

# ***Comparative Analysis of Expert Testimony in Cases Involving Mental Health as Mitigating Factor***

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**Abstract:** In the 20th century, the reliance on expert witnesses grew due to technological advancements and complex legal cases. Notably, the scientific foundation of psychology gained widespread acknowledgment, bestowing a pivotal role upon psychologists, particularly those specializing in forensic psychology, within the courtroom. In the United States, experts assist impartial judgments in the adversarial litigation model. This article conducts a comparative analysis of two cases—one in South Korea and one in the United States—where forensic psychologists played a central role in providing crucial assistance to defendants grappling with mental health issues. These cases shed light on the discernible distinctions within the expert witness systems between the two countries, emphasizing the profound impact of legal traditions on the significance attributed to expert opinions and the dynamics of equitable legal decision-making. This exploration underscores the evolving role of expert witnesses in an ever-advancing legal landscape, where their expertise continues to be a lodestar guiding the pursuit of justice.

**Keywords:** sociology, forensic criminology, expert testimony, mitigating factor, mental health

## **1. Introduction**

Since the onset of the 20th century, marked by a relentless surge in scientific and technological progress coupled with the escalating complexity of legal cases, the reliance on experts has seen an unprecedented upswing within the realms of the judicial system. Judges and juries have increasingly turned to these erudite professionals, seeking their expertise as a lodestar to illuminate the claims put forth by both the prosecution and defense, ultimately guiding them toward judicious decisions. This evolving legal landscape has led to a burgeoning role for expert witnesses in litigation, laden with amplified responsibilities and demands.

Simultaneously, as the discipline of psychology has blossomed, it has permeated the collective consciousness of society. The scientific underpinnings of psychology have garnered widespread acknowledgment, gradually solidifying its standing as a salient influencer in courtroom proceedings. This transformation in perception has generated a heightened demand for the services of psychologists, particularly those with expertise in forensic psychology. These professionals are increasingly called upon to share their knowledge within the solemn confines of the justice system [1].

In the context of the Anglo-American legal system, which serves as the cornerstone of the United States' legal framework and is built upon the adversarial litigation model, experts often find themselves retained by one of the litigating parties, whether it be the prosecution or the defense. The cardinal rule incumbent upon these expert witnesses is their abstention from expressing any personal opinions on the case at hand. Instead, their solemn duty is to furnish testimony grounded solely in their professional acumen, with the overarching goal of furnishing judges and juries the requisite tools for rendering impartial and equitable judgments. However, it is crucial to note that in nations adhering to the continental legal system or a hybrid amalgamation of continental and Anglo-American legal traditions, such as South Korea, the construct of expert witnesses deviates somewhat from the American paradigm.

This article endeavors to scrutinize two distinct legal cases—one unfolding in South Korea, the other in the United States—where psychologists played pivotal roles in presenting evidence that led to mitigated sentences for defendants grappling with mental health issues. This paper's central focus shall be on the contributions of forensic psychologists acting as expert witnesses in each of these cases, accentuated by an incisive comparison of the disparities that exist between these two divergent legal systems.

## **2. Case Analysis 1: Jeong-ok Kim V. Jong-hwan Kim (2016)**

### **2.1. Background of the Case**

The case took place on May 17, 2016. It involved a 34-year-old man named Jeong-ok Kim, who had been waiting inside a restroom in the early morning, armed with a knife. As six men left the restroom one by one, the victim, who had finished drinking at a nearby bar with her companions, entered the women's restroom. Jeong-ok Kim positioned himself near the sink, anticipating the victim's arrival. When the victim reemerged, he forcibly pushed her into the upstairs restroom. Upon seeing the victim reaching for her phone, possibly to report or seek help, Jeong-ok Kim stabbed her in the left chest using a kitchen knife he had brought from his home. As the victim became unable to resist, Jeong-ok Kim continued to use the knife, inflicting approximately 10 wounds to her left chest, shoulder, and arm. These wounds consisted of stab wounds, incisions, and cuts. Tragically, the victim succumbed to her injuries on the spot due to a puncture wound to her heart and pulmonary artery.

After his arrest, Jeong-ok Kim claimed that he committed the crime out of feelings of being ignored and humiliated by women, driven by his deep-seated hatred towards them. According to the court's judgment, the defendant was found guilty of committing the crime of murder by stabbing the victim more than ten times with a kitchen knife, resulting in her death. As a result, the court initially deemed the defendant deserving of the death penalty. However, considering the diagnostic evidence provided by psychiatric experts, the defendant's medical history, his own confession, and testimonies from other witnesses regarding his life and mental state, the court reached a different conclusion.

It was determined that the defendant had been diagnosed with schizophrenia in 2009 and had been hospitalized on multiple occasions since then. Even at the time of the crime, he continued to experience symptoms of delusions of persecution, delusions of relationships, impaired reality judgment, and diminished control due to his schizophrenia. The court acknowledged that the defendant did not make any attempt to conceal the criminal act, leading to the belief that Jeong-ok Kim acted under the influence of delusions caused by his mental illness. Specifically, he developed a distorted perception of women restraining and harassing him. Considering the defendant's mentally weakened state and his inability to perceive the rightness or wrongness of his actions at the time of the offense, the court revised its sentence. Instead of the death penalty, Jeong-ok Kim was sentenced to thirty years in prison. Additionally, upon his release, he will be required to wear an electronic ankle monitor for twenty years [2].

## 2.2. Criminological Theory Analysis

In this case, the actions of the criminal, Jeong-ok Kim, can be analyzed through the lens of two criminological theories: routine activities theory and rational choice theory. The routine activities theory posits that the likelihood of a crime increases when three fundamental elements of crime intersect in time and space. These elements consist of a motivated offender, a suitable target, and the absence of capable guardians [3].

In this specific case, Jeong-ok Kim serves as the motivated offender. The court determined that he was in a delusional state caused by his mental illness at the time of the crime, fueling his resentment and aggression towards women. This factor establishes him as a motivated offender. The female victim, on the other hand, becomes the suitable target. Her gender, intoxicated state, and solitary presence rendered her vulnerable and appealing to the perpetrator. Furthermore, public restrooms, although considered public spaces, often lack adequate security or surveillance equipment due to the necessity for privacy. This distinctive characteristic of the location created a lack of monitoring, acting as the absence of capable guardians in this context. In this particular case, all three foundational elements that contribute to the occurrence of a crime were distinctly present and converged, ultimately resulting in the commission of the offense.

According to rational choice theory, criminals make calculated decisions based on rationality when engaging in criminal activities. They strive to select targets that offer high rewards with minimal effort and risk [4]. In the analyzed case, Jeong-ok Kim demonstrated rational decision-making in various aspects of the crime.

To begin with, Kim carefully chose the early morning as the time for the crime. In comparison to daytime when foot traffic is higher, the probability of successfully carrying out the crime and escaping without detection is greater during nighttime. The rational choice is further evident in the selection of the crime location—a public restroom near the bar. On a Tuesday night, there are typically fewer people present in such locations during the early morning hours, and the number of solitary women is also reduced. Conversely, bars tend to attract larger crowds during this time. Hence, the likelihood of encountering a solitary woman using the restroom near the bar late at night is higher than in other places. Moreover, most public restrooms lack surveillance cameras or security personnel. Remarkably, in this case, the public restroom was even outside the jurisdiction of the building where the bar was located, which presented an additional advantage for the successful execution of the crime.

Regarding the selection of the victim, Kim patiently waited inside the restroom with a knife for approximately three hours. Surveillance footage from the hallway indicates that during this period, six men passed by or utilized the restroom. Notably, Kim showed no inclination to attack the men and even attempted to avoid a conflict with an intoxicated individual. Conversely, as soon as the female victim appeared with her companion, he immediately targeted her and positioned himself at the entrance of the restroom. While the court believed that his choice of a female victim stemmed from delusions of persecution caused by schizophrenia, this selection aligns with rational choice theory as well. Targeting women, compared to men, offers a higher success rate and involves lower risk. His avoidance of conflict with the intoxicated man was also a strategic way to minimize risk. Additionally, intoxicated women tend to have slower reaction times than sober women, further decreasing the risk involved in the crime and increasing the likelihood of a successful offense.

## 2.3. Expert Witness

According to the judgment of this case, the criminal psychologists who served as witnesses did not attend the trial. Several experts were present as witnesses, most of whom were psychologists previously involved in Kim's mental health treatment. However, they did not appear as expert witnesses but rather as ordinary witnesses.

Among the witnesses, only one psychologist, Mr. P, served as an expert witness in this case. He was appointed by the court and entrusted with the responsibility of conducting psychological assessments and mental evaluations of the defendant following his arrest. The evidence he presented included a diagnostic report and analysis of Kim's psychological state, as well as an evaluation of the relevance of Kim's past medical history. These two reports played a significant role in shaping the judge and jury's understanding of Kim's mental condition both in the past and at the time of the crime [5]. As a result of the expert witness's testimony and evidence, Kim's sentence was reduced from the death penalty to a 30-year prison term, accompanied by a requirement to wear an electronic ankle monitor for 20 years.

### **3. Case Analysis 2: Yates V. State (2005)**

#### **3.1. Background of the Case**

In 2001, the defendant Andrea Pia Yates made an urgent 911 call, reporting that her five children were injured and in need of immediate assistance. Upon arrival at Yates' residence, the police discovered four lifeless children lying on the appellant's bed, drenched and covered by a sheet. The fifth child was found in the bathtub, face down and floating. Throughout this time, Yates remained silent and cooperated with the ongoing police investigation.

During the trial, a total of ten psychiatrists and two psychologists provided testimony regarding Yates' mental illness. Some of these experts had previously served as Yates' therapists, offering insights into the symptoms, severity, and treatment of her mental condition. The remaining psychiatrists and one psychologist, whose names were undisclosed, conducted evaluations and/or provided treatment to Yates subsequent to her arrest. Four of the five psychiatrists and the psychologist presented testimonies asserting that Yates suffered from a mental breakdown caused by postpartum depression, postpartum psychosis, and schizophrenia. They argued that her ability to make rational judgments was impaired at the time she killed her five children, and that she either did not comprehend the wrongfulness of her actions or genuinely believed that her actions were justified.

In contrast to the testimony provided by other expert witnesses, the tenth psychiatrist, Dr. Park Dietz, who conducted an interview with Yates, testified that although she had a mental illness at the time of the crime, she was aware that her actions were morally wrong. Based on Dr. Dietz's testimony, the jury and the judge ultimately reached a guilty verdict.

Years later, it was discovered by Yates' legal team that Dr. Dietz had provided false testimony during the trial. Cross-examination revealed that the references to television programs made by Dr. Dietz were fabricated, despite his initial claim that Yates had been influenced by the content of those shows. Subsequently, Yates chose to appeal her case based on Dr. Dietz's false testimony.

While the state court initially considered the television program references to be inconsequential, the appellate court recognized that they had indeed influenced the decision-making of the jury and the judge. As a result, the appellate court overturned Yates' life sentence and remanded the case for further proceedings. Ultimately, it was determined that Yates had suffered from a range of mental illnesses, including postpartum depression, postpartum psychosis, and schizophrenia. These conditions contributed to her mental disturbance during the act of killing her five children, rendering her incapable of assessing the morality of her actions. Additionally, taking into account her act of calling the authorities to report the incident as a form of self-surrender, she was ultimately found not guilty but was placed under guardianship and required to receive treatment in a mental hospital [6].

#### **3.2. Criminological Theory Analysis**

In this case, Yates' behavior exemplifies the concepts of routine activities theory and social bond theory. According to the routine activity theory, three factors contribute to the occurrence of crime.

In Yates' case, her mental disorders, such as postpartum depression, led to a mental breakdown and aggressive behavior, making her a motivated offender. Her five young and defenseless children, who were constantly in close proximity to Yates within their home, became vulnerable targets. The location of the crime, Yates' own home, lacked surveillance devices and capable guardians who could exercise rational judgment to control Yates' actions and protect the children. This created an environment devoid of monitoring, which further facilitated Yates' criminal behavior.

Social bond theory suggests the presence of a social bond between individuals and society, which is formed through interactions with others in the community [7]. This social bond is believed to influence the likelihood of engaging in criminal or unlawful activities. Stronger social bonds decrease the probability of involvement in crime or illegal activities, while weaker or severed social bonds increase the likelihood of committing crimes or engaging in illegal behaviors.

In Yates' case, her frequent childbearing resulted in her becoming increasingly isolated from normal social life for an extended period. The presence of postpartum depression further diminished her social interactions. Prior to the birth of her fifth child, her interpersonal interactions were primarily limited to her husband, parents, and mental health professionals. With the birth of the fifth child and the subsequent death of her husband, her mental illness worsened. Throughout the process, starting from Yates' development of depression to the eventual commission of the crime, her connection to society continuously dwindled, almost disappearing entirely. This fragile social bond not only exacerbated her mental illness but also heightened the likelihood of her engaging in criminal or illegal behavior. It was one of the contributing factors that led to her criminal actions.

### **3.3. Expert Witness**

In this case, the testimony of expert witnesses played a crucial role in shaping the court's judgment. Unlike the approach mentioned earlier, where only one expert witness was relied upon, it is common in American courts to have multiple psychiatrists and psychologists assess the defendant's mental state and provide testimonies to ensure the credibility and professionalism of the diagnostic results [8]. This case followed a similar approach.

According to the court's ruling, several expert witnesses attended the trial and underwent cross-examination. Some of these witnesses were Yates' past therapists, while others conducted psychiatric evaluations of Yates after the incident. It is important to note that among all the expert witnesses who testified, only Dr. Dietz believed that Yates, despite having mental issues, possessed the ability to discern the rightness or wrongness of her actions during the commission of the crime. However, his testimony significantly influenced the jury and the judge, resulting in Yates receiving a life imprisonment sentence.

When Dr. Dietz's expert testimony was later found to be false, the outcome of the case underwent a dramatic change. Yates was now regarded as being in a mentally deranged state during the crime, leading to a direct alteration of her life imprisonment sentence to an acquittal. This highlights the significant role of expert witness testimony in this case and its profound influence on the judge and jury's ultimate decision.

## **4. Expert Witness Systems in Two Countries**

### **4.1. Expert Witness Systems in Anglo-American Legal Systems**

Due to scientific advancements and the specialization of social divisions, disputes in social life often encompass a wide range of professional fields and require specialized expertise. In response to this situation, the role of expert witnesses has emerged. These individuals utilize their specialized knowledge to assist judges or juries in gaining a better understanding of evidence or controversial facts. However, the discrepancies in the evidence provided by forensic psychologists in the two

aforementioned cases indicate that the expert witness systems used in South Korea and the United States are not entirely identical, primarily due to variations in their respective legal systems.

In countries such as the United Kingdom and the United States (excluding Louisiana), which widely employ the Anglo-American legal system, the involvement of expert witnesses in trials is primarily influenced by the adversarial litigation model. In these countries, judges typically maintain a relatively neutral position and are not responsible for collecting evidence. Consequently, expert witnesses in Anglo-American legal systems are usually selected and hired by the parties involved [9]. While the laws in Anglo-American countries grant judges the power to initiate expert witness procedures and appoint experts themselves, this situation rarely occurs in most cases, as demonstrated in the previous *Yates v. State* case. Despite the need for expert witnesses to possess sound professional knowledge to ensure the expertise of their testimony, there are no statutory qualification requirements for expert witnesses in the legal systems of Anglo-American countries. In litigation, the focus lies on whether the hired expert's knowledge and experience contribute to the fair judgment of the judge and jury. As a result, the pool of individuals who can serve as expert witnesses includes those who qualify based on their knowledge, skills, experience, training, and education. This extends beyond professional criminologists and sociologists to include technical professionals such as accountants and nurses. When these expert witnesses appear in court, they are considered a special category of witnesses. Although they differ from ordinary witnesses, they still operate within the framework of witnesses and must adhere to the same rules during the litigation process [10].

#### **4.2. Expert Witness Systems in Continental and Hybrid Legal Systems**

This policy varies slightly in countries with a continental legal system and in some countries that combine elements of the continental legal system and Anglo-American legal systems. For example, in South Korea, the practice of expert witnesses providing testimony in judicial trials is primarily influenced by judges exercising their authority to determine the use of expert witnesses [11]. In these countries, expert witnesses assist judges in understanding and assessing matters of expertise and facts, rather than aiding either party to win. Their role is more akin to “advisors” or “auxiliaries” to medieval judges. Consequently, to minimize any bias when expert witnesses testify as assistants to judges or prosecutors, they should not have any contact with either party, particularly establishing an employment relationship. Therefore, in South Korea, most expert witnesses are selected and invited by the court and are not employed by the parties involved. Additionally, in countries adopting the continental legal system, including South Korea, there are often strict qualification requirements for expert witnesses testifying in court, and they must obtain statutory qualifications to be eligible for the candidate list [12].

These expert witnesses must obtain a qualification certificate issued by relevant national departments or organizations before practicing. For example, in France, experts are selected from a national registry of individuals and legal entities compiled by the Office of the Supreme Court or from a list agreed upon by the Court of Appeals and the Prosecutor General. The procedures for registering or removing someone from the registry are governed by administrative court regulations [13]. Furthermore, when these expert witnesses provide testimony in a litigation case, they are often considered professional technical personnel who apply their expertise to present facts based on the judge's instructions, rather than being regarded as slightly special witnesses as in English and American courts [14]. This difference means that expert witnesses in countries with a continental legal system are not required to testify in court. In most cases, they only need to provide written testimony as evidence and are not subject to cross-examination by opposing attorneys.

### 4.3. Ensuring Credibility and Expertise of Expert Witnesses

Due to the absence of statutory qualification requirements for expert witnesses in Anglo-American legal systems and their ability to be selected and hired by the parties involved, this practice may appear to increase the potential bias in expert witness testimony compared to countries where expert witnesses are appointed by the court. Such bias can impact the trust of juries and judges in the testimony provided by expert witnesses. However, in the adversarial model of the courtroom, the ability for parties to hire expert witnesses allows for more detailed and accurate professional information on disputes or crucial issues. Bias can also be mitigated through the cross-examination of expert witnesses by attorneys in the courtroom.

To ensure the expertise and accuracy of expert witness testimony, their appearance in court requires multiple rigorous evaluations [15]. Firstly, when an expert witness attends a litigation case, they undergo a review process. No expert witness automatically becomes a witness in the next case based solely on their previous testimonial experience. However, in civil law countries, once qualified as an expert witness, an individual can be repeatedly commissioned by the court to provide specialized technical expertise. Secondly, expert witnesses in Anglo-American legal systems also undergo scrutiny from multiple parties. The hiring party reviews whether the expert witness is qualified, whether their professional judgments and assertions favor their litigation position, and whether the expert witness has any unfavorable records that may impact the litigation. The court also conducts a qualification review to assess the expert's professional skills. Although expert witnesses are subject to the supervision of the trial, experts who frequently participate in cases are undoubtedly more likely to gain recognition from the court. Opposing attorneys also scrutinize the expert's qualifications during cross-examination, primarily focusing on the authenticity, legality, and accuracy of the expert's qualifications and assessment materials. Such challenges can impact the trust of judges and juries in expert witnesses [16].

Certainly, the Anglo-American legal system has always approached the acceptance of expert witness testimony with caution. In the case of *Frye v. United States* (1923), the District of Columbia Circuit Court of Appeals established the Frye rule, adopting the general acceptance standard. According to this rule, evidence based on a methodology that has gained general acceptance in the relevant scientific field is considered scientific and can be admitted as evidence by judges and juries [17]. However, this rule was later replaced by the "Daubert Rule" in 1993, as decided by the United States Supreme Court.

In the case of *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), the court presented five criteria for determining the validity of evidence. First, the theory or technique must be testable and have undergone testing. Second, it must have been subject to peer review and publication. Third, its error rate, whether actual or potential, must be known. Fourth, there must be standards controlling the technique's operation. Fifth, the theory or technique must enjoy general acceptance within the relevant scientific community [18]. These criteria provide a framework for evaluating the admissibility of scientific evidence.

Furthermore, in *Kumho Tire Co. v. Carmichael* (1999), the standards for evaluating fields that cannot be measured by the criteria mentioned earlier, such as technology or other areas, were further refined. The federal courts determined that the specific factors outlined in the Daubert Rule also apply to all expert witnesses and cases [19]. This grants the prosecution and defense greater freedom in selecting expert witnesses, as well as giving judges and juries greater discretion in making judgments based on the admissibility of expert testimony. These developments have played a significant role in shaping the acceptance and credibility of expert witness testimony in the Anglo-American legal system.

## 5. Conclusion

In conclusion, this article explores the significance and impact of expert witnesses in shaping legal outcomes, particularly in cases involving mental health as a mitigating factor. These cases underscore the importance of expert witnesses in providing specialized knowledge and insights that aid in understanding the complexities of mental health issues in the legal context. Expert testimony can contribute to fairer and more informed legal decisions made by judges by shedding light on the defendant's mental state and its implications for their actions.

In addition to discussing expert testimony in cases involving mental health as a mitigating factor, the translated content also explores the distinctions between the expert witness systems in the common law system, represented by the Anglo-American legal system, and the continental legal system. These differences suggest that the Anglo-American legal system relies more extensively on expert witnesses, thereby allowing for a broader range of professional opinions. On the other hand, the continental legal system places greater emphasis on judicial evaluation and may involve fewer expert witnesses during court proceedings. Understanding these variations is crucial when analyzing the role of expert testimony in cases involving mental health as a mitigating factor. It underscores the influence of legal traditions and systems on the significance attributed to expert opinions, the procedures for selecting and presenting expert witnesses, and the overall dynamics of legal decision-making.

In essence, this exploration underscores that expert witnesses are not mere spectators in the courtroom but rather essential contributors to a more equitable and nuanced legal process. Their expertise, coupled with an understanding of the intricacies of legal systems, fortifies the foundations of justice, particularly when mental health factors come into play.

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