



## Criminalistics Section – 2004

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### **B73 It May Have Two Sides, But It Is the Same Coin**

*Peter R. De Forest, DCrim\*, Professor of Criminalistics, John Jay College of Criminal Justice, 445 West 59th Street, New York, NY 10019*

After attending this presentation, attendees will have increased awareness concerning the implications of law-induced asymmetries that arise in applying science to physical evidence analyses and interpretations.

The marriage between law and science is a difficult one. Each of these professional pursuits has a different purpose. In the physical evidence arena, lawyers may wish to control the dissemination of scientific information generated on behalf of their clients. All of the legal machinations related to access cannot be allowed to affect the objectiveness of the science. Scientists must hold to a high standard and play no role in manipulating the science to fit the case needs. The science must not be compromised. The session theme of "two sides of the same coin" offers the opportunity to contrast the perspectives of science and the law with respect to the results of physical evidence analyses. By way of an oversimplified analogy, lawyers may only see one side or the other of the coin, or want to, while the scientist is obligated not only to recognize the two different sides but also to see it as a single coin. Where two scientists disagree, there is a problem. Science requires objective analysis and attempts to reach a consensus. Two competent scientists examining the same evidence should reach the same conclusions. If this is not the case, there is a serious problem. One or both are wrong, or the subject is not properly the subject of a scientific inquiry. Cavalier attitudes such as "you are entitled to your opinion and I am entitled to mine" are not appropriate. Every effort should be made to resolve differences of opinion. There is also a need to recognize when one is dealing with the "opinion of a scientist" as opposed to a *scientific opinion*. There is a distinct difference. The former may have no scientific basis. If so, it is out of place in any scientific report or legal proceeding.

The way this scientific information is used in a legal proceeding is in the province of the attorneys. In criminal cases the asymmetry in the management of information is most extreme. The prosecution as the representative of the state is obligated to make all relevant scientific information available to the defense. Evidence generated by the defense, on the other hand, may be regarded as "work product" and protected from discovery. Details of the rules differ with jurisdiction. Experts for the defense may have access to, and assess the results and interpretations obtained by the state's experts, but the reciprocity may not be observed unless defense experts are offered as witnesses.

#### **Science-Law Interface, Reciprocal Discovery, Criminalistics**