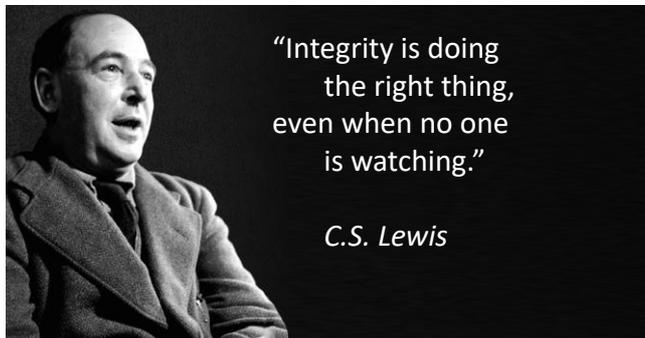


## Note #6: The Realm of the Oil and Gas Expert: Honesty and the Pillar of Integrity

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No one would doubt that integrity is an essential element to being a good expert witness; a role requiring honesty, strong moral principles and high professional standards.

The quote from C.S. Lewis is very apposite: honesty with oneself is key. Integrity starts right at the very beginning of being engaged as an expert and continues through until your role is complete.



Asking yourself the right questions at the very beginning of an engagement is vitally important. An initial review of the technical information can give you a very good measure of the issues.

As an expert in the oil and gas industry, I'm always struck by the fact that one can almost always grasp the main technical essentials of a case quite quickly and identify their technical merits. More importantly however, one can quickly identify opinions which have little, or no, technical merit. Honesty with yourself at this point is key.

Woe betide the expert who attempt to construct arguments or make claims on the flimsiest of information, or even worse, distort elements of the argument to fit their client's agenda.

Just like the tight-rope walker risking all and playing fast-and-loose with his own life, experts who might be tempted to take this approach, are risking their own professional integrity by presenting information to a tribunal which is incomplete and as a result, gives a skewed or biased view of the technical issues.



Integrity starts at the very moment one is approached and asked to act as an expert; getting this bit wrong will have consequences. An early review of the technical facts and both side's technical arguments will allow you to form an initial view and decide how to proceed.

*Primary Rule Number One* is: Be ready to decline the engagement if you feel that you are being asked in your role as an expert to do any of the following:

- Give an opinion which is incomplete, requiring a partial analysis of the data.
- Express a view which you know is based on flimsy information.
- Write things in your report which you feel could be very easily countered and leave you open to a potentially humiliating cross examination.
- Answer questions which would be outside your core area of expertise.

If *Primary Rule Number One* is breached then it's very unlikely you will be able to express an unbiased, robust and convincing opinion. The client may not be pleased to be informed, but you'll be giving them an honest view which may save them a great deal of time and money further down the line.

As experts, we should all be aware that our duty is to the court or tribunal. As stated clearly in section 35 of the Ministry of Justice Civil Procedure Rules and Practice Directions:

*'[The duty of experts to help the court] overrides any obligation to the person from whom experts have received instructions or by whom they are paid.'*

*'Experts should assist the court by providing objective, unbiased opinions on matters within their expertise, and should not assume the role of an advocate.'*

In fact, integrity as an expert is key to one's ability to produce a robust argument and to emerge from the cross-examination process relatively unscathed. Being able to clearly express an opinion, when that opinion has been based on a thorough analysis of all the facts, described in a coherent, logical, reasoned and clear report, gives a tremendous sense of personal satisfaction and places the expert in a very strong position.

Of course, contrary views will be expressed and your own position may be ferociously attacked. However if each of your opinions can be shown to be well supported and one can express and describe this clearly to the court or tribunal, then one is in a good place.

An expert who takes advantage of the strict confidentiality of the arbitration to give a poor, unconvincing and weak testimony as a result of not following 'Primary rule number one' will only be observed by those present at the tribunal; their behaviour only described subsequently through the power of word-of-mouth. Such an expert could go on to give similarly feeble performances in subsequent engagements.

Now, I'm not talking about weak and unconvincing testimony which arises from the expert not being prepared through lack of effort or assiduousness but rather one which is a consequence of an expert attempting to defend a skewed opinion for which the data are insufficient, incomplete, or selectively chosen; something he or she should have avoided from day one.

As a result, an expert could state certain things which stretch technical credibility and if they are not able to support their opinions robustly and logically, they could appear unconvincing. Cross-examination in these circumstances can make for a very uncomfortable experience; to such an extent that they may wish that the Earth open up and swallow them; and, like

shipwrecked sailors clinging to their raft, the next question may sink them.



In summary, there's no substitute for integrity and the strength which comes from being honest with yourself and your client. The right decisions early-on will help preserve your professional integrity and enhance your credibility as an oil and gas expert.

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