



### A28 Forensic Science Ethics and Criminal Prosecutions: Missing Pieces

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After attending this presentation, attendees will better understand the interconnection between professional conduct and the “Brady” obligation of prosecutors.

This presentation will impact the forensic science community by discussing the importance of communication between government laboratories and prosecutors.

This presentation will examine the role of ethics in forensic science. First-rate Codes of Ethics already exist in a variety of sources: scientific societies; accreditation bodies; certification associations; and within parent organizations that house forensic science laboratories. Codes of ethics serve to help practitioners understand their obligations to the criminal justice system and to their profession. However, failure to abide by codes of ethics and even sanctions resulting from breaches of ethics, may not affect a trial in which an expert is a witness.

The situation is complicated because there is no clear legal mandate for an employer to turn over information of ethical misconduct to the prosecution. In addition, it is uncertain whether a government body employing an individual sanctioned for ethical wrongdoing by a professional organization would even know of such that sanctions were imposed. Ethical sanctions are often considered confidential matters. Further, there is no requirement for government experts to be members of professional associations having Codes of Ethics. Thus, an expert who engages in unethical practices, but who is not a member of a professional society, is not bound by that society’s code.

Under Brady, prosecutors have a legal duty to disclose information and to inform the defendant of information deemed to be material that could influence the outcome of a trial or could impeach the integrity of an expert witness. Impeachable information would likely include ethical sanctions. Presumably, ethical misconduct, and especially sanctions from a professional society, would be considered Brady material. But how would a prosecutor become aware of an ethical breach of ethics?

Here is a hypothetical: A member of a professional association, e.g., the American Academy of Forensic Sciences, violates ethical standards and is censured for that conduct. Let’s say he or she is removed from the organization. Would such information be routinely provided to the individual’s employer that the person was censured? If a censured individual worked for a public forensic science laboratory, that information may be considered “Brady material” by the prosecution. But how does the prosecutor who calls that individual know of the censure? It could be argued that the information should be turned over to the defense. As it stands, the public lab administrator may or may not be unaware of the ethical breach. If the results of a professional society’s ethics investigation are turned over to the individual’s employer, does the lab have a legal duty to advise the prosecution? Does the professional association have a responsibility to advise the employer, the courts, the public, or the prosecution of such matters?

A solution to this problem is likely some form of government oversight of forensic science to establish rules of ethical conduct within the profession. Simply establishing a uniform Code of Ethics as the National Academy of Sciences report on forensic science recommends does not fully address the current situation. In addition, courts at some point need to define what the Brady obligation means, not only for the prosecution but to the Government’s forensic science delivery system.

**Forensic Science Ethics, Brady Material, Discovery**