



E23 “...Horse to Water” — How to Educate Legal and Forensic Communities Concerning the Processes and Importance of Expert and Scientific Evidence in the Law

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The goal of this presentation is to expose the issues and methods by which those constituting the “forensic” in “forensic science” might be educated to understand the systems, processes, and nature of evidence produced by the application of scientific, technical and experiential expertise for use in court.

This presentation will impact the forensic community by educating attendees who have ever wondered why good forensic evidence is misunderstood, or why bad evidence is not caught by the legal process will be exposed to the need for and ideas about educating the legal community. This is a two-way street, with the education of experts and scientists about the legal system, its intellectual and professional process and reasoning being essential to achieving the goal of fair and just resolution of disputes being equally essential. Top experts in the processes of science, the law, and professional understanding will provide insight and a plan for action.

Forensic science is rarely the first-hand evidence presented in a case. It explains, illustrates, and compares the circumstances of the evidence through the lens of its skilled practitioners, with a purpose of assisting greater understanding of the evidence. If the goal of forensic science is indeed “assisting law enforcement officials, enhancing homeland security, and reducing the risk of wrongful conviction and exoneration”, as the National Academy of Sciences (NAS) stated in the executive summary to their report, an emphasis on ensuring that the recipients of the knowledge and expertise of the forensic practitioner are equipped to use the information they are given is paramount.

At the heart of the National Academy of Science report is the recognition that the individuals who work in the legal profession as involved in the criminal justice system do not always have a full understanding of the scientific evidence that is presented for them to evaluate. The NAS report recommended an evaluation of the use of forensic evidence in criminal and civil litigation, to include:

The collection and flow of evidence from crime scenes to courtrooms
The manner in which forensic practitioners testify in court
Cases involving the misinterpretation of forensic evidence
The adversarial system in criminal and civil litigation
Lawyers’ use and misuse of forensic evidence
Judges’ handling of forensic evidence

While individuals in the system may be able to understand forensic issues, the system itself is broadly failing to educate its participants. Thus, the issue of education needs to be addressed at the systemic or institutional level. The presentations in this session are designed to address different aspects of this problem, and talk about issues pertaining to educating the participants at the institutional level where all participants gain the knowledge necessary to understand this area.

The first topic to discuss is institutionalizing the scientific education of the judicial bench. In addition to being fact-finders in some cases, judges also are charged with making the legal determination of whether particular types of evidence are acceptable and reliable applications of knowledge, science or technical skills. This role unambiguously requires some knowledge of scientific principles and the scientific method. It also includes the need to evaluate competing assertions of technical sufficiency in obtaining results sought to be introduced as evidence. The two presentations in this area will discuss how to institutionalize judicial learning in this area and perhaps more importantly, if this is even realistic.

The second presentation pertains to institutionalizing forensic knowledge among public defender offices. In the criminal justice system, government agencies usually have primary access and control of evidence in any given case. Prosecutors therefore have an institutional advantage owing to better access to the crime labs and other forensic resources controlled by the state and law enforcement that defense attorneys simply do not have. Consequently, defense attorneys have to be better trained to be able to handle forensic evidence in and out of the courtroom. A presentation about the challenges of institutionalizing forensic knowledge in public defender agencies as well as discussing different models for spreading this information throughout public advocacy agencies at and above the trial level will be given.

The third presentation pertains to how laypeople perceive scientific and forensic evidence. Research regarding how jurors perceive scientific evidence will be discussed as well as findings and the lessons and pitfalls that they show about the process of educating lay people in the forensic arena.

The final presentation pertains to the role of how the forensic scientist has a role and should approach their job in dealing with the legal aspect of their practice. Keeping in mind that the word “forensic” itself implies the relationship between expertise and its practice for evidentiary purposes, a relationship with the courts is implicit in being a “forensic scientist”. Two-way communication between scientists and lawyers have



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languished. Many state-employed scientists have been shown to believe their job is to promote the state's interest, not the impartial application of science. Such a narrow view is inimical to a system that prevents wrongful convictions and seeks to enable righteous exonerations. Education in ethics and professionalism among the scientific community needs to approach common ground with the same subjects in the legal community. As it is imperative that lawyers have to understand science and its processes, scientists have to have a better understanding of their role in both science and law beyond preparing to give testimony. Until both sides have a clearer understanding of the limitations of each other's disciplines, as well as their respective goals, there will continue to be a great divide between the two groups

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