

The Ins and Outs of Expert Witness Work

Talk #2:

- ◆ Background and Ethics –
the necessary prerequisites
- ◆ Skills and Attributes –
what's needed and how to develop them

PATCA Meeting January 8, 2009

presented by Ron Bader
of

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My Legal Disclaimer

The information provided in this slide presentation is based upon my knowledge and opinions on the subject matter at the time of it's writing and is limited in scope in part due to presentation time constraints. It does not represents a complete coverage of the subject matter or present all factors to be considered and contemplated.

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What in Ron Bader's background has enabled him to do EW work?

- Consultant for 27+ years in Interdisciplinary Systems Engineering and Electronic Product Development
- A founding employee of Compression Labs, Inc.
- Teaching Associate and Teaching Assistant UC Berkeley Electrical Engineering Department
- Named inventor for three US Patents and a fourth patent pending



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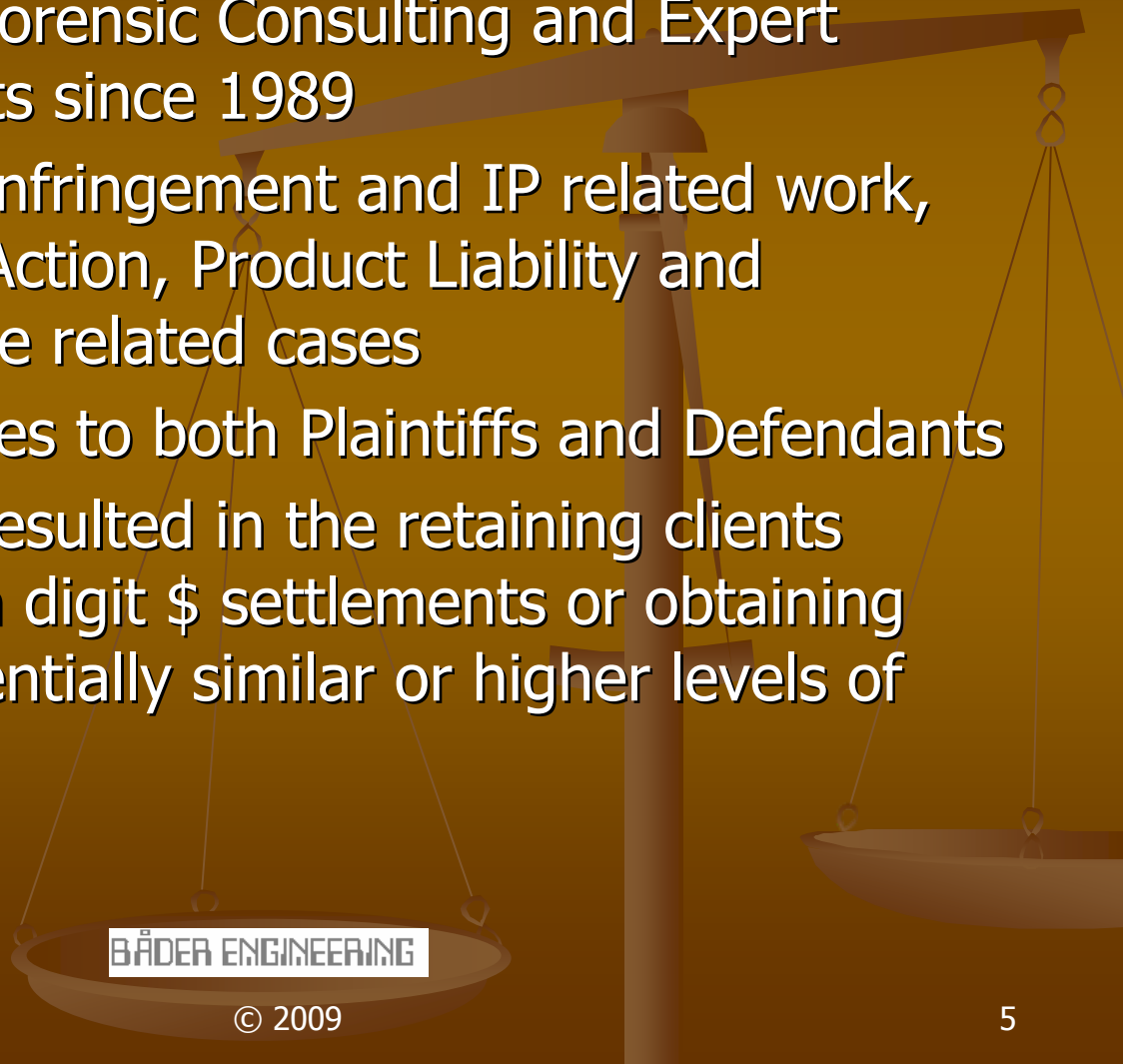
What other activities help enhance Ron's credibility with attorneys

Active Involvement in Professional Organizations:

- Chairman of the PATCA Ethics Committee
- Senior Member of PATCA, former President and current Member of the Board
- Senior Member of IEEE
- Member and past Vice-Chair of the IEEE Consultants Network of Silicon Valley

Ron's EW Background Today

- Over a dozen Forensic Consulting and Expert Witness projects since 1989
- Mostly Patent Infringement and IP related work, but also Class Action, Product Liability and Contract dispute related cases
- Provided services to both Plaintiffs and Defendants
- Several cases resulted in the retaining clients receiving seven digit \$ settlements or obtaining relief from potentially similar or higher levels of liability



How did I get started in Forensic work

- I received a phone call from an attorney in 1989 who found me in the PATCA directory
 - He needed reverse engineering of the firmware and hardware for an ultrasonic positioning system for earth moving equipment to substantiate suspected infringement of his client's patent

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What is and what do you need to become an Expert Witness

- The Merriam-Webster Online Dictionary defines **Expert** as: **“having, involving, or displaying special skill or knowledge derived from training or experience”**
- According to Princeton University’s WORDNET 3.0 lexical database for the English language an **Expert Witness** is **“a witness who has knowledge not normally possessed by the average person concerning the topic that he is to testify about”**



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You do not necessarily need a Ph.D. to qualify as an EW or Forensic Consultant

- A Plumber with 30 years practical experience may make a better expert for a problem with overflowing toilets than someone with a Ph.D. in fluid dynamics.
- For a standard of care issue in a nursing facility, a practicing RN may be a better expert than a doctor.



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Excellent Writing Skills are Essential

- Written reports are often required

Carefully choosing your words is very important:

- Opposing Counsel will use everything they can to discredit your testimony.
- A well written expert report may be a key factor in bringing the parties to a settlement, or it may cause a judge to issue a summary judgment in favor of the retaining client thereby short circuiting a potentially lengthy and expensive battle.



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Excellent Verbal Communication Skills are Essential

- During deposition your choice of words is critical
- If the Finder of Fact doesn't understand you, they won't hear your message.



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Excellent Listening Skills are also Critical

- It is absolutely critical to listen carefully to the questions and make sure you understand them before answering
- You must also listen carefully to any objections raised by retaining counsel.

A high level of Integrity and Ethics is Imperative

- You must always answer all questions truthfully.
- There must be no skeletons in your closet
- You must avoid all conflicts of interest – both perceived and real ones



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You must never compromise your integrity or ethics

- You must render your opinions impartially, basing them on the evidence and your expert knowledge without bias toward the party who retained you.
 - It is not your job to act as an advocate for the retaining party – that is their attorney's job
 - It is your job to present your professional opinions and the bases for them, in a way that can be easily understood by the Finder of Fact.



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You must never compromise your integrity or ethics

- Never allow yourself to be pressured into offering opinions that you don't have sound bases for and can't comfortably stand behind.
- Never offer opinions on a subject that is outside of your areas of expertise



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Presenting a Professional Image is Important

- How you look and carry yourself telegraphs as much if not more information than what you say
- An expert needs to be well groomed, dress appropriately and act professionally



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Demeanor is Important

- Your Body language conveys a lot
- The quality and tone of your voice is important
- Remain serious and don't be a wise guy



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Additional Factors that are Helpful

- Teaching experience and/or assuming the role of a teacher is very helpful
 - showing a genuine desire to help the finder of fact understand the issues goes a long way toward building your credibility and gaining support for your opinions



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Additional Factors that are Helpful Continued

- Continuing to work in your Field is also a good thing
- Being Charismatic and extremely good looking also helps a lot ٥



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EW work is not for the faint of heart

- An expert must have thick skin
- It is very stressful work
- Case schedules are unpredictable



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EW work is not an endeavor to take lightly or approach casually

- One serious mistake can end your career as an Expert Witness
- You must always remember that you are playing in someone else's sandbox
- Educate yourself about the legal process and procedures before delving into EW work
- Take advantage of the many excellent resources available to learn about best practices and the subtleties of EW work.



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EW Educational Conferences

- **18th Annual SEAK National Expert Witness Conference, Hyannis, MA.**
 - *Preconferences: June 23-24, 2009*
 - *Main Conference: June 25-26, 2009*
 - *<http://www.seak.com/semJune09semoverview.htm>*
- **FEWA Annual Conference, La Jolla, CA.**
 - **February 26-28, 2009**
 - http://forensic.org/Public/fewa_conference09_rsvp.pdf

EW Textbook Resources

- Babitsky, Steven, James J. Mangraviti Jr., and Christopher J. Todd. THE COMPREHENSIVE FORENSIC SERVICES MANUAL: The Essential Resources For All Experts. Falmouth: SEAK, 2000 [ISBN: 1-892904-07-1]
- Babitsky, Steven, and James J. Mangraviti Jr.. CROSS-EXAMINATION: The Comprehensive Guide For Experts. Falmouth: SEAK, 2003 [ISBN: 1-892904-23-3]
- ---. WRITING AND DEFENDING YOUR EXPERT REPORT The Step-by-Step Guide with Models. Falmouth: SEAK, 2002 [ISBN: 1-892904-21-7]

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End of Talk # 2

Thank you for investing your time tonight!

I hope you found something in this presentation that made it worth your while!

- Ron Bader

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