



E52 Straight Shooters or Hired Guns? Expert Forensic Evidence in English Courts

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After attending this presentation, attendees will gain insight into how forensic experts in the United Kingdom (UK) are trained, how they practice, and how they interact with the legal system.

This presentation will impact the forensic science community by stimulating discussion of the relative advantages and disadvantages of different approaches to both the concept of the expert and the way that expert evidence is weighed and judged by the court.

In the UK, there is no formal process for “judging” the admissibility of expert testimony equivalent to the “trilogy” in United States Law of *Daubert*, *Joiner*, and *Kumho*, and therefore the concept of the expert and the contents of expert testimony are very differently viewed and regulated in the two jurisdictions. The acceptance of expert testimony in English courts is a complex interaction between practical experience (both of the expert’s own field of expertise and of giving testimony), observation of the work of other professionals (including observing more senior practitioners giving testimony and observing the testimony of an expert called by “the other side”), knowledge of current best evidence and research, informal teaching and formal training.

In English law, expert witnesses are defined as “witnesses to the court” that is to say the expert is expected to give unbiased testimony no matter whether they are called to give evidence for the prosecution or defense. Many forensic pathologists and indeed experts in other fields accept instruction from both prosecution and defense teams and are regularly called to give evidence by both prosecution and defense barristers. As a result of this, there is much less of a concept of the defense expert as a “gun for hire”, as many forensic experts will be seen giving evidence for one side in a certain case, and for the other in their next case. This is generally considered to be a positive aspect of expert evidence, as it reduces the risk of the pathologist becoming excessively “prosecution-centric” or “defense-centric.” The forensic expert witness in England is in a highly privileged position compared to other witnesses (eyewitnesses and professional witnesses) and often have extensive interaction with the legal teams who are relying on their evidence before his or her attendance at court which allows the prosecuting or defending barrister (counsel) to “tailor” their questioning to what the expert is comfortable to say under oath. To mitigate against this, experts are permitted to listen to another expert’s oral testimony, and even advise counsel during cross examination as to which areas of the evidence to explore more thoroughly and which to leave well alone (all the while attempting to remain an unbiased witness to the court of course)!

Finally, the potential problems that arise in any court of how a jury composed of people with no prior expertise in, or experience of, forensic pathology or science can be assisted to make a reasonable decision regarding conflicting opinions expressed by experts offering testimony and the concept of the “joint expert statement” will be discussed.

Expert Evidence, Prosecution, Defense