



Criminalistics Section – 2004

B39 Private Consultants for the Prosecution— Are They Really Necessary?

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After attending this presentation, attendees will have increased awareness concerning the essential role that comprehensive physical evidence interpretations play in a complete forensic science service.

The author has served as a private consultant for the prosecution (and defense) for more than three decades. On a significant number of occasions this was critical for, or contributed to, the case solution. The question arises, why was this involvement of a private expert necessary? The primary answer is that very often the forensic science laboratory or laboratory system available to the prosecutor in the area did not develop and maintain a full-service forensic science delivery system. The laboratory system operated in a reactive mode. Such a system carries out tests and reports results. The attention is focussed narrowly on "items and tests" rather than on the scientific interpretation of a larger physical evidence picture. Over this period of time spanned by my observations the situation has worsened. It needs to be addressed. The interpretation of scientific data and findings is a scientific problem. It is critically important that this interpretation be done by scientists. It should not be left to prosecutors, defense attorneys, or judges to make scientific interpretations. Once appropriate scientists have rendered the scientific interpretation, investigators, members of the legal profession, and the finders of fact can then use it. Laboratory systems that do not address this need are not supplying a full forensic science service. A void or empty niche is left. This default by the forensic science service can lead to an even more disturbing and insidious problem than that just described. It may lead scientifically naive prosecutors to seek outside expertise from individuals who have established reputations as "good witnesses" but who lack appropriate scientific credentials. This phenomenon is experiencing alarmingly rapid growth. The desirability of scientists integrating the information and rendering overall conclusions is great. However, there are possible pitfalls. It is important to recognize that certain overarching conclusions may not call for scientific expertise. There is a danger of scientists wrongly giving common sense conclusions the imprimatur of science. This must be recognized and avoided. A balance must be struck between ignoring the need for scientific interpretations and the excesses of over interpretation. Appropriate interpretation is at least as important as the laboratory work.

The situations justifying the use of an outside expert should be relatively rare. However, such needs do arise. Some areas of trace evidence can be very arcane and beyond the experience of many trace evidence experts. Ideally, when an outside expert is brought into a case, it should be at the suggestion of the forensic science laboratory system or at least in consultation with it. If this is not the case, it is cause for concern. This suggests that there is a problem with the relationship between the laboratory and the prosecutor's office, that there is something wrong with the proposed "expert," or that there is a problem with the laboratory itself. The problem could be some combination of the three. When such a situation arises, it constitutes a warning sign that should be heeded. The perils are ineffective case solutions on the one hand, or worse, pseudoscientific testimony and the possibility of a miscarriage of justice on the other.

Public Laboratories, Private Consultants, Physical Evidence Interpretation