

Expert Testimony across Jurisdictions

Angelika Braun
University of Trier, Germany
brauna@uni-trier.de

This contribution represents the perspective of an expert who has worked in eight different jurisdictions and testified in five of them and can thus report from experience within the adversarial as well as the inquisitorial framework. Some impressionistic observations will be discussed.

Both the content of the expert report and the way it is presented in court are likely to vary with the judicial system. Two issues which immediately come to mind are the consequences of having to follow precedents and the number of experts involved in a case. In the adversarial framework, the content of the report is to some extent determined by higher court rulings, e.g. on including formants in every forensic voice comparison. Following these precedents would not be mandatory in the inquisitorial system. In the adversarial framework, the testimony is often carefully orchestrated and may depend on the strategy of the side that commissioned the report more than on a comprehensive rendition of the findings. In the inquisitorial system, the expert usually submits a full report.

In the adversarial system, opposing experts are the rule, which effectively means that there are some built-in checks and balances in assessing the expert's work. In the inquisitorial system, there is generally just one – usually court-appointed – expert who is expressly instructed to be impartial and reminded of that immediately prior to testifying. However, this will not work unless the expert is knowledgeable as well as conscientious. Charlatanry, when it comes under a guise that is rhetorically well-versed and generally well-dressed, may remain undetected.