



E3 Guru Demon Illusionist? Is It Time for an Overhaul of Expert Qualification Procedures?

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After attending this presentation, attendees will learn how an expert is defined in a court of law, what the important aspects of expert qualification are, and the relationship between them. Additionally, attendees will learn why, and how, expert credentials should be scrutinized by opposing counsel, and the consequences of neglecting this important duty. The benefits and feasibility of the establishment of an independent entity responsible for expert qualification and certification will be discussed.

There is increasing concern among criminal justice professionals, and society at large, that experts are nothing more than paid advocates. This presentation will impact the forensic community by presenting strategies to ensure that unqualified and/or unscrupulous experts do not reach the witness stand, and that they wreak less havoc in those cases that do not make it to the courtroom. The pros and cons of an independent system for expert accreditation will be discussed. It is postulated that widespread adoption of these strategies will ultimately improve, and bolster public confidence in, the criminal and civil justice systems.

Judges are responsible for keeping unqualified 'experts' out of the courtroom. They must make reasoned and rational judgments based upon limited information, and in a short amount of time. It is postulated that much of this qualification burden could be borne, prior to trial, by opposing counsel. Additionally, because much expert consultation occurs prior to trial, the concept of expert qualification and certification by an independent organization is explored.

It is important that the courts have a supply of competent and ethical experts on hand to analyse evidence, review documentation, and explain complex technical and scientific issues to those involved in the case. In recent years, allegations of résumé "puffery", fraudulent qualifications, and misleading or dishonest courtroom testimony have tarnished the reputation of the entire expert community. The unfortunate result of this is that experts are increasingly viewed as paid advocates.

Judges must act as gatekeepers to their courtroom, using their judicial experience and judgment to weed out unqualified "experts", thereby keeping junk science and dishonest or misleading testimony from the ears of jurors. This process sounds plausible; however, judges have but a few minutes to accomplish this task in the courtroom. Inevitably, some less than stellar experts slip through the net, and juries have been exposed to quackery and deceit that, ultimately, may have led to injustice.

Judges routinely qualify experts in their courtrooms, and the process has become so mundane that it is often easy to overlook the fact that the process took place at all. In performing this qualification function, judges must assess the proffered experts based upon their education, training, and experience. The weight assigned to each of these criteria can be the subject of criticism.

In most cases judges are expected to perform this qualification process in just a few minutes, in front of the entire courtroom, and with minimal information validation. Clearly, there is insufficient time for the judge to verify any information presented, either in support of, or against, the "expert" presented to them. Very often judges will hear experts run through an impressive sounding list of memberships in "scientific" societies, plus a long list of publications, and this may well sway the final judgment with regard to expert suitability to testify on the matters at hand.

It can be argued that it takes an expert to know an expert and, by definition, even the most capable judges are not sufficiently knowledgeable to reliably assess the credentials of experts in every scientific field and subspecialism. It is postulated that juries would be exposed to fewer unqualified and unscrupulous experts if opposing counsel, with the assistance of an appropriate expert consultant, more thoroughly researched and challenged experts prior to trial. Opposing counsel should devote the time and resources necessary to research the expert's academic credentials, the nature and purpose of individual scientific societies, and the quantity and quality of the proposed expert's published work. Techniques for achieving these goals are discussed, and case studies presented.

Even if the courtroom expert qualification process worked flawlessly, the issue of the influence of non-testifying experts must be considered. The vast majority of criminal and civil cases never make it to the courtroom, and under the current system any 'experts' rendering opinions in these cases are not subject to any formal qualification procedures, yet their work may ultimately have a great influence on many lives. The long-term goal of establishing an independent national expert qualification and certification body is discussed.

Expert, Qualification, Accreditation