



### **E3 The Use and Misuse of Inquisitorial Experts**

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After attending this presentation, attendees will understand how inquisitorial jurisdictions differ from adversarial systems in their use of scientific experts and what the advantages and shortcomings of each system are.

This presentation will impact the forensic science community by encouraging them to rethink some stereotypes that may have been held in the context of comparative criminal procedure in general and the use of court-appointed experts in particular.

Court-appointed experts are often depicted as a miracle solution in the legal and scientific literature: being supposedly neutral, they deliver high-quality scientific evidence in a non-partisan way. But are experts the only variable to consider when discussing the relative advantages and shortcomings of adversarial and inquisitorial experts? Could there be other mechanisms influencing the overall quality of scientific expertise in a given criminal justice system?

An empirical study was conducted comparing the use of scientific evidence in the United States and in Switzerland, a typical inquisitorial jurisdiction. Semi-structured interviews were conducted with defense attorneys in both jurisdictions to assess their attitudes toward scientific evidence and to collect data on their experiences in this context. Since almost all Swiss experts being court-appointed, it was expected that many of the problems encountered in adversarial jurisdictions (such as bias, extreme polarization, misunderstanding of expert conclusions by fact-finders) would be non-existent. The results of the study showed that the situation is more nuanced and complicated than usually described in academic circles, and that, if inquisitorial jurisdictions avoid certain pitfalls typical of adversarial systems, they also create problems of their own.

For instance, contrary to expectations, lack of transparency was denounced by all Swiss interviewees as being a prominent feature of the inquisitorial use of experts. Swiss attorneys also showed a high level of trust in scientific experts; yet, this trust appeared to be uninformed. Their knowledge of (and interest in) scientific evidence seemed very limited, and their appraisal of the probative weight of the evidence appeared to be based largely on cognitive heuristics. This led to a passive behavior that even the personal experience of scientific errors could not rouse. On the contrary, skepticism was a characteristic of all American interviewees, who appeared highly motivated to scrutinize the work carried out by prosecution experts.

Such a difference in attitudes between Swiss and American attorneys cannot be totally justified by objective differences in the quality of the scientific evidence to which they are confronted. Consequently, traditional legal scholarship praising the advantages of inquisitorial over adversarial experts should be considered with care. It might well be that there is an epistemic advantage in the use of adversarial experts.

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### **Inquisitorial, Adversarial, DNA Evidence**