



### F16 The Ethical Boundaries of Presenting Expert Testimony in a Criminal Trial

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**Learning Overview:** The goal of this presentation is to address an issue that has been observed in the use of experts in criminal cases: the use of experts with minimal experience or knowledge of the subject they are testifying about, or experts who testify about subjects that are outside their area of expertise. Examples will be provided of cases in which testimony has been allowed, and the impact that testimony has had on cases.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by addressing the ethical issue of experts with insufficient experience or knowledge of the subject about which they are testifying.

This presentation is designed to raise awareness and generate discussion about the ethical obligations of forensic experts and attorneys when presenting testimony in a criminal trial.

The criminal justice system is an adversarial one. Both sides have the obligation to zealously represent their clients. A prosecutor has the added obligation to ensure that justice is done. That concept is easily stated, but harder to apply. At the outer limits, a prosecutor is prevented from presenting evidence they know to be false. In some jurisdictions, this limitation extends to evidence that would mislead the jury or encourage a false impression. Courts have been reluctant to find that line has been breached, and disciplinary authorities are even more reluctant to impose sanctions. The result is that the limits of zealous advocacy can vary from jurisdiction to jurisdiction and even between prosecutors in the same jurisdiction.

While this is always a potential problem, there are special concerns when experts are used. Jurors rely heavily on experts, assume that the prosecutor has researched their credentials, and believe they are qualified. Judges often rely far too heavily on prosecutors and routinely allow experts to testify. While the ultimate decision is up to the judge, the practical impact is that the State decides which experts are qualified. Far too often, little to no research has been done, other than checking with prosecutors, and prosecutors rely on the expert to educate them. While there are now more resources available to defense counsel, far too few defense lawyers take advantage of them. There is also a disparity in resources, and in some fields, there are few experts available to consult with defense lawyers. The result is that experts offered by the State often go unchallenged on both their qualifications and the subject matter of their testimony.

While there are limits placed on lawyers (even if they may be vague), there are even fewer limits on experts. Most experts are members of several different organizations. Some organizations may have ethical guidelines, while others don't. This presentation will explore what limits exist and whether there are any meaningful limitations, or whether each expert is left to his or her concept of what is right. Emphasis will be placed on the obligation experts have to inform prosecutors about the limits of their testimony, as well as what obligations they must meet with defense counsel, and whether there is any obligation to inform the courts about areas in which they may not be qualified.

The goal of this presentation is to encourage discussion and solicit proposals and suggestions to deal with these issues. Reliance on the courts has proved to be of little use and expecting prosecutors to limit the use of evidence that may help obtain a conviction is problematic. The hope is that not only will proposals and suggestions be identified, awareness of the issue will also be increased.

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