *McAshan v. Delhi Gas Pipeline Corp.*, 739 S.W.2d 130, 131 (Tex. App.--San Antonio 1987, no writ) (a condemnation case).

In determining highest and best use, the appraiser must consider legal, physical, market, and economic factors. Economic considerations such as supply and demand are also important. The highest and best use must occur within the reasonably near future and can't be remote or speculative.

Legally permissible uses are usually determined by current zoning and other land use regulations. However, some types of land use restrictions, such as easements, are permanent. Others, like zoning restrictions, can be changed depending on who sits on the zoning commission, city council, variances from zoning restrictions that have been granted in the past, etc.

In *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 629 (Tex. 2002), the Supreme Court rejected an expert's opinion of value based on a faulty conception of highest and best use: the appraiser had "premiered his valuation on the fact of . . . condemnation, thus improperly including project enhancement in that valuation."

IX. STANDARDS OF APPRAISAL PRACTICE. There are some national standards of appraisal practice, primarily relating to real estate valuation.

A. WHO ISSUES STANDARDS FOR APPRAISING THE VALUE OF ASSETS?

1. The Appraisal Foundation. The Appraisal Foundation was formed in 1987, consisting of nine major professional U.S. appraisal organizations, all exclusively involved in real estate valuation except the ASA, which is multi-disciplinary. The Foundation is governed by a 32-member Board of Trustees, including appointees of member appraisal organizations, certain government bodies, other sponsor organizations and trustees-at-large. Funding is provided by member and sponsor organizations and the federal government under Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The chairman of the Board of Trustees appoints a nominating subcommittee, which appoints the Appraisal Standards Board and the Appraiser Qualifications Board.

2. Appraisal Standards Board. The Appraisal Standards Board (ASB) is a subdivision of the Appraisal Foundation. The Appraisal Foundation was established pursuant to congressional authority to be a source of appraisal standards and appraiser qualifications. The Appraisal Foundation promulgates appraisal standards through the Appraisal Standards Board (ASB) and qualifications through the Appraiser Qualifications Board (AQB). The Appraisal Standards Board has issued valuation standards, called USPAP. See <<http://www.appraisalfoundation.org>>.

3. Appraiser Qualifications Board. The Appraiser Qualifications Board (AQB) is a subdivision of the Appraisal Foundation. The AQB has set minimum qualifications for real estate appraisers and is studying qualifications for personal property and business appraisers.

B. WHAT ARE USPAP? USPAP are the Uniform Standards of Professional Appraisal Practice, issued by the Appraisal Standards Board. USPAP were adopted by the Appraisal Standards Board of the Appraisal Foundation on January 30, 1989.

FIRREA requires that real estate appraisals used in conjunction with federally-related transactions be performed in accordance with USPAP. According to the Foundation web site, more than 80,000 state certified and licensed appraisers are currently required to adhere to USPAP. <<https://www.appraisalfoundation.org/html/aboutus.asp?FileName=aboutus>> Since 1992, the Office of Management and Budget (OMB) has required federal land acquisition and direct lending agencies to use appraisals conforming to USPAP. *Ibid.*

As a result of their importance to federally-related real property appraisals, USPAP come as close as anything to generally accepted standards of real property appraisal practice. *See e.g., Cottonwood Affordable Housing v. Yavapai County*, 72 P.3d 357 (Az. TaxCt. 2003)(Court will give “strong deference” to USPAP).

1. USPAP Not a Standard of Admissibility of Opinions on Value. Courts of some states have held that USPAP are not rules of evidence.

Connecticut has adopted executive department regulations requiring that real property appraisals be performed according to USPAP. *See* Conn. Comm. of Consumer Protection Reg. 20-504-2. One Connecticut judge rejected a claim that an appraisal report was inadmissible for violating USPAP, saying that the purpose of the Connecticut legislative scheme and related regulations was to provide for the licensing and certification of appraisers, and “not to impose threshold standards for the admissibility, or content of, an appraisal” *Connecticut Housing Finance Authority v. Moniz*, CV-950553406S (Conn. Super. Ct. Hartford Nov. 10, 1997) (unreported) [1997 Conn. Super. LEXIS 3027]. Several Minnesota courts have arrived at the same opinion, rejecting challenges to admissibility based upon a violation of USPAP, saying for example that “USPAP standards are not Rules of Evidence. Rules of Evidence govern the admissibility of evidence at trial.” *Ferche Acquisitions, Inc. v. County of Benton*, C5-94-513 and CX-95-274 (Minn. Tax Ct. Sept. 21, 1995) [1995 Minn. Tax LEXIS 62]. *See Huisken Meat Center, Inc. v. County of Murray*, C4-95-87 *3 (Minn. Tax Ct. June 3, 1996) [1996 Minn. Tax LEXIS 34] (failing to adhere to USPAP goes to the credibility, not the admissibility of evidence“); *Small Building Redevelopment Corp. v. County of Hennepin*, TC-19147 (Minn. Tax Ct. April 12, 1995) (“failing to adhere to USPAP goes to the credibility, not the admissibility, of the evidence”) [1995 Minn. Tax LEXIS 19]. The Mississippi Supreme Court rejected an attack on an appraisal by an expert who owned nearby land, saying that the USPAP preamble and Rule 2-3 “do not render incompetent an appraiser with interests in nearby land or in the subject property being appraised. The emphasis of USPAP is on disclosure of any material interest which the appraiser may have.” *Broadhead v. Bonita Lakes Mall, Ltd.*, 702 So.2d 92, 98 (Miss. 1997).

In one case during year 2000, a federal district judge ruled that USPAP were “persuasive evidence of appropriate appraisal ethics and practices,” and the court relied on USPAP in weighing the credibility of an appraiser’s opinion. *McKesson Corp. v. Islamic Republic of Iran*, 116 F.Supp. 2d 13(Dist. Ct. D.C, 2000), *rev’d on other grounds*, 271 F.3d 1101(D.C. Cir. 2001). However, the appraiser’s violation of USPAP ethics rules did not lead to exclusion of the appraiser’s opinions.

It thus appears that failure to comply with USPAP is at most just one factor to consider on admissibility. A variation from USPAP in how much disclosure is contained in a written report is not very important from a reliability standpoint. However, a variation from the valuation methodology in USPAP is important to the question of whether the evaluator’s methodology is reliable.

2. USPAP Not Generally Accepted for Business Valuation. USPAP Standards 9 & 10 apply to business appraisals. *See*: <<https://www.appraisalfoundation.org/html/USPAP2003/toc.htm>>. These standards do not have general acceptance. For example, the American Institute of Certified Public Accountants and the IRS have not adopted USPAP.

X. BUSINESS VALUATION.⁵ The IRS, in Rev. Rul. 59-60, said that business valuation “is not an exact science.” The business valuation field has general principles that are widely-acknowledged, but business valuation involves many subjective decisions that are not subject to precise measurement. Additionally, there is no “peer reviewed” publishing industry in business valuation, in contrast to scientific fields.

A. BUSINESS EVALUATORS: LICENSING AND PROFESSIONAL ORGANIZATIONS. Business evaluators are not licensed or accredited by the State. Most business evaluators belong to one or more of four associations that offer education and accreditation in business appraisal. These are the American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers (ASA), the Institute of Business Appraisers (IBA), and the National Association of Certified Valuation Analysts (NACVA).

1. AICPA. The American Institute of Certified Public Accountants (AICPA) is the national professional organization for all CPAs. Membership is voluntary. In 1997 the AICPA instituted a professional designation for CPAs who have met experience, education and testing requirements for business valuation. That designation is ABV–Accredited in Business Valuation. *See*: <<http://www.aicpa.org/members/div/mcs/abv.htm>>. The AICPA is in the process of developing uniform standards of business valuation. They are expected to be released for public comment in 2002, and to be finalized in 2003.

⁵The author received assistance in preparing this section from Patrice L. Ferguson, of Ferguson, Camp & Poll, Houston, Texas. Ms. Ferguson is both an attorney and a CPA, and has a forensic and accounting practice throughout Texas, with her office being located in Houston.

2. American Society of Appraisers. The American Society of Appraisers (ASA) was formed in 1936 and is an appraisal certifying organization representing all major disciplines of appraisal specialists, including those who specialize in business valuation. In order to ensure that professional appraisers adhere to high technical and ethical standards in performing valuation projects, ASA has prepared a comprehensive set of *Principles of Appraisal Practice and Code of Ethics* for its members. These principles are appropriate for business valuation specialists as well as appraisers for other valuation disciplines within the ASA membership. Among topics addressed by the principles are the following major issues:

- Objectivity
- Obligations to the client
- Obligations to other appraisers
- Guidance on the application of various methods and practices
- Unethical and unprofessional practices.
- Guidance on the appraisal report.

Beyond the preceding general standards, the Business Valuation Committee of the ASA has adopted standards that relate specifically to business valuation engagements. These standards currently include eight Business Valuations Standards, Definitions, a Statement of Business Valuation Standards, and one Advisory Opinion.

The ASA follows mainstream business valuation methods for appraising businesses. See <[http:// www.appraisers.org](http://www.appraisers.org)>.

3. Institute of Business Appraisers. The Institute of Business Appraisers (IBA) consists of persons who engage in the valuation of mid-sized to smaller businesses. Members include CPAs, business brokers, attorneys, economists, college professors and estate appraisers. Formed in 1978, the IBA has over 3,000 members, half of whom are CPAs. The IBA awards Professional Certifications, including: CBA, Certified Business Appraiser; AIBA, Accredited by IBA; BVAL, Business Valuation Accredited for Litigation.

4. National Association of Certified Valuation Analysts. The NACVA is an organization of some 4,500 CPAs and other valuation professionals who engage in business valuation, litigation support and other types of valuation services. The NACVA was formed in 1991. The NACVA offers three designations: Certified Valuation Analyst (CVA); Accredited Valuation Analyst (AVA); and Government Valuation Analyst (GVA). Approximately 3,500 members have obtained one of these designations. A CVA must be a licensed CPA and a member of the local CPA society or of the AICPA. An AVA must have a business degree and experience in business valuation. A GVA must be currently employed by a government agency and performing valuation work. See <<http://www.nacva.com>>.

5. The International Business Brokers Association. The International Business Brokers Association (IBBA) has established authoritative principles for conducting business brokerage activities. The IBBA Standards provide a minimum standard of methodology for business brokers when dealing with customers, clients, and other business brokers. In addition to six standards a glossary is included in the standards for terms that are unique to the business brokerage industry.

B. SOURCES OF AUTHORITY ON BUSINESS VALUATION. Sources of authority for business valuation include the IRS, the Appraisal Standards Board, the AICPA's Business Valuation Committee, and the other business valuation organizations mentioned above. The non-governmental organizations publish materials, conduct educational classes, conduct testing, and award special designations for business evaluation. There are some privately published books and journals that many consider authoritative. For example, Shannon Pratt's books on business valuation are highly respected. And there are court decisions involving valuation issues—mostly estate tax litigation. However, case law usually is fact-specific and not very helpful in articulating business valuation standards.

C. IRS STANDARDS ON BUSINESS VALUATION. For purposes of business valuation methods, the main authoritative statements by the Internal Revenue Service are revenue rulings. However, private letter rulings (PLRs) which, although not public, do present the IRS' position on substantive tax issues. There are some PLRs that relate to business valuation, and many business evaluators consider PLRs. Remember, these are IRS positions.

The most important source of authority on valuing closely-held businesses, from the IRS or from any other source, is Rev. Rul. 59-60 (1959-1 C.B. 237), which provides guidance regarding the valuation of stock of closely held corporations for estate and gift tax purposes. In RR 59-60, the IRS reviewed in general the approach, methods, and factors to be considered in valuing shares of closely held corporate stock for estate and gift tax purposes. RR 59-60 was modified by Rev. Rul. 65-193. The provisions of Rev. Rul. 59-60, as modified, were extended to the valuation of corporate securities for income and other tax purposes by Rev. Rul. 68-609, 1968-2 C.B. 327. Rev. Rul 93-12 deals with attributions. There are others, as well.

The IRS has issued other Rev. Rulings on valuing business interests that are considered authoritative. For example, Rev. Rul. 77-287 deals with the valuation, for Federal tax purposes, of securities that cannot be immediately resold because they are restricted from resale pursuant to Federal securities laws. RR 77-287 is on-line at: <<http://www.minval.com/irsrevrule77287mineral.htm>>.

D. GENERALLY ACCEPTED BUSINESS VALUATION METHODS. For valuing publicly-traded stock, market reports reflect what price shares are selling for—this is the value you use, subject to some adjustment.

For valuing privately-held businesses, the starting point is the historical, existing financial records, including books of account, financial statements, and tax returns. Financial reports and tax returns are designed for purposes other than establishing value, so the rules for preparing these documents are different from the generally-accepted methods for valuing business interests. Additionally, there may be questions about the accuracy of a business's books of account, financial statements, and tax returns.

Some businesses are valued based on fair market value of assets and liabilities. Others are valued based on capitalized income. Others are based on cash flow.

E. VALUING LESS THAN A 100% OWNERSHIP INTEREST. An appraiser valuing a partial interest in a business may make adjustments to the ownership interest being valued. Adjustments would include (1) marketability discount; (2) blockage discount; (3) control premium; (4) minority discount. There are many published tax cases that discuss these issues. See e.g., *Mandelbaum v. C.I.R.*, 69 T.C.M. (CCH) 2852, 1995 WL350881 (1995) (applying 30% marketability discount). These adjustments are subjective, and often not based on objective data but rather on the experience and judgment of the expert. Consequently, adjustments made by different experts on the same business can vary widely. Most tend to be case-specific and not too helpful in establishing standards of admissibility.

F. OTHER FACTORS IN VALUING BUSINESSES. The appraiser may have to consider tax attributes of the corporation (such as capital gains tax on shares, LIFO reserve on inventory, retained earnings in a corporation, etc.), buy-sell agreements, and restricted stock, meaning stock that cannot be sold at the present time due to federal securities laws. In a Texas divorce, the business appraiser may have to deal with the issue of personal goodwill, which under *Nail v. Nail*, 486 S.W.2d 761 (Tex.1972), is not part of the value of the business for purposes of divorce.

XI. MENTAL HEALTH EXPERTS.

A. CASES. The following cases involve the admissibility of mental health expert testimony measured against the requirement of legal reliability.

The Texas Court of Criminal Appeals considered how to apply legal reliability standards to mental health experts in *Nenno v. State*, 970 S.W.2d 549 (Tex. Crim. App. 1998). The Court of Criminal Appeals suggested the following factors be applied to fields of study outside of the hard sciences (such as social science or fields relying on experience and training as opposed to the scientific method): (1) whether the field of expertise is a legitimate one; (2) whether the subject matter of the expert's testimony is within the scope of that field; (3) whether the expert's testimony properly relies upon and/or utilizes the principles involved in the field. *Nenno*, 970 S.W.2d at 561. In *Nenno*, the Court of Criminal Appeals upheld the admission of the testimony of a Supervisory Special Agent in the Behavioral Science unit of the FBI who specialized in studying the sexual victimization of children, and who concluded that the defendant was a pedophile, would be difficult to rehabilitate, and posed a continuing threat to society.

In *Wright-Thomas v. State*, 2000 WL 1184591 (Tex. App.--Dallas Aug. 22, 2000) (not for publication), the exclusion of a psychologist's opinions regarding the unreliability of eyewitness testimony was affirmed because the expert did not sufficiently relate his testimony to the facts of this case.

In *Mega Child Care, Inc. v. Texas Department of Protective and Regulatory Services*, 29 S.W.3d 303 (Tex. App.--Houston [14th Dist.] 2000, no pet.), it was not error for the trial court to admit the testimony of an expert with a degree in sociology, who had been employed by TDPRS for twenty years, had been in the child care licensing division for ten

years, and had been a supervisor for TDPRS for eight years, on the question of whether a child care facility had been operating in violation of state law.

In *Roise v. State*, 7 S.W.3d 225, 237 (Tex. Crim. App. 1999), the Court of Criminal Appeals held it was error to admit the testimony of a psychologist, that certain photographs would promote sexual impulses and sexual fantasies and that children in the photographs were developmentally harmed. The Court noted that “[d]egrees, experience, and training do not qualify an expert to answer every conceivable question about psychology,” and held that the opinion was not reliable under *Nenno*, nor was the expert’s theory of four stages of sexual arousal relevant to the factual issues in the case.

In *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 611-12 (Tex. 1999), the Supreme Court rejected the testimony of a psychologist that certain behavior was extreme and outrageous, and said: “[e]xcept in highly unusual circumstances, expert testimony concerning extreme and outrageous conduct would not meet” the requirement that expert testimony involve scientific, technical, or other specialized knowledge that would assist the trier of fact.

In *Campos v. State*, 977 S.W.2d 458 (Tex. App.–Waco 1998, no pet.), the trial court admitted the testimony of a clinician who had a Bachelor’s Degree in Education, a Master’s Degree in Spanish and counseling, and training to become a licensed professional counselor and “registered play therapist.” The witness’s training included study, passing an examination, and 2,000 hours of supervised work. The witness’s experience included counseling hundreds of children, 75% of whom were victims of abuse. The expert testified that play therapy was accepted in the counseling community as a legitimate form of counseling. She said that her training permitted her to interpret the actions of children in a way that a jury could not do. The witness had not written an article, but had lectured and had testified on 3 occasions. *Id.* at 463. The expert testified that she had seen the child 10 times in 8 months, that the child had drawn several pictures including a picture of a tree and a house. The expert testified that abused children generally draw “X’s” in the houses and holes in the trees, and that the child’s pictures contained these symbols. She testified that the child chose to play in the sandbox, and that the male doll always ended up “gone” or “dead.” She testified that sexually abused children often feel guilty, frustrated, confused, and angry, and that the child had exhibited all of these feelings. The appellate court held that no error was committed by admitting this evidence.

In *America West Airlines, Inc. v. Tope*, 935 S.W.2d 908, 918 (Tex. App.–El Paso 1996, no writ), a conclusion by a mental health practitioner that her patient suffered from post-traumatic stress disorder was properly excluded because of the expert’s somewhat unorthodox methods, failure to keep notes, lack of psychological testing, etc.

In *Wessmann v. Gittens*, 160 F.3d 790 (1st Cir. 1998), the U.S. Court of Appeals for the First Circuit said:

When scientists (including social scientists) testify in court, they must bring the same intellectual rigor to the task that is required of them in other professional settings. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *Braun v. Lorillard, Inc.*, 84 F.3d 230, 234 (7th Cir. 1996); see also *People Who Care*, 111 F.3d at 537 (declaring, in reviewing admissibility of social science evidence purporting to quantify causes of achievement gap, that “the methods used by the expert to derive his opinion [must] satisfy the standards for scientific methodology that his profession would require of his out-of-court research”)

In *Skidmore v. Precision Printing and Pkg., Inc.*, 188 F.3d 606 (5th Cir. 1999), the Fifth Circuit applied the *Daubert* reliability concept to a psychologist who testified to a diagnosis that the plaintiff suffered from post-traumatic stress disorder and depression brought on by the defendant’s conduct, and held no abuse in admitting the testimony.

In *Nichols v. American National Insurance Co.*, 154 F.3d 875 (8th Cir. 1998), the Eighth Circuit Court of Appeals affirmed the trial court’s rejection of the opinion of an M.D. and two Ph.D. psychologists that several children had been subjected to child abuse. The professionals supported their conclusions by Child Behavior Checklists (CBCs) completed by the children’s parents; (2) conducting clinical interviews with the children that involved role playing with anatomically correct dolls; and (3) interviews with the children’s parents and assessment of their credibility. The District Court found:

(1) that the CBCs relied upon in part by the appellants’ experts had not been validated for use with mentally retarded children; (2) that in any event a CBC is insufficient, on its own, to establish that a child has been abused; (3) that Dr. Sullivan’s clinical interview protocol, which [the children’s] experts submitted and which they claimed was accepted by the relevant scientific community, did not provide specific guidance for conducting clinical interviews; and (4) that in interviewing the [children], [the children’s] experts departed significantly from the clinical protocol that they submitted to the court.

The Eighth Circuit Court of Appeals also noted that there was no support for the low rate of error claimed by the experts. And the Court noted that the experts’ methodology led to the choice of a mode of therapy for these children, and not a diagnosis of child abuse.

B. LICENSING OF MENTAL HEALTH PROFESSIONALS. To understand the issue of qualifications and professional limits on the opinions of mental health experts, it is important to understand the licensing of mental health practitioners in Texas. The following explanation of licensing is provided by clinical and forensic psychologist Jan DeLipsey, Ph.D., 4514 Travis Street, Dallas, Texas. Dr. DeLipsey was an editor and chief contributing author to the Family Law Section's EXPERT WITNESS MANUAL. The copyright to this section of the paper is reserved to Dr. DeLipsey.

The State of Texas licenses psychologists, social workers, licensed professional counselors (LPC's), marriage and family therapists (MFT), and psychiatrists (MD's). Only these individuals may deliver general mental health services. There are restrictions with some of the licenses regarding the scope of practice and all allow an exclusion to ministers and pastoral care. One of the restrictions is the use of the word psychologist or psychological – it can only be used professionally by a psychologist--it cannot be used by a marriage and family therapist or a licensed professional counselor. Only a psychologist or psychiatrist can use the term "psychological evaluation."

The licensing statutes codify standards and guidelines for the various professions. For governmental agencies there is an exclusion – they can perform services without licenses – an example would be child protective services. For family court services, educational or licensing requirements for workers are determined on a local basis. Larger counties tend to employ those with advanced degrees who are also licensed.

Licensed psychologists usually have either a MA in psychology or a PhD in psychology. In recent times some psychologists have a D.Psych. Prior to 1979 other doctorate degrees in mental health could sit for the psychology exam so there are still a few psychologists who might have an doctorate in social work or counseling education.

The master's level licensee is termed a psychological associate.

A PhD and Psy. D. may practice independently but a psychological associate must practice under the supervision of a doctorate degreed individual.

An Ed.D. is a doctorate in education. Because the individual does not have a doctorate degree in psychology, he or she cannot sit for the psychology board licensing exam. Therefore the Ed.D. will take a license as either a marriage and family therapist or as a licensed professional counselor.

Licensed social workers can have any type of mental health degree. There are 5 different levels of licensing but the act is only a title act – not a practice act. Anyone in the State of Texas can perform or practice social work – but only a licensee can claim to be a social worker or do social work.

With regard to Licensed Professional Counselor's (LPC) and Licensed Marriage and Family Therapist's (LMFT), in order to sit for either of these exams, the individual must have an advanced degree in a mental health field as well as well documented supervised experience in the delivery of services – currently 3,000 hours for the LPC and 2,000 hours for the LMFT.

Psychiatrists must hold a medical license from the State Board of Medical Examiners-- they can hold a degree as either a medical doctor or osteopath. They need not hold any special training in psychiatry. Any individual – a podiatrist for example, with a medical license can hold themselves out to be a psychiatrist if they so choose.

In order to be "Board Certified" the doctor must have at least one year of specialized training in the area as well as sit for an exam. There are also specific rules and guidelines for board certified psychiatrists.

Only licensed psychologists and psychiatrists can perform projective testing. Examples of projective testing would be the Rorschach Inkblot Test or a Complete the Sentences Test. Objective psychological testing (MMPI, MCMI, etc.) can be conducted by any licensed professional who has the proper training. However, the terminology for the resulting product such as psychological evaluation or psychological functioning is restricted.

All of these licensed mental health practitioners can make a mental health diagnosis, provided they have sufficient underlying training. All of the licensing acts stress that the professional must practice within the limits of their training.

C. RELIABILITY AND VALIDITY IN SOCIAL SCIENCES. Two measures of the legitimacy of mental health expert evidence are "reliability" and "validity."⁶

⁶The following description of reliability and validity is taken from writings of and discussions with Jan DeLipsey, Ph.D., Dallas, Texas.

“Reliability,” in the social science sense, means consistency. It measures the degree of consistency of results. The same test given to the same person should reliably reach the same result, time-after-time.

“Validity” is the accuracy of a mental health test or theory. Psychologists ask: “Are we testing what we think we are? Are we seeing what is really there? Does this test for depression really test depression? Does this treatment for depression really alleviate the symptoms?” Validity research answers these questions.

Reliability is consistency only and is the foundation for validity. If a person is shooting at a target and consistently hit the same area of the outer ring, there would be good reliability because all of the bullets are going to the same place. The shooter is consistent. But if the goal was accuracy - to hit the bull’s eye, then there would be no validity – none of the shots had gone into the bull’s eye. So the shooter would be a reliable, but not valid.

Reliability is the foundation for validity – if you can’t be consistent – you don’t even get to the question of accuracy.

Reliability is established through a calculation called a “reliability coefficient” that is often symbolized by “ r ”. A reliability coefficient value ranges from 0.0 (no reliability) to +1.0 (perfect reliability). ELAZAR PEDHAZUR AND LIORA PEDHAZUR SCHMELKIN, MEASUREMENT, DESIGN, AND ANALYSIS: AN INTEGRATED APPROACH 85-86 (1991). Note that a reliability coefficient never has a negative value. For example, if the reliability coefficient is equal to .90, that indicates that 90% of the variance⁷ of the total score is reliable (systematic) variance rather than error variance. Obviously, higher reliability is always better.

⁷ Variance can be thought of as a measure of variability in a sample of scores on a given test. Use of variability is essential to statistically analyzing a group of scores.

XII. EXPERTS, LISTED BY GEOGRAPHICAL AREA AND SUBJECT MATTER.

A. ABILENE.

Oil & Gas Valuation.

Name: Royce Walker, Petroleum Engineer, LeClair Operating Co.

Tracing Experts (for commingled assets).

Name: Randy Burchell, CPA, CVA, Burchell, Denson & Morrison

Valuation-Businesses & Professional Practices.

Name: Randy Burchell, CPA, CVA, Burchell, Denson & Morrison

Valuation-Rural Real Estate.

Name: Butch Nelson

B. AMARILLO.

Copy Services for Voluminous Document Production.

Name: Don Sanders, Sir Speedy

Custody Issues & Evaluations.

Name: Jerome Kleinpeter, William J. Kleinpeter & Associates

Name: Priscilla Kleinpeter, William J. Kleinpeter & Associates

Graphics & Trial Aids Services.

Name: Don Sanders, Sir Speedy

Oil & Gas Valuation.

Name: Keith Selinger, GSM Enterprises

Private Investigators.

Name: Monte Leggett, Leggett Investigations

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Name: Jack Hudgins, Jr., CPA

Name: Gregory Morgan, CPA

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Name: Gregory Morgan, CPA

Valuation-Commercial Real Estate.

Name: Steve Rogers, J. Gaut & Associates

Valuation-Residential Real Estate.

Name: Steve Rogers, J. Gaut & Associates

C. AUSTIN.

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Name: Fran Markowski, LSW, MSW

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Name: The Exhibit Company

Legal Ethics Experts.

Name: Tom Watkins, Attorney

Name: Claude Ducloux

Name: Steve McConnico, Attorney

Legal Malpractice Experts.

Name: Tom Watkins, Attorney

Name: Steve McConnico, Attorney

Private Investigators.

Name: Larry York

Probate Law Issues.

Name: Richard Thormann

Tracing Experts (for commingled assets).

Name: Jean Glass, CPA

Name: J. Kenneth Huff, Jr., CPA

Name: Marcia Threadgill, CPA

Trust Law Issues.

Name: Andy Norval

Name: Steve Saunders

Valuation-Antiques & Artwork.

Name: Eliza Moorehead

Valuation-Businesses & Professional Practices.

Name: J. Kenneth Huff, Jr., CPA

Valuation-Commercial Real Estate.

Name: Brad Beal

Name: Larry H. Decovic, American Realty Corp.

Valuation-Residential Real Estate.

Name: Brad Beal

Name: Larry H. Decovic, American Realty Corp.

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Name: Trip duPerier

E. BEAUMONT.

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Name: Ray Coxe, Ph.D.

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Name: Ned Groves, M.D.

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Valuation-Commercial Real Estate.

Name: Jim Bishop

Valuation-Residential Real Estate.

Name: Jim Bishop

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Name: Charles Jacobus, Attorney

Valuation-Residential Real Estate.

Name: Charles Jacobus, Attorney

G. BROWNSVILLE.

H. BRYAN.

I. COLLEGE STATION.

J. CONROE.

K. CORPUS CHRISTI.

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Name: Joseph Horvat, Ph.D.

Name: Macy Kinzel, Ph.D.

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Name: Alan Fisher, Ph.D.

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Name: Sandra Craig, Ph.D.

Name: Sandra Dooley, Ph.D.

Name: Alexandria Doyle, Ph.D.

Name: Burton C. Einspruch, M.D., FACP

Name: Robert Gordon, Ph.D., J.D.

Name: Gail Inman, Ph.D.

Name: Kevin Karlson, Ph.D., J.D., Psychologist

Name: Ray McClung, Ph.D.

Name: Mark Otis, Ph.D.

Name: Dianna Lynn Rumsey, LMSW-ACP, Dip CFC

Name: Rebecca Walker, Ph.D.

Name: Richard Warshak, Ph.D.

Name: John Zervopoulos, Ph.D., J.D.

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Name: Sandra Craig, Ph.D., Psychologist

Name: Sandra Dooley, Ph.D., Psychologist

Name: Alexandria Doyle, Ph.D., Psychologist

Name: Robert Gordon, Ph.D., J.D., Psychologist

Name: Kevin Karlson, Ph.D., J.D., Psychologist

Name: Richard Warshak, Ph.D., Psychologist

Name: John Zervopoulos, Ph.D., J.D., Psychologist

Graphics & Trial Aids Services.

Name: Trial Arts

Name: VeriPath Interactive

Jury Selection.

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Name: Jan DeLipsey, Ph.D., Psychologist

Name: Robert Gordon, Ph.D., J.D., Psychologist

Name: Mary Griffiths, Ph.D.

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MD Psychiatrists who do forensic work.

Name: Harlan Charleston, M.D.

Name: Jaye Crowder, M.D.

Name: Louis Deere, M.D.

Name: Mitchell Dunn, M.D.

Name: Burton C. Einspruch, M.D., FACP

Name: Gerald Melchiodi, M.D.

Name: Edgar Nace, M.D.

Private Investigators.

Name: Bill Albright

Name: Jim Bearden

Name: William Deere, William Deere & Associates

Name: Scott Hayes, Spencer Hardt & Associates

Social Workers who do forensic work.

Name: Michael Bickers, LMSW-ACP, LMFT

Name: Patricia Cox

Name: Nancy Start

Tracing Experts (for commingled assets).

Name: Doug Fejer, CPA
Name: Paul French, III, CPA, CVE
Name: James Penn, CPA
Name: Brian Rice, CPA

Trust Law Issues.

Name: Gary Stolbach, Attorney

Valuation-Businesses & Professional Practices.

Name: Doug Fejer, CPA
Name: Paul French, III, CPA, CVE
Name: James Penn, CPA
Name: Brian Rice, CPA

Valuation-Residential Real Estate.

Name: Dick Clements
Name: D.W. Skelton

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Name: Jan DeLipsey, Ph.D., Psychologist
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Name: Brian Rice, CPA

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Q. HARLINGEN.

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Name: Sharon Hunt, Ph.D.
Name: Ed Silverman, Ph.D., Psychologist

Forensic Psychologists.

Name: Joan Anderson
Name: Jean Guez, Ph.D., Psychologist
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Name: Steve Smoot

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Name: Jim Barker, Attorney
Name: Steve Smoot

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Name: Matt Ramsey

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Name: Don Pannell, Acta Investigations

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Name: Sara Pecheco

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Name: Charles Gerhardt, CPA
Name: Jeannie L. McClure, CPA, ABV, ASA

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Name: Robin Hutchins
Name: Mike McQuinn
Name: Randy Nichols

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Name: David Lewis
Name: Mike McQuinn
Name: Randy Nichols

S. LAREDO.

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V. LUBBOCK.

W. McALLEN.

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Valuation-Businesses & Professional Practices.

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BB. SAN ANGELO.

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CC. SAN ANTONIO.

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Name: DocuSource

Name: Southwest Legal Copy

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Name: Joann Murphey, Ph.D., Psychologist

Name: John Reid, Ph.D., Psychologist

Name: Dina Trevino, Ph.D., Psychologist

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Name: Jack Ferrell, Ph.D., Psychologist

Name: Joann Murphey, Ph.D., Psychologist

Name: Dina Trevino, Ph.D., Psychologist

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Name: Allen Harman, Private Eyes, Inc.

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Name: William C. Bradley, CPA

Name: Michael Gentry, CPA, ABV, J.D.

Name: Gerald Hill, CPA

Name: Gene Trevino

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Name: William C. Bradley, CPA

Name: Michael Gentry, CPA, ABV, J.D.

Name: Gerald Hill, CPA

Name: Gene Trevino

Valuation-Rural Real Estate.

Name: Richard Dugger

Others.

Name: Mary Ann Osborne, Certified Divorce Planner

DD. TYLER.

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Name: Gerald Shore, Ph.D.

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Name: Tom Allen, Ph.D.

Name: Lynn Morrow, Ph.D.

Name: Gerald Shore, Ph.D.

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Name: James E. Smith

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Name: Tony Morgan, CPA

Valuation-Businesses & Professional Practices.

Name: Robert Bailes, CPA

Name: Tony Morgan, CPA

EE. WACO.

FF. OTHER STATES.

DNA/Forensic/Paternity Testing.

Name: Genetic Technologies, Inc.

APPENDIX**XIII. EXPERTS, LISTED IN ALPHABETICAL ORDER, WITH BIOS.**

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Laurence Abrams Ph.D., Clinical Psychology, 510 Bering, Suite 200, Houston, Texas 77057; (713) 782-8975.

Psychotherapy, Diagnostic Evaluations and Consulting Services. All ages. Marital and Family Therapy. Help for Blended Families; communication issues with families of divorce, including ex-spouses. Custody, visitation and all related issues, including spouse and child abuse. Houston and all nearby counties.

PH.D., Clinical Psychology, University of Texas. Health Service Provider Specialty. Former Chief Child Psychologist, Baylor College of Medicine and Texas Research Institute. Currently Clinical Associate Professor, Baylor College of Medicine, and Full time Private Practice. Past offices include Houston Psychological Assn President; Texas Psychological Assn President; Chairman of Texas State Board of Examiners of Psychologists (Licensing Board), among others. Named by the American Psychological Assn as a recipient of Alfred Heiser Award for Contributions to the Profession, and twice named by American Psychological Assn as one of top twelve Psychodrama Therapists in USA, only two such lists made.

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Benjamin J. Albritton, Psy.D., 8411 Preston Road, Suite 675, Dallas, Texas 75225, (214) 265-1400.

Dr. Albritton is licensed in Psychology in the state of Texas, currently in an active group clinical practice, he provides inpatient and outpatient evaluation, psychological testing and psychotherapy to children, adolescents and adults. He is a member of the American and Texas Psychological Association. He performs independent and court appointed psychological evaluations and custody evaluations. In addition, he provides psychological evaluations of damages resulting from trauma for civil suits. His Preston Center office offers easy access from the Dallas Metroplex.

Dr. Albritton grew up in Dallas and received a Bachelor of Arts from the University of Texas in Austin. He received a Master's in Theology from Dallas Seminary, and received a Master's of Arts and Doctorate in Psychology from Biola University in California. He did an internship at Dallas Child Guidance Clinic and following post doctoral inpatient experience, he became a licensed psychologist in the state of Texas in 1987. He was the Executive director of the Doug Cosbie Youth Center and has conducted supervision in numerous settings. He teaches on the graduate level and in other venues. He has been actively involved in forensic testimony since 1991 and has received numerous continuing education hours in forensic psychology. He is frequently court appointed as well as used as a testifying expert in Dallas and the state of Texas. His extensive experience with children and adolescents uniquely equips him for custody and civil evaluations.

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Sharon J. Anderson, Ed.D., 9550 Forest Ln. #114, Dallas, Texas 75243; (214) 341-2003.

Dr. Sharon J. Anderson is a licensed Psychologist in full-time private practice in Dallas, Texas. Her office is in the Forest Park Gardens office park.

Located at LBJ Expressway (635) and Forest Lane, the office is convenient for those who live or work in North Dallas, Park Cities, Addison, Richardson, Plano, and other north/central/eastern areas of the Metroplex.

Dr. Anderson has had extensive experience with adults and couples in all stages of relationships, marriage, separation, divorce, and visitation. She has been called upon to testify or give depositions involving divorce, custody, visitation, and in a variety of criminal cases.

Dr. Anderson has a Bachelor's, Master's, and Doctoral degrees from North Texas State University. She is licensed in Texas as a Psychologist and has hospital privileges. She is a Licensed Marriage and Family

Counselor and a Licensed Professional Counselor. She is a Certified Sexual Addiction Therapist and a member of the National Register of Health Service Providers.

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Saleem S. Ateek, Psy.D., 5949 Sherry Lane, Suite 125, Dallas, Texas 75225; (214) 691-3882.

Professional Experience:

Dr. Saleem Ateek is a licensed Clinical Psychologist and a Licensed Marriage and Family Therapist (LMFT) who has been in private practice, providing services for individuals, families and marital couples since 1976. Dr. Ateek also served as the Chief Psychologist for the Dallas County Juvenile Justice System from 1975-2001. Dr. Ateek is a Clinical Professor of Psychologist at the University of Texas Southwestern Medical Center in Dallas. In his private practice, Dr. Ateek specializes in marital enrichment, family skills training, individual and family psychotherapy, and psychological evaluations to assist the courts in custody matters.

Education:

Psy.D. in Clinical Psychology, August 1975

Certification and Licensure:

Texas State Board of Examiners of Psychologists
Texas State Board of Marriage and Family Therapists (LMFT)
Registered Sex Offender Treatment Provider (RSOTP)
National Register of Health Service Providers in Psychology

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Robert L. Bailes, CPA / ABV, Bailes & Co., P.C., 1357 Dominion Plaza, Tyler, Texas 75703; (903) 509-0425.

Practice is primarily in East Texas and North Texas with engagements statewide.

Services rendered in family law:

- Business valuation
- Tracing
- Economic contribution
- Reimbursement
- Taxation issues

Resumé data:

- BBA Accounting - Baylor University 1976
- Master of Professional Accountancy - Baylor University 1978
- Certified Public Accountant - Texas
- Accredited in Business Valuation (ABV) - American Institute of CPAs
- 25 years public accounting experience
- Experience serving as receiver and trustee
- Extensive experience testifying at trial and deposition over a 20-year period
- Experience dealing with discovery
- Experience preparing reports for litigation
- Past board member Texas Society of CPAs Litigation Services Section

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Bradford W. Beal, 1717 West 6th Street, Suite 295, Austin, Texas 78703; (512) 477-7058.

My professional services include commercial and residential real estate appraisals, appraisal reviews, valuation consultation, brokerage work, and expert testimony for properties in Travis and Williamson Counties.

State-certified as an appraiser for commercial and residential properties. Over 25 years of experience in the Austin metropolitan area. Extensive work with family law practitioners in collaborative cases. Qualified as an expert witness in Travis and Williamson Counties.

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Michael G. Bickers, LMSW-ACP,LMFT, 5600 West Lovers Lane, Suite 317, Dallas, Texas 75209; (214) 366-2288.

Michael G. Bickers is a nationally recognized psychotherapist specializing in relationships, addictions and abuse recovery. He provides counseling services for individuals, couples, groups and families within the Dallas-Ft. Worth metroplex. In addition, he provides intervention services and consults with various treatment centers and corporations throughout the United States.

Michael G. Bickers is licensed as a Master Social Worker-Advanced Clinical Practitioner as well as a Marriage and Family Therapist and he is a certified Sex Addiction Therapist. Mr. Bickers completed an undergraduate degree from Indiana University and holds a Masters Degree in clinical Social work from the University of Texas at Arlington. He is a member of the Dallas Group Psychotherapy Society, Inc. and has participated in extensive continuing education including study at Harvard Medical School. Known nationally for his success with addiction intervention, he is also a distinguished consultant, speaker and experienced expert witness.

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William C. Bradley, CPA/ABV, 5711 Northwest Parkway, San Antonio, Texas 78249; (210) 696-8881.

Bill Bradley has provided tracing of separate and community assets, computation of malpractice claims, loss of wages and other economic damage computations, business and partnership valuations in many different industries. He has also provided tax and cash flow planning in connection with divorce, while supervising an active tax practice for corporate, individual, partnership and non-profit entities.

Shareholder – Netting & Pace, CPA’s, Incorporated, 745 E. Mulberry Ave., Suite 700, San Antonio, Texas 78212; Telephone (210) 738-3888, Facsimile (210) 738-1010

Education-BBA in Accounting, The University of Texas at Austin, 1966

AUTHOR AND/OR PANEL PARTICIPANT FOR VARIOUS STATE BAR CLE ACTIVITIES INCLUDING:

- Family Law Section, Expert Witness Manual
Co-author Chapter 2-2 Sources of Authority on Financial Issues
Co-author Chapter 2-10 Business Valuation
- 1993 Panel Member – Financial Expert Workshop
- 2001 Panel Member – Tax Workshop: The Fundamentals
- 2002 Panel Member – Executive Compensation, Beyond the 401(k)

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Shannon Bradshaw, MS. LPC-S, 9741 Preston Rd., Suite #105, Frisco, Texas 75034; (214) 595-4815.

I provide individual and family counseling to children, adolescents, and adults. My private practice is located in Frisco, Texas. I received a masters degree in counseling psychology at Our Lady of The Lake University, San Antonio, Texas in 1993. I hold a Licensed Professional Counselor License licensed by the State of Texas. For 8 years I specialized in working with children who had been sexually or physically abused. During this time I provided expert testimony for the District Attorney's office and for Child Protective Services. Presently, I work with many children of divorcing parents. I am frequently called to testify in custody trials and modification hearings. I have had experiences working with grief/loss issues, domestic violence issues, and behavioral issues.

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James H. Bray, Ph.D., Baylor Family Counseling Clinic, Baylor College of Medicine, 3701 Kirby Drive, 6th Floor, Houston, Texas 77098; (713) 798-7750.

I provide expert testimony concerning all aspects of family law. This includes psychological and family evaluations in custody disputes and modifications, mediations regarding custody issues, family and marital therapy. I also provide pre-marital counseling, post-divorce counseling, and parent training. Our clinic provides sliding-fee scales counseling services.

University of Houston, Ph.D., Clinical Psychology, December 1980.
Postdoctoral Fellow in Family Therapy, Texas Research Institute of Mental Sciences, 1980-1981.
Texas State Board of Examiners of Psychologists, License Number 2-2293. Licensed Psychologist and Health Service Provider. Texas State Board of Examiners of Marriage and Family Therapists, License Number 001779.
Associate Professor and Director, Family Counseling Clinic, Baylor College of Medicine.
Conducted custody evaluations throughout Texas since 1981.
Conducted NIH funded longitudinal study on effects of divorce and remarriage on children.
Texas Supreme Court Advisory Committee on Child Support and Child Visitation, 1988-97.
Consultant for the Judicial Council of California regarding child custody and mediation.
Consultant to the National Institute of Mental Health on Families and HIV/AIDS.
Published over 125 professional articles and books.

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John A. Buxton, ISA CAPP, Buxton Appraisal, Authentication & Consulting Services, 6717 Spring Valley, Dallas, Texas 75254; (972) 239-9943.

Services:
Expert Witness and trial consultation, appraisal review
Authentication and appraisal of African, Precolumbian, Oceanic, and American Indian Art
Art expert/appraiser locator service
Speaking engagements and public appearances
Venues: Smithsonian, Kimbell Museum, National Cowboy Hall of Fame, Philbrook

Biographical:
2004-1997- Appeared on Chubbs Antique Road Show - PBS Television
2002 – Featured in full page “High Profile” Article, Dallas Morning News (July)
2002 – Ellen A. Amirkhan NTISA Distinguished Service Award
2000-2001 - National Board of Directors, International Society of Appraisers
2000 - Designated Member of the Year, International Society of Appraisers
1999-1997 - National Chairman, Electronic Information Services Comm., ISA
1999 - Designated Specialist African Art, Certified Appraiser of Personal Property
1993 - Designated Member ISA
1993 - ART TRAK, Inc. online nationally as a computer network for art information
1975 – Established Shango Galleries, Dallas, Texas

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John E. Camp, CPA/ABV, CFA, Ferguson, Camp, & Poll, P.C., 1800 Bering Drive, Suite 950, Houston, Texas 77057-3156; (713) 783-5200.

Vice President of Ferguson Camp Poll, P.C.

In the area of family law, John combines his 29+ years of accounting and audit experience with expertise in valuations of closely-held businesses in a variety of industries, including professional firms and related issues of personal and commercial goodwill.

Education: University of Texas at Austin - BBA Accounting (1974)

Licenses Certified Public Accountant, Texas (1976)
& Chartered Financial Analyst (1993)
Certifications: AICPA Accredited in Business Valuation (1998)
 American Society of Appraisers (Candidate) - course work is complete
 AICPA Business Valuation Certificate of Educational Achievement Program

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Alexander Lamar Casparis, Jr., Economist and Certified Public Accountant, 700 North Grant, Suite 800, Odessa, Texas 79760-4556; (432) 333-3221.

Expertise in Economic Modeling and Expert Testimony related to quantifying Personal and/or Corporate Valuations and Damages, Forensic Examinations to quantify the risk and/or extent of Fraud and Embezzlement, the Development of Compensation Models for Medical Practitioners and other Licensed Professionals serving clients in West Texas, Dallas/Fort Worth, San Antonio, and Houston.

Educational background includes a BBA from Baylor University in Economics, a MBA from the University of Texas of the Permian Basin in Management, and DBA in Information Technology Management (all but dissertation) from Nova Southeastern University. A Certified Valuation Analyst and Certified Forensic Accountant with Professional and Academic presentations generally including the Valuation of Intangible Assets, the Introduction of Technology in a Business Process Improvement Environment, the Bifurcation of Personal and Enterprise Goodwill. A Member of the Honor Society in Economics (ODE) and Chairman of the Litigation Service Member Section (LSMS) of the Texas Society of Certified Public Accountants (TSCPA). Experience testifying in State and Federal Courts.

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Barry S. Coakley, Ph.D., Institute for Families in Transition, Inc., 2815 Valley View Lane, Suite 202, Dallas, Texas 75234-4966.

(Dallas, Denton, Collin, Tarrant counties)
Biographical: BS in psychology, UNT, 8/69; MS Clinical Psychology, 12/71; PhD Family Psychology, TWU, 8/93. licensed psychologist since 1985, associate school psychologist since 1971; 12 years predoctoral working as school psychologist and director of community based youth/family agencies; worked in family court system since 1987.

Services: Specializing in consultation for family law attorneys, and evaluation, training and therapy for adults and children within divorced and divorcing families. Services include brief and full custody evaluations, social studies, coparenting training, alienation prevention and intervention training, short-term intensive conflict intervention, and divorced-family therapy for high-conflict parents and their children.

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Robert D. Cocanower, Jr., Cocanower & Cocanower, P.C., 1501 Merrimac Circle, Suite 109, Fort Worth, Texas 76107; (817) 335-5547.

Description of Service:
Cocanower & Cocanower, P.C. is a family run accounting practice specializing in tax and litigation support. Our services include: business valuation, separate/community property analysis, expert witness testimony, forensic accounting, professional/personal goodwill analysis, accounting and tax service, estate tax planning, and asset discovery. Our firm has extensive experience in these areas which allows us to provide the best possible service to our clients.

Resume/Robert D. Cocanower, Jr., C.P.A.
Education: University of Oklahoma-Accounting & Finance-BBA
 Texas Christian University-Finance-Graduate work
Qualifications & Experience:

Expert Witness/Consultant: Alter ego, business valuation, separate and community property, reimbursement, professional and personal goodwill, lost profits, asset discovery, fraud and other areas of family and probate law.

Speaker/Author-Partial list: "Experts After Enron", Advanced Family Law Course 2002, "Valuation Problems in the 21st Century", AAFL Course 2000; "Use of Separate & Community Property in Estate Planning", Advanced Estate Planning Conference; "CPA's Role in Divorce & Community Property", TSCPA; "Business Valuation", TX Center for the Judiciary, 1995-1996; and "Expert Testimony Techniques/Depositions & Trials", TSCPA.

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Rob C. Cocanower, Cocanower & Cocanower, P.C., 1501 Merrimac Circle, Suite 109, Fort Worth, Texas 76107; (817) 335-5547.

Description of Service:

Cocanower & Cocanower, P.C. is a family run accounting practice specializing in tax and litigation support. Our services include: business valuation, separate/community property analysis, expert witness testimony, forensic accounting, professional/personal goodwill analysis, accounting and tax service, estate tax planning, and asset discovery. Our firm has extensive experience in these areas which allows us to provide the best possible service to our clients.

Resume/Rob C. Cocanower, C.P.A.

Education: University of Texas A&M-Accounting-BBA

Licensors: Certified Public Accountant, American Society of Appraisers (Candidate Status/All Exams passed)

Qualifications and Experience:

Expert Witness/Consultant: Business valuation, alimony, separate & community property, goodwill analysis, economic contribution, federal income taxation, and other areas of litigation support.

Speaker/Author-Partial list: "Economic Demonstration: Demonstration of Proof", Advanced Family Law Course 2002; "Through the Past Darkly: Reviewing Tax Returns" (Co-Author RD Cocanower, Jr. CPA), Associate Judges/Title IV-D Masters Seminar 2001; Speaker "Single Period vs Multiple Period Discounting", Advanced Family Law Course 1999; and Speaker "Valuing a Business", FW TSCPA.

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Mary A. Connell, Ed.D., ABPP, 100 East 15th Street, Suite 635, Fort Worth, Texas 76102-6566; (817) 334-0035.

Description of services performed:

Child custody evaluation by court appointment or agreement of the parties; case consultation, research, and pure expert testimony regarding standard of care for custody evaluation and parenting evaluations in abuse/neglect cases; second opinion evaluation; consultation with litigants on special issues such as alienation, relocation, sexual abuse allegations, and constructive co-parenting. Located in Fort Worth but willing to take cases in other locations.

Description of education and experience:

Licensed psychologist, board certified in forensic psychology by American Board of Professional Psychology, 23 years in private practice in Fort Worth. Actively involved in state and national psychological organizations, Vice President of American Academy of Forensic Psychology, column editor, Expert Opinion column, American Psychology-Law Society News. Sixteen years of experience in child protection evaluations, with over 2000 evaluations completed, served as psychologist consultant to Permanent Planning Team for four years. Several years of experience providing therapeutic services with familial sexual abusers and victims. Fifteen years of experience doing child custody evaluation, over 100 families evaluated. Frequent presenter at American Academy of Forensic Psychology continuing education workshops, full-day child custody evaluation training, in various states. Professional reviewer of state board complaints in child custody matters, also provide supervision in child custody evaluation to psychologists seeking board certification.

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Jan M. DeLipsey, Ph.D., Psychologist, 4514 Travis, Lock Box 3, Dallas, Texas 75205; (214) 599-0141.

Since 1995, Dallas-based jury consultant and expert witness, Dr. Jan Marie DeLipsey has specialized in litigation consulting and trial advocacy, offering assistance in domestic relations, civil and criminal cases. Her trial work includes jury research, litigation planning, and witness preparation, ranging from focus groups to case analysis to working with problematic evidence.

Dr. DeLipsey holds a doctorate of psychology and is a licensed psychologist by the State of Texas. From 1973-95, she published and testified as an expert witness in the forensic areas of competency, interviewing and the reliability of the child witness; victimology; prediction of dangerousness; child custody issues; and ethical assessment and standard of care. Dr. DeLipsey continues to publish in various areas of forensic practice and has served as a liaison to the Family Law Council and on the Family Law Council Public Relations Committee.

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David Dike, David Dike Fine Art, 2613 Fairmount, Dallas, Texas 75201; (214) 720-4044.

David Dike graduated from TCU with a BBA and opened his gallery in 1986 specializing in 19th and early 20th American paintings, with an emphasis on Early Texas Artwork. He is past president of the Dallas Art Dealers Association and a member of the New England Art Appraisers Association.

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Sandra Y. Dooley, Ph.D., North Dallas Doctors Office, P.C., 8215 Westchester, Suite 305, Dallas, Texas 75225; (972) 407-6820.

Dr. Sandra Dooley has been practicing psychotherapy in Dallas since 1987 and has extensive experience in marriage and family and divorce counseling including counseling with regard to child custody issues. She strives to help clients attain health co-parenting relationships during separation and following the divorce. Dr. Dooley is easily contacted through the above address and telephone number and her email address: dooleydrs@aol.com.

Dr. Dooley is certified in the State of Texas as a licensed professional counselor and as a licensed marriage and family therapist. She furnishes continuing education for other therapists through conducting workshops and seminars. Dr. Dooley also works with attorneys through providing supportive psychotherapy for their clients who are involved in family litigation matters.

Dr. Dooley is a member of the American Association of Marriage & Family Therapists, the Texas Counselors Association, and the American Psychotherapy Association. Additionally, she is on the Advisory Board of Divorce magazine and is a contributing writer for that publication.

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Claude E. Ducloux , 400 West 15th Street Suite 808, Austin, Texas 78701; (512) 474-7054.

I have testified in many cases on the issues of legal ethics, attorneys fees, attorney trust account management, and engagement agreements and retainers. I have written ethics opinions for firms on various legal issues.

BA 1972, Univ. of TX, Austin; J.D., St Mary's University 1976; Board Certified in Civil Trial and Civil Appellate Law. TBLS; Licensed in Texas, California, and Colorado; former Chair Tx Bd of Legal Spec.; former Asst. Gen. Counsel, State Bar of Texas; former President, Travis County Bar Association. Bd of Trustee of Texas Center for Legal Ethics and Professionalism.

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Richard L. Dugger, MAI, CRE; Dugger, Canaday, Grafe, Inc., 111 Soledad Street, San Antonio, Texas 78205; (210) 227-6229.

State Certified General Real Estate Appraiser (Number: TX-1321050-G)

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Dr. Burton C. Einspruch, 8330 Meadow Road, Suite 117, Dallas, Texas 75231;(214) 369-1636.

Dr. Burton C. Einspruch's background includes research, clinical, administrative, and teaching experience and responsibilities spanning four decades. He is a Diplomate and has served as an Examiner of the American Board of Psychiatry and Neurology and holds the title of Professor both at medical and non medical universities. He is a Fellow of the American College of Psychiatrists, The American Psychiatric Association and American Society for Adolescent Psychiatry. He currently serves as a board member of The Holocaust Studies Program at the University of Texas at Dallas, The Dallas National Bank, American Service Group, Dallas Museum of Natural History and is Chairman of the Medical Advisory Board of St. Mark's School of Texas.

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Paul French, III, 1909 Woodall Rogers Freeway, Suite 410, Dallas, Texas 75201; (214) 468-8207.

Services Rendered

My areas of expertise include business valuations, characterization, tracing, forensic accounting, financial misconduct and fraud identification, locating hidden assets, property division, tax fraud identification, stock option valuations, mediation and settlement conference support, professional malpractice, shareholder oppression, lost profits, and consulting and testifying expert witness engagements.

Licensure, Qualifications & Experience

- Court Appointed or jointly retained under an agreed order as a business valuator or financial expert in Collin, Dallas, Denton and Tarrant Counties
- Licensed, Certified Public Accountant (Texas)
- Texas Society of CPA's Litigation Services Section: Steering Committee Member
- Certified Valuation Analyst by The National Association of Certified Valuation Analysts; Member, Professional Standards Committee, State Chapter President
- Certified Fraud Examiner by The Association of Certified Fraud Examiners
- Business Valuator Accredited in Litigation by The Institute of Business Appraisers
- Certified Divorce Financial Analyst by The Institute for Divorce Financial Analysts
- Bachelor of Business Administration, Magna cum Laude; Accounting and Finance

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Patrice Ferguson, CPA/ABV, JD, Ferguson, Camp, & Poll, P.C., 1800 Bering Drive, Suite 950, Houston, Texas 77057-3156; (713) 783-5200.

Founder and President of Ferguson Camp Poll, P.C.

For 30 years, Patrice has provided tax and consulting services to her clients and has included in her practice marital property issues, tracing and characterization, business valuation, and expert testimony, as well as assistance with structure of settlement and decree language. She has been a frequent speaker for the State Bar of Texas in the areas of valuation, characterization and tracing, mediation, and tax issues.

Education: University of Texas at Austin: BBA - Accounting - 1973
University of Houston Law Center: JD - 1989

Licenses Certified Public Accountant, Texas - 1975
& Licensed, State Bar of Texas - 1991

Certificates: AICPA Accredited in Business Valuation - 1998

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C. Michael Gentry, CPA, Polansky, McNutt, Perry & Gentry, P.C., 45 N.E. Loop 410, Suite 950, San Antonio, Texas 78216; (210) 737-1042.

Services: Business valuations for litigation (including divorce), gift and estate planning, and mergers and acquisitions. Asset tracing in divorce matters. Lost profits calculations.

Education, licensure, qualifications and experience: BBA, Baylor University, 1969
JD, University of Illinois College of Law, 1972
Certified Public Accountant, Texas 1974
Attorney at Law, Texas 1973 (Inactive), Illinois 1972
Accredited in Business Valuation, American Institute of Certified Public Accountants, 1998
Principal, Polansky McNutt Perry & Gentry, P.C.
Partner, Ernst & Young, L.L.C. Testified in state and bankruptcy courts.

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Karen L. Gold, PsyD, 609 Myrtle Avenue, Suite 101, El Paso, Texas 79901; (915) 532-7102.

Services: Psychological evaluations, adults and children; PAS assessment; Friend to the Court custody evaluations; court-ordered high-conflict-situation parenting education; therapeutic visitation supervision; divorce counseling; divorce mediation; trial consulting; inservice and continuing education to the legal profession; jury debriefing; from mid-Central to far W.Tx.

Bio: Transplanted easterner, BA from University of Maryland, M.Ed from Loyola of Maryland, post-masters Specialist Certification from University of Louisville (Ky), PsyD from Baylor University; Residency from UT Medical Branch Department of Psychiatry San Antonio. Licensed since 1982 and practicing primarily in El Paso. Diplomate of the American Board of Forensic Examiners and of the American Board of Medical Psychotherapists and Diagnosticians; Member, Society of Police and Criminal Psychologists, American Society of Trial Consultants, American Psychological Association; published author; veteran expert witness in County, District, Federal courts with more than 500 appearances to date.

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Robert Gordon, Ph.D., J.D., Psychologist, Dallas Address: 15301 Dallas Parkway, Suite 150, Addison, Texas 75001; (972) 620-0230; Houston Address: 1221 McKinney, Suite 3110, Houston, Texas 77010; (713) 659-6600.

Dr. Gordon conducts clinical and forensic evaluation of parents and children experiencing divorce and modification issues. He designs good parenting plans, offers home and quality of life studies, and blended family counseling. He participates in collaborative law and ADR procedures. He consults and provides crisis intervention, client centered psychotherapy, and expert testimony. Referrals are accepted from the Courts and Members of the Bar.

Dr. Robert Gordon is a psychologist and attorney who has examined parents and children for the past 25 years. He has done so at the request of family courts and members of the bar. Dr. Gordon is boarded in both clinical and forensic psychology by the American Board of Professional Psychology. He has served as President of the Texas Psychological Association and Chairperson of the Texas State Board of Examiners of Psychologists. Dr. Gordon received the prestigious Distinguished Psychologist Award for his pioneering work in integrating the knowledge of psychology and law. He is the author of the Custody Quotient Test of Effective Parenting. He has offices and ADR labs in Dallas and Houston. Please visit: <http://www.insightandanswers.com>

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Edward B Gripon M.D.P.A., 3560 Delaware, #502, Beaumont, Texas 77706; (409) 899-4472.

My forensic psychiatric practice is in Beaumont, Texas. I am board certified by the ABPN in General Psychiatry and Forensic Psychiatry. I do both civil and criminal forensic evaluations. In addition, I still do out-patient treatment of a wide range of psychiatric disorders. I completed medical school and residency at UTMB in Galveston and have 25+ years experience in forensic matters. I am licensed in Texas.

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Jean R. Guez, Ph.D., 3000 Wesleyan, Suite 255, Houston, Texas 77027; (713) 552-9500.

My services center primarily on treating individuals, couples, families, and children, consulting with mediation teams to resolve disputes relating to the care of children, and forensic related services including custody evaluations, access recommendations, co-mediation and co-arbitration in family disputes, reintegration of families after a hiatus or abuse, post-divorce or post-litigation consultation to families, and development of appropriate visitation and access schedules for children under the age of five including infants.

I received my undergraduate degree from Tulane University, my doctorate from Pennsylvania State University, and my Post-Doctoral Fellowship from the Department of Pediatrics, Baylor College of Medicine. I am currently affiliated with Baylor College of Medicine in the Department of Psychiatry and Behavioral Science as an adjunct Associate Professor. I have been licensed in the state of Texas since 1983. I hold memberships in local, state, and national associations relating to Psychology. I have given a number of invited lectures or talks with the Inns of Court, South Texas College of Law Mediation Training, Baylor College of Medicine, and other local groups.

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Terry W. Hammond, Terry W. Hammond & Associates, Attorneys and Counselors at Law, 1020 Montana Avenue, El Paso, Texas; (915) 534-7000.

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James M. (Mike) Hill, FASA, CBA, Hill Schwartz Spilker Keller LLC, 5847 San Felipe, Suite 3100, Houston, Texas 77057-3918; (713) 771-5011.

HSSK has unique experience in providing valuation, accounting, and forensic investigations for marital dissolutions. We specialize in identifying separate and community property, tracing assets and reimbursement claims, and valuing the business interests owned by the community estate. We also have computer forensic expertise to assist in locating hidden assets and deleted files, as well as preserving digital evidence.

Mike Hill, Sr. is a founding shareholder and President of Hill Schwartz Spilker Keller LLC, a valuation and litigation consulting firm. Mike served as Chairman of the Appraisal Foundation, which promulgates the national standards for the appraisal industry. Mike is a Fellow of the American Society of Appraisers (FASA). He has also earned the designation of Certified Business Appraiser (CBA) from the Institute of Business Appraisers. Mike received his BS degree from the University of Texas and MBA with honors from Lamar University, with additional post-graduate studies at the University of Houston. Mike assisted in formulating and developing the Business Valuation Certification Courses of the American Society of Appraisers. He continues teaching these courses and presenting seminars throughout the nation.

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Jack S. Hudgins, Jr., Hudgins Humphrey Moore, P.C., 1800 S. Washington, Suite 315, Amarillo, Texas 79102; (806) 371-8771, ext. 14.

Primary services include:

- Tax structure planning for transactions related to business transfers, succession or dispute resolutions, including divorce. Business valuation for transactions relating to business transfers or federal estate and gift tax, including adequate disclosure letters. Valuation mediation services related to dispute resolution.
- Tracing or other fraud investigation services. Traditional tax compliance and planning services.

Professional Certifications:

- Certified Public Accountant
- Certified Valuation Analyst
- Certified Fraud Examiner

Professional Organizations:

- American Institute of Certified Public Accountants
- National Association of Certified Valuation Analysts
- Association of Certified Fraud Examiners

Texas Society of Certified Public Accountants

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Kevin Karlson J.D. Ph.D, Meaningful Communication, 14956 Knollview Drive, Suite 100, Dallas, Texas 75248; (972) 839-2394.

Description of Services: We provide personalized communications effectiveness training for lawyers and their clients designed to meet the unique demands of the pending or anticipated litigation in each case, as well as mediation and collaborative law proceedings. Training content always includes information about dress and appearance, courtroom behavior, and basic information about the rules of procedure and rules of evidence that are directly relevant to the client's most effective testimony. We consult on trial strategy, jury research and voir dire, evaluation and preparation of expert witnesses, and design of trial exhibits.

Background and Experience: Kevin Karlson JD PhD is the consulting principal of Meaningful Communication, a Dallas-based consulting firm which he leads. Dr. Karlson has been providing professional consulting services for more than 20 years, after completing a Ph.D. in clinical psychology from UT Southwestern Medical Center in Dallas in 1983, and a JD from Dedman School of Law at SMU in 1984. He is the sole contributing author of an award winning psychiatric evidence book "Psychiatric and Psychological Evidence" by D. Shuman (Shepards-McGraw/Hill, 1988). He has been appointed to the adjunct faculty of UT Southwestern Medical School Division of Psychology in Forensic Psychology, Dedman School of Law at SMU in Psychiatric Evidence, and University of Texas at Dallas School of Management in Marketing/Business Communication. Following a brief stint at Texas Instruments as a Senior Consultant to the corporate legal department, Dr. Karlson launched Meaningful Communication to provide professional executive coaching services to business clients and litigation consulting services to legal professionals and their clients throughout the U.S. in family and civil litigation.

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Gerald A. Keller (Gerry), ASA, CBA, Hill Schwartz Spilker Keller LLC, 4835 LBJ Freeway, Suite 675, Dallas, Texas 75244; (214) 741-5360.

HSSK has unique experience in providing valuation, accounting, and forensic investigations for marital dissolutions. We specialize in identifying separate and community property, tracing assets and reimbursement claims, and valuing the business interests owned by the community estate. We also have computer forensic expertise to assist in locating hidden assets and deleted files, as well as preserving digital evidence.

Gerry Keller is a founding shareholder of Hill Schwartz Spilker Keller, LLC, a valuation and litigation consulting firm. He serves as the Managing Partner of its Dallas office. Gerry's background includes an eighteen year career in commercial banking with Cullen/Frost Bankers in San Antonio as well as fifteen years as a business appraiser. He holds the professional designations of Accredited Senior Appraiser (ASA) by the American Society of Appraisers and Certified Business Appraiser (CBA) through the Institute of Business Appraisers. Gerry received his BBA from St. Mary's University and his MBA in Corporate Finance with highest honors from the University of Dallas. He is past President of the Dallas/Fort Worth Chapter of the American Society of Appraisers and is on the Executive Committee of the Foundation Appraisers Coalition of Texas (FACT).

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Nancy Kellogg, M.D., Alamo Children's Advocacy Center, 7130 Highway 90 West, San Antonio, Texas 78227; (210) 675-9000.

Services: medical evaluations (including interview and exam) of suspected victims of child abuse; review of medical records of suspected child abuse cases (and preparation of summary reports when requested); expert and fact witness testimony regarding medical records/findings of suspected child abuse cases; consultation regarding general issues related to child abuse.

Education: Dartmouth College, B.A., 1978
University of Texas Health Science Center at San Antonio, M.D., 1985

University of Texas Health Science Center at San Antonio, Pediatric internship and residency, 1985-1988
Licensure: Medical license received 1986, renewed annually thereafter
Board certified in Pediatrics: 1989, recertified 1996, 2002
Qualifications: Tenured Professor, Department of Pediatrics, University of Texas Health Science Center at San Antonio
Medical Director, Alamo Children's Advocacy Center
Experience: Examination of more than 7,500 children and adolescents for suspected child sexual abuse; examination/evaluation of more than 1000 children and adolescents for suspected child physical abuse; testified >500 times; over 30 publications (peer-reviewed journals, books, book chapters); over 100 regional, national and international invited presentations.

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Monte L. Leggett, Leggett Investigations, 4174 Canyon Drive, Amarillo, Texas 79109; (806) 352-8070; (800) 521-0436.

We cover the 26 counties of the Texas Panhandle from Amarillo North, but we do travel and have worked all areas of Texas and the United States. We specialize in Divorce, Child Custody and Surveillance. We also have undercover field operatives, conduct background investigations, court appointed criminal investigations, locate run-always and missing children and also have a juvenile transport service(to detention facilities or rehab facilities).

I began my career in investigations with the Randall County Sheriffs Office in 1975/76, I then entered military service with the Military Police/Investigations Division and later with the Criminal Investigations Division. In 1983 I opened Leggett Investigations in Amarillo, Texas and now have 5 staff Investigators. I am State Licensed thru the Texas Commission on Private Security and Private Investigations. I have a BA in Business Admin, a Firearm instructor, I am S.C.A.N. certified,(scientific content analysis), I am a member in good standing with numerous investigative associations including the Texas Association of Licensed Investigators.

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David H. Lindau CPA, CFP, CVA, 4130 Rio Bravo, Suite B, El Paso, Texas 79902; (915) 544-6950.

David specializes in taxation, business and individual consulting services with an emphasis in litigation matters and business valuation matters. Services are primarily offered in West Texas and Southern New Mexico, specifically El Paso and Las Cruces.

David has a Bachelor of Business Administration from the University of Texas at El Paso (1961) and a Master in Professional Accounting from the University of Texas at Austin (1963) David is a senior partner with the firm of Lauterbach Borschow and Co., El Paso's oldest and largest locally owned accounting firm. He is a certified public accountant in Texas and New Mexico. He is also a Certified Financial Planner certificant and a Certified Valuation analyst. Professional memberships include the Texas Society of CPAs, the Financial Planning Association, the National Association of Certified Valuation Analysts and the Institute of Certified Business Appraisers. David has been qualified as an expert in local state district courts, Federal District Court, Federal Bankruptcy Court and Federal Tax Court. David has served clients in several industries including manufacturing, retail, wholesale, service, professional practices, real estate and family limited partnerships. Litigation matters have included valuations for family law matters, lost profits, insurance claims and tax matters.

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Perry M. Marchioni, Ph.D., 1705 W. Illinois, Midland, Texas 79701; (432) 684-4540.

Services rendered:
Individual, marital, and family psychotherapy
Psychological and neuropsychological evaluation
Forensic consultation (family and criminal law)
Forensic evaluation of sex offense, competency to stand trial, insanity, violence risk, child abuse accusation

Education: B.S. 1977 M.A. Clinical Psychology, U. T. E. P.
Ph.D. 1985 Counseling Psychology Texas Tech Univ.

Licenses: Texas State Board of Examiners of Psychologists 1989
Licensed Specialist in School Psychology 1996
Health Service Provider, NRHSP 1997

Employment: Private Practice at current location since 1993
Regional Psychological Consultant, Texas Rehabilitation Commission, Vocational Division
School Psychologist on contract with Midland I.S.D. and other area schools
ABEL assessment site and provider of sex offender evaluation for Midland and Ector counties

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Jeannie L. McClure, CPA/ABV, ASA, 1225 North Loop West, Suite 1050, Houston, Texas 77008; (713) 622-6000; 13455 Noel Road, Suite 1000, Dallas, Texas 75240; (214) 328-1700.

Business valuation firm with offices in Houston and Dallas, Texas. The Principals have over 30 years experience in the areas of valuation and forensic accounting. Areas of expertise include marital dissolution, estate and gift, ESOPs, fairness opinions, reorganizations, intellectual property, litigation support and damages calculations. Industries served include medical, software, oil & gas, construction, insurance, banking, manufacturing, retail, professional practices and various service industries.

B.B.A./Accounting, Texas A & I University; CPA, Accredited Senior Appraiser (ASA) in Business Valuation with the American Society of Appraisers; ABV (Accredited in Business Valuation) with the AICPA; Member of the Houston Estate and Financial Forum and the Houston Business & Estate Planning Council; Steering Committee AICPA/AAML National Conference on Divorce; Currently assisting the committee revising the definitions and formulas for the economic contribution; Corporate transactions, Forensic and tracing; Determination of special issue damages; Expertise resulting from public accounting experience in the area of taxation, audit, and management advisory services; Expert testimony in federal and state courts; Court appointed as joint expert; Successful Collaborative Law divorce cases; Creative skills in successful mediation of highly complex financial issues.

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Greggory D. Morgan, CPA, CVA, Brown, Graham and Company, P.C., P.O. Box 9297, Amarillo, Texas 79105-9297; (806) 355-8241.

Have provided litigation support on both an expert and consulting basis in the following areas; family law property settlements, community/separate property tracing, business valuation, wrongful termination, wrongful death, personal injury, business failure cause and effects, income tax planning with regard to property settlements, rebuttal of expert testimony, various civil damages.

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Elizabeth Joann Murphey, Ph.D., 13300 Old Blanco Road, Suite 260, San Antonio, Texas 78216; (210) 495-0221.

Dr. Murphey services clients from San Antonio and it's surrounding areas, from Austin to the Valley. She is a clinical psychologist in private practice who offers a wide range of services from individual, family and marital therapy to custody issues, including co-parenting, evaluations and/or other litigation issues. In addition to therapy, Dr. Murphey administers testing and provides evaluations for educational, legal, personal or work-related matters.

University of Tennessee, Knoxville, TN; December 1982-Ph.D. in Clinical Psychology (APA Approved); June 1976-Ph.D. in School Psychology (Course work and internship); August 1972-M.S. in Counseling and Guidance; December 1968-B.S. in Elementary Education.

Fellow in the International College of Prescribing Psychologists

Diplomate in Clinical Psychology, American Board of Professional Psychology
Licensed as a Clinical Psychologist in Texas by the Texas State Board of Examiners of Psychologists, License # 2934

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Wm. Barry Norman, Ph.D., 4200 South Hulen, Suite 423, Fort Worth, Texas 76109; (817) 731-0888.

Services I provide: Despite extensive training in psychological testing, I rely on in-depth clinical interviews (and occasionally some testing) to perform custody evaluations, frequently focusing on the issue of relocation. I provide these services in Tarrant, Parker, Wise, Erath, Palo Pinto and Young counties, Texas.

Biographical information: I was educated at Texas Wesleyan University, Texas Tech University, and New York University Medical Center; I hold a doctorate in psychology from Texas Tech University. I have been licensed to practice psychology in the state of Texas for over 25 years. My experience is broad-based, including teaching at the college level, administrator of a residential treatment facility for emotionally disturbed teenagers, and chief psychologist at a maximum security hospital. I have been providing evaluations and testimony for the criminal and family courts since 1976.

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Mary Ann Osborne, Osborne Consulting Services, LLC, 118 Oakhurst Place, San Antonio, Texas 78209-2135; (210) 824-9747.

Services:

As a Certified Divorce Financial Analyst, I provide financially related services throughout the divorce process. Examples include budgets/cash flow reports, inventory, tracing/characterization, financial exhibits, review of investment/bank statements/tax returns/retirement plans and financial projections using divorce-specific software. In a cost-effective way, I relieve the attorney of time-consuming research and provide the client with hand-holding and financial education.

Qualifications and Experience:

Education: BS Education-University of Missouri, Columbia; MBA with distinction-University of the Incarnate Word, San Antonio; Certified Divorce Financial Analyst Designation-Institute of Certified Divorce Financial Analysts.

Experience: Osborne Consulting Services, LLC 2001-present (see services above); Frost National Bank 1998-2000-San Antonio Trust Department-stock/bond trades, monitor/adjust asset allocation of trust portfolios; Rauscher Pierce Refsnes, Inc.1995-1997-San Antonio-Series 7 and 63 licensed investment executive, solicited/managed client assets, developed investment seminar curriculum/presented to physicians/corporations, retirement coordinator in local office. Organizations/Miscellaneous: Texas Association of Divorce Professionals-Secretary/Treasurer, Charter Member; Collaborative Law Institute of Texas-Member 2003; Speaker: Legal Assistants University, Employee Education-Southwest Research Institute-San Antonio, Estate Planners-College Station; Continuing Education 2003-Advanced Family Law Seminar and New Frontiers.

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Jim Penn, Whitley Penn, Whitley Penn-Dallas Office, Two Lincoln Centre, 5420 LBJ Freeway, Suite 1440, Dallas, Texas 75240; (972) 392-6620; Whitley Penn-Mid Cities, Chase Bank Bldg., 860 W. Airport Freeway, Suite 601, Hurst, Texas 76054; (817) 258-9120.

Whitley Penn is a full service accounting firm with over 70 employees and three offices in the Dallas-Fort Worth Metroplex. We began as a firm twenty years ago. Our valuation/litigation support department performs valuations of businesses and intangible assets for a variety of purposes, as well as tracing and characterization of assets, estate analysis and economic contribution claims for divorce purposes.

Jim Penn graduated Magna Cum Laude from the University of Houston in 1978. He is a CPA and is Accredited in Business Valuations by the AICPA. He co-founded Whitley Penn in 1983 after working at both a national and local accounting firm. He has advanced education related to litigation services, expert

testimony and business valuations as well as specialized education related to Texas Family Law. He routinely speaks and writes on these subjects. Over 80% of Jim's practice is devoted to family law matters and he testifies routinely in N. Central Texas.

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Geoffrey S. Poll, CPA, JD, Ferguson, Camp, & Poll, P.C., 1800 Bering Drive, Suite 950, Houston, Texas 77057-3156; (713) 783-5200.

Vice-President of Ferguson Camp Poll, P.C.

In his family law work, Geoff advises clients and attorneys on property settlements, prenuptial arrangements, and structure of tax provisions in divorce decrees. He has done extensive work and written on the subjects of options, deferred and other employee compensation plans. He also participates in the financial aspects of collaborative law cases.

Education: Texas A & M University at College Station: BBA in Accounting and Finance - 1985
South Texas College of Law - J.D. May 2000 with honors

Licenses & Certified Public Accountant, Texas - 1991

Certificates: AICPA: Certificate of Advanced Studies in Corporate Taxation - 1994
Licensed, State Bar of Texas - 2001

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Shelley R. Probbler, Psy.D., Licensed Psychologist, 1868 Nacogdoches Rd., San Antonio, Texas 78209; (210) 829-4876.

Dr. Probbler is a licensed psychologist with expertise in working with children and families. A focus of her practice is devoted to working in the forensic area, conducting custodial evaluations, evaluations pertaining to access and assessments regarding child abuse and neglect. Dr. Probbler has additional expertise in working in correlated areas of family law, including domestic violence, parenting education and cooperative parenting. In addition to her forensic practice, Dr. Probbler has a psychotherapy practice, specializing in working with helping children and families adjust to the impact of divorce.

EDUCATION/TRAINING:

Psy.D., 1991: Illinois School of Professional Psychology [APA approved].

Dissertation: *Relating clinical performance to academic ability: the utility of subjective and objective admissions criteria.*

University of Texas Health Science Center at San Antonio, Clinical Psychology Internship [APA approved].
M.A., 1983. Division of the Humanities, Department of English Literature, University of Chicago.

B.A., 1978. College of the Humanities, Department of English Language and Literature, State University of New York at Binghamton.

LICENSURE:

Texas State Board of Examiners of Psychologists: Licensed Psychologist, License Number: 24454

Listed in the National Register of Health Service Providers in Psychology, effective December 27, 1996

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Steve Rogers, MAI, P.O. Box 9441, Amarillo, Texas 79105; (806) 373-3111.

28 years experience in real estate appraisal, state certified Tx, NM, OK, KS

Experience in all commercial and residential property types, testified in Texas Panhandle Courts on real estate valuation matters. Real estate broker in TX.

BS Texas Tech University, post graduate study in real estate at Baylor Univ., MAI designation since 1981, currently certified by all licensing organizations.

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Dianna Lynn Rumsey, LMSW-ACP, P.C., Diplomate of Clinical Forensic Counseling, 3817 Fairmount Street, Dallas, Texas 75219; (214) 528-3011.

Services offered: Therapy for children, adolescents, adults & families. Consultations and court/deposition preparation with attorneys in traditional family law, collaborative family law and mental health malpractice cases. Teaching seminars/conferences on mental health issues, ethical/malpractice issues and forensic issues. Divorce Mediation; Child Custody Issues; Diagnostic Evaluations; Clinical Assessments; Social Studies; Adoption Studies; Courtroom Testimony.

Education: American College of Certified Forensic Counselors #F17413-Diplomate Status; National Association of Forensic Counselors #F17413; Texas State Licensed Clinical Social Worker #S20480 (“S” denotes approved “Supervisor” Status); MSW Smith College School for Social Work; BSW East Central University; BA in Counseling except for Internship East Central University. Continuing Education Hours from 1984 to present - 535 clock hours. Forensic Specializations (Diplomate Status): Child Custody Evaluations; Criminal Offender Counseling; Ethics; Malpractice Prevention; Mediation; Youthful Offender Counseling.

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Beverly Flis Ryan, Beverly F. Ryan & Co., Certified Public Accountants, 10777 Northwest Freeway, Suite 415, Houston, Texas 77092; (713) 869-3666.

Provides accounting services primarily in the Houston area, including litigation support, tax, financial consultation, and other accounting services. Litigation support services may include financial analysis, investigative accounting, separate property tracings, valuation and division of property, expert witness testimony, and assistance with discovery, settlement negotiations, mediation, and trial preparation.

CPA - MI (1978) and TX (1980). BS in Business Administration (with high distinction) - Wayne State University (1976); Major – Accounting. Member AICPA and TSCPA. Completed various seminars in litigation support services, business valuations, family law and income taxes among other topics. Presented or assisted in presentation of seminar topics on using the computer in litigation support services. Accounting practice concentrated in the area of litigation support services, primarily family law and probate matters, since 1983. Have provided expert witness testimony in cases filed in Harris, Fort Bend, & Montgomery counties in Texas and one case in Nevada. Have provided other litigation services and consultation in cases filed in other Texas counties as well. Have provided services relating to both large and small cases.

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Jeffrey A. Schumacher, CPA/ABV, ASA, 1225 North Loop West, Suite 1050, Houston, Texas 77008; (713) 622-6000; 13455 Noel Road, Suite 1000, Dallas, Texas 75240; (214) 328-1700.

Business valuation firm with offices in Houston and Dallas, Texas. The Principals have over 30 years experience in the areas of valuation and forensic accounting. Areas of expertise include marital dissolution, estate and gift, ESOPs, fairness opinions, reorganizations, intellectual property, litigation support and damages calculations. Industries served include medical, software, oil & gas, construction, insurance, banking, manufacturing, retail, professional practices and various service industries.

B.B.A. Valparaiso University; Certified Public Accountant (Texas); Accredited Senior Appraiser (ASA) in Business Valuation with the American Society of Appraisers; ABV (Accredited in Business Valuation) with the AICPA; Published articles and lectured in his field of expertise including University of Houston, South Texas College of Law and other professional societies and peer organizations; 20 years experience in the valuation and sale transactions of closely held businesses; Designed one of the first commercially viable business valuation software packages in 1983; His extensive experience with computer software and hardware is particularly applicable in the areas of forensic investigations and tracing analysis; These skills have also been applied to develop innovative and highly effective demonstrative aids for presentations and at trial; has testified as an expert in numerous federal and state courts.

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Keith A. Selinger, Grace, Shursen, Moore & Associates, Inc., 7201 I.H. 40 West, Amarillo, Texas 79106; (806) 358-6894.

Education, Licensure, Qualifications and Experience:

- 1. BS in Geology, University of Tulsa, 1962
- 2. MS in Geology, University of Arizona, 1964
- 3. BS in Petroleum Engineering, University of Wyoming, 1965
- 4. Thirty-nine (39) years of practical experience in the industry
- 5. Domestic and international work experience
- 6. Prepare oil and gas property appraisals
- 7. Make recommendations concerning remedial work and production practices
- 8. Appeared as an expert witness in over thirty cases in the last ten years
- 9. Prepared total field studies for fields located in the United States and overseas
- 10. Licensed Petroleum Engineer since 1969

Kinds of Services Rendered:

- 1. Oil and gas property appraisals and fair market value estimates
- 2. Evaluation of current oilfield operations and recommendation for changes
- 3. Evaluate technical data (i.e., well logs, DST's pressure analysis)
- 4. Design and evaluate enhanced recovery projects
- 5. Appear as an expert witness in civil and bankruptcy courts and before State oil and gas regulatory agencies

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Lorrie Semler, ISA CAPP, AM, CES, Certified Appraiser of Personal Property Specializing in Antiques and Residential Contents, Semler Appraisals & Estate Liquidations, 2000 Via Corona, Carrollton, Texas 75006; (972) 416-3417.

Description of Services Provided:

Appraisals of personal property, including antiques and general household contents, for equitable division in divorce and estate distribution, insurance coverage and claims, probate and estate tax, and charitable contribution. We also conduct estate liquidations by tag sale and auction.

Biographical Description:

- * Certified Member of the International Society of Appraisers, Accredited Member of the International Society of Appraisers, Member of the Texas and National Auctioneers Associations, Certified Estate Specialist.
- * Appraisal practice started in 1992.
- * Expert witness testimony in Federal Court, Dallas County.
- * Onsite and Distance Education instructor for the International Society of Appraisers' Core Courses in Appraisal Theory & Practice.

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R. Jerald Shore, Ph.D., Shore & Associates, P.C.

Locations: Tyler (Dr. Shore and Mrs. Kelly Smith, L.P.C.) Ph. 903-595-4206; Longview (Dr. Donald Winsted, Ph.D.) Ph. 903-238-9050.

- Custody Evaluations (Drs. Shore and Winsted)
- Psychological Evaluations (Drs. Shore and Winsted)
- ounseling - Individual and Marital (Shore, Winsted, Smith)
- ounseling and Play Therapy - Adults, Adolescents, Children (Winsted and Smith)
- Court testimony (Shore, Winsted and Smith)

Resumé: R. Jerald Shore, Ph.D.:
Doctor of Philosophy, Clinical Psychology, University of North Texas

Master of Business Administration, University of Virginia
License No. 24292, TX State Board of Examiners of Psychology
License No. 3121, Licensed Specialist in School Psychology

Over 3000 evaluations of adults and children since 1997
Over 100 custody case evaluations, plus other assignments by the court
Director of Psychological Services – two hospitals

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Jeffrey C. Siegel, Ph.D., Forensic and Clinical Psychology, 12810 Hillcrest Rd., Suite 217, Dallas, Texas 75230; (972) 960-1472.

Bio: Jeffrey C. Siegel earned his Ph.D. in clinical psychology and completed a post-doctoral training program in forensic psychology before entering private practice in 1981. He has conducted child custody and parental fitness evaluations for Courts throughout Texas. He has presented numerous papers and conducted professional workshops on the interactions between psychology and family law for numerous psychology and legal organizations. He continues to conduct research and has published peer-reviewed research on the MMPI-2, the most widely used psychological test in custody matters. He is a Fellow of both the American College of Forensic Psychology and the American Psychological Association. He is a founding editor of J.M. Craig Press, an on-line publishing company that provides current social science research updates to the family law community.

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Edward G. Silverman, Ph.D., Licensed Psychologist, West Houston Psychological Associates, P.C., 3400 Bissonnet, Suite 155, Houston, Texas 77005; (713) 838-9119.

Edward G. Silverman is a licensed psychologist who received his undergraduate degree in psychology from Rutgers University and his doctoral degree in clinical psychology from Ohio University. Dr. Silverman completed his clinical training at Baylor College of Medicine where he was Assistant Professor of Psychology from 1979 until 1985. Since that time, he has been in independent practice as co-director of West Houston Psychological Associates, P.C. Dr. Silverman has extensive experience in conducting child custody evaluations and has been a court appointed expert on numerous occasions in Harris, Fort Bend, Montgomery, Brazoria, and Galveston counties. He has coauthored several articles and has made numerous professional presentations regarding psychological issues in family law. His publications and presentations have addressed a variety of topics including parental alienation, allegations of sexual abuse, and the role of psychological testing in child custody evaluations. Although specializing in forensic psychology, Dr. Silverman maintains an active psychotherapy practice. He is also actively involved in the supervision and training of clinical psychology interns at Baylor College of Medicine, where he is a Clinical Assistant Professor in the Department of Psychiatry and Behavioral Sciences.

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Brenda Simonson-Mohle, ISA CAPP, Signet Art, 2644 Newcastle Dr., Carrollton, Texas 75007; (972) 306-1963.

Description of Services:

I provide appraisals of fine art for all purposes, including estates, donations, damage claims, divorce, insurance pre-evaluation, pre-purchase advice and resale. I also act in an advisory capacity or expert witness for legal matters. My areas of expertise include paintings, prints, drawings, sculpture, tapestries and some decorative art.

Description of Expertise/ Training/ Service:

1987-Present Appraiser and Art Advisor -- Signet Art
1990 Accredited --International Society of Appraisers
2000-Certified Appraiser of Personal Property--Fine Art, International Society of Appraisers
1996-97 President, North Texas Chapter of ISA

1997-98 National Chair--Fine Art Committee, ISA
 1998 Outstanding Member of the Year -- ISA
 2001-2003 National Chair-- Ethics Committee, ISA
 2000-2002 Various Appearances on HGTV's "The Appraisal Fair"

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James N. Spiller, Spiller and Associates, P.O. Box 1679, Pearland, Texas 77588; (800) 713-4324.

Practice: Practice covers the United States and Mexico.
 Specialize: Video Surveillance
 Background Investigations
 Witness location and statements
 Child Custody and Pre-marital investigations
 Pre-employment and internal theft investigations
 Education: Bachelor of Science/Criminal Justice – Sam Houston State University
 Licenses: Class C Private Investigator under the Texas Security Commission
 A1 All Lines Insurance Adjustor License through State of Texas

Experience includes 28 years of trial and deposition testimony. One of 2 investigators appointed to investigate the Mormon will of Howard Hughes. Prepared background investigation of potential jurors for one of the largest civil suit (Hughes case) in US history. Provided security for witnesses to and from courthouse until verdict was reached. Conduct video surveillance on workman's compensation claims/disability claims for attorneys, insurance companies, oil companies and various private businesses. Periodically teach Criminal Justice curriculum at various junior colleges in Houston.

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Gary Stolbach, Glast, Phillips & Murray, P.C., 2200 One Galleria Tower, 13355 Noel Road, L.B. 48, Dallas, Texas 75240-6657; (972) 419-8300.

Services Offered:

- * Legal advice, as co-counsel or special counsel, regarding marital property claims arising, upon divorce, from estate planning structures such as trusts and family limited partnerships.
- * Such advice takes advantage of case experience and research and analysis of novel marital property claims which arise from trusts and family limited partnerships.
- * Expert testimony regarding same.

Professional Background:

- * Board Certified, Estate Planning and Probate Law, Texas Board of Legal Specialization.
- * 27 years of experience as an estate and trust attorney, including serving previously as the lead attorney in that practice area for Jones, Day in Texas and for Winstead, Sechrest & Minick.
- * Experience, as co-counsel to family law attorney and expert witness, in several substantial divorce cases involving marital property claims arising from trusts.
- * Speaker on this subject at the 2002, 2003 and (invited to speak at) 2004 State Bar of Texas Advanced Family Law Institute.
- * Frequent lecturer on trusts and estate planning and administration topics; published author
- * Education: The University of Pennsylvania; 1971 graduate, B.A., Phi Beta Kappa. Legal Education: University of Pennsylvania Law School; J.D., 1976. Practice in Texas since 1978.

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Beth Szescila, ISA CAPP, Szescila Appraisal Service, 224 Birdsall Street, Houston, Texas 77007; (713) 869-4088.

Services

As a trained personal property specialist, Ms. Szescila appraises antiques, fine art and residential contents for individuals, attorneys, businesses and institutions. Services offered include written appraisals, verbal

estimates of value, expert witness testimony, discreet disposition of property, and appraisal consultation for divorces, donations, estate affairs, insurance matters, etc.

Abbreviated Resume

Ms. Szescila is a certified member of the International Society of Appraisers (ISA), one of less than fifteen members internationally who are certified in two different disciplines, those being Antiques and Residential Contents, as well as Fine Arts. For 5 years she was the lead instructor of ISA’s specialty course, “The Appraisal of Antiques and Residential Contents”, taught nationwide. She holds a B.A. in Fine Arts from the University of Mississippi and continues to study at Glassell School of Art. Ms. Szescila is currently the Corporate Vice President of the Board of Directors of ISA, which is headquartered in Seattle, and has served as President of the ISA’s Gulf Coast Chapter. She has been an appraiser on the nationally syndicated television show, “The Antiques Roadshow”, since its first season and has been featured on A & E’s show “The Incurable Collector”. (Note: Neither Texas nor the Federal Government licenses personal property appraisers.)

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Carroll N. Thompson, Certified Public Accountant, 3515 Brookhaven, Montgomery, Texas 77356; (936) 448-4805.

Certified Public Accountant - 1962; BBA University of Houston - 1963; I have focused on forensic Accounting since 1971, including discovery, financial and income tax analysis, community/separate property tracing, financial consulting, and mediation assistance.

Expert witness testimony in most family courts in Harris County, Texas and also in many other counties across the state; expert witness testimony in Federal Court in Houston (patent infringement damages); expert witness testimony in Illinois.

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Linda Rollins-Threats, Ph.D., 3620 N. Josey Lane, Suite 207, Carrollton, Texas 75007; (214) 373-2454.

General Information:

Offices in Carrollton, TX since 1992, offering the following services:
Psychological Testing, Mediation, Marital and Family Counseling, Group Therapy, Communication Skills and Assertive Training. Primarily servicing North Texas

Education:

B.S. in Social Work - University of Missouri, St. Louis, Missouri
M.S. in Social Work - St. Louis University, St. Louis, Missouri
Ph. D. in Clinical Social Work with a Specialty in Individual, Marriage and Family Therapy - University of Texas at Arlington, Texas
Licensed Marriage and Family Therapist
Additional training in the following: MMPI And MMPI 2 Interpretation, Family Mediation, Culture Diversity Training, Management Of Combative Patients, Crisis Intervention, Family Therapy Techniques, Peer Counseling, Counseling Physically And Sexually Abused Children And Their Parents, DSM-IV Clinical Applications, Psycho-Active Medications, Development Of Individualized Treatment Plans, Conducting An Intake Interview - Mental Status Examination, Group Therapy, Communication Skills And Assertive Training, Cognitive Training. Geriatric Counseling and Working with the Elderly, Behavior Therapy, Individual Therapy

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Christopher Ticknor, MD, General Adult Psychiatry, 7940 Floyd Curl Drive, Suite 770, San Antonio, Texas 78229; (210) 692-7775.

Dr. Ticknor is a private practice Psychiatrist and also an expert in Forensic Psychiatry with an emphasis on Civil Litigation. He has been designated in both State and Federal cases involving Mood Disorders, Wrongful Death, Suicide, Post-Traumatic Stress Disorders, Head Injury cases, and Pain and Mental Anguish. Dr.

Ticknor has testified on the subject of Testamentary Capacity and Competency. He is not a Child Psychiatrist and, therefore, does not perform Custody Evaluations.

Dr. Ticknor is an Associate Clinical Professor of Psychiatry at the University of Texas Medical School in San Antonio. He is Board-Certified in Psychiatry and serves as an Examiner for the American Board of Psychiatry. He has been in private practice since 1986. Dr. Ticknor is a principal investigator in research involving psychiatric disorders in Adults and Adolescents. He is a Past President of the Bexar County Psychiatric Society.

An honors graduate of Southern Methodist University in Dallas, Dr. Ticknor attended medical school at the University of Texas Health Science Center in San Antonio, where he received his medical degree in 1982. He completed an internship and residency in General Adult Psychiatry also at the University of Texas Health Science Center and served as Chief Resident in the Department of Psychiatry. He has been a native San Antonian since 1972.

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Dina Trevino, Ph.D., 6100 Bandera Road, Suite 414, San Antonio Texas 78238; (210) 647-7712.

Services provided include consultation to attorneys/Court, child custody evaluations, including social study and psychological testing, cooperative parenting, consultation and therapy with families, children and adolescents. Also, consultation and assessment for schools, Independent Education Evaluations for schools/districts.

Education: PhD in Psychology from The University of Texas at Austin in 1986; Internship at UTHSC - Dallas; B.A. and M.A. also from UT - Austin, in 1977 and 1981 respectively.

Licensure: Licensed by Texas State Board of Examiners of Psychology in 1987 as a PhD level psychologist and licensed as an L.S.S.P. (Licensed Specialist in School Psychology) in 1996 through Texas State Board of Examiners of Psychology (grandfathered in).

Qualifications and Experience: Worked in the Bexar and surrounding counties Court systems since 1991. Worked with children and adolescents since 1985.

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Gene Trevino, Valuation Associates, Inc., 16607 Blanco Road, Suite 1505, San Antonio, Texas 78232; (210) 479-8999.

Education: BBA University of Texas at San Antonio
MBA University of Texas at San Antonio
Ph.D. Walden University

Professional Designations:
ASA (Accredited Senior Appraiser in Business Valuation); CFA (Chartered Financial Analyst);
CEA (Certified Earnings Analyst)

Relevant Publications:
"Are Discount of Closed-End Funds Really a Proxy for Lack of Control?" Business Appraisal Practice, Fall 2002.
"A Case Study Analysis of the Differences Between Lost Profits and Firm Value" Business Valuation Review, March 2002.
"Divorce Settlements Involving a Closely Held Business: Are They Fair?" Fair Share, March 1999.
Calculating the Earnings Base For a Self-Employed Individual, Journal of Legal Economics, 7,(3).
The Daubert / Robinson Factors From the Prospective of an Expert Witness, San Antonio Lawyer, May- June 1998.

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Richard A. Warshak, Ph.D., 16970 Dallas Parkway, Suite 202, Dallas, Texas 75248; (972) 248-7700.

Services Provided

Trial consultation; preparation for *Daubert* hearings, depositions, and cross-examination of experts
Consultation with attorneys, mental health professionals, and parents on child custody matters
Review and analysis of evaluations conducted by mental health professionals
Expert witness testimony in selected cases
Treatment of abducted and alienated children and their families

Education, Licensure, Qualifications, and Experience

B.S. — Cornell University; Ph.D. — University of Texas Health Science Center, 1978
Licensed psychologist in Texas since 1980; additional professional certifications
Clinical Full Professor of Psychology at the University of Texas Southwestern Medical Center
Past president of the Dallas Society for Psychoanalytic Psychology; consulted to the White House
Member, editorial board of two professional journals; editorial reviewer for two other journals
Recipient of major grant from the National Institute of Mental Health to study stepfamilies
More than 25 years experience as a clinical, consulting, and research psychologist
Internationally recognized expert on divorce, child custody, and stepfamilies. Author, two prominent books
on divorce and custody and more than 40 articles (4 published by the ABA) in scientific and legal books and
peer-review journals, including landmark articles on parental alienation, relocation, father custody, and
overnights between young children and parents.

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Jarvis A Wright, Ph.D. Psychologist, 421 West Concho, San Angelo, Texas 76903 and Serving Greater West Texas; (325) 944-8184.

Area of Expertise: General Forensic Practice

Family Law Services Rendered:

Evaluations that include all significant adults and all children (Usually these are Court Ordered) Evaluations
that include only one parent and/or children (Usually these are attorney arranged)
Trial Consultation as a non testifying expert

Resume:

1976-Ph.D. Counseling Psychology, University of Southern Mississippi
2001-Post-Doctoral Master of Science in Clinical Psychopharmacology, California School of Professional
Psychology
Licensed Psychologist, State of Texas since 1977
26-years experience in general forensic work (Criminal, Civil Plaintiff, Civil Defense, Family, Probate,
Administrative, etc.) I have provided services in most District Courts in West Texas

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John A. Zervopoulos, Ph.D., J.D., ABPP, Clinical and Forensic Psychology, 5440 Harvest Hill Road, Suite 202, Dallas, Texas 75230; (972) 458-8007.

Services: Dr. John A. Zervopoulos conducts court-appointed forensic psychological evaluations and
counseling in family law cases with adults and children. Dr. Zervopoulos has been appointed most in Dallas,
Collin, Rockwall, Ellis, and Navarro counties. In addition, Dr. Zervopoulos consults with attorneys and their
clients on mental health and family issues in Collaborative Law cases.

Education, License, and Experience: Dr. Zervopoulos received his B.A. from Wheaton College (IL) in 1974,
and his Ph.D. in counseling/clinical psychology from the University of North Texas in 1981. He has been
licensed to practice psychology since 1983. In November 2002, after a review of his work and an
examination, Dr. Zervopoulos was board certified in forensic psychology by the American Board of
Professional Psychology (ABPP).

The court-appointed work of Dr. Zervopoulos includes cases involving child custody disputes, child access and possession issues, and parenting capacity concerns. In addition, Dr. Zervopoulos graduated from SMU School of Law in December 1993 and was licensed to practice law in May 1994. Dr. Zervopoulos has presented and written in State Bar conferences and publications, including the *Expert Witness Manual* and the *Texas Bar Journal*.

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XIV. SUPPORT SERVICES, LISTED IN ALPHABETICAL ORDER.

IdentiGene, 5615 Kirby, Suite 800, Houston, Texas 77005; (800) DNA-TYPE (Telephone); (713) 798-9515 (Telefax); www.identigene.com

Genetic Technologies, Inc., P.O. Box 242, Glencoe, Missouri 63038-0242; (877) 451-4363 (Telephone); www.genetictechnologies.com

Private Eyes, Inc., P.O. Box 6574, San Antonio, Texas 78209; (210) 822-2711 (Telephone); (210) 826-5430 (Telefax); www.private-eyes-inc.com

Southwest Legal Copy, 115 E. Travis Street, San Antonio, Texas 78205; (210) 227-9500 (Telephone); www.swlegalcopy.com

VeriPath Interactive, 12801 N. Central Expressway, Suite 850, Dallas, Texas 75243; (214) 349-8100 (Telephone); www.veripath.com