



E17 State Crime Laboratories — Open or Closed to Criminal Defense Attorneys?

*Justin J. McShane, JD**, *The McShane Firm, LLC, 4807 Jonestown Road, Suite 148, Harrisburg, PA 17109*; *Richard O. Middlebrook, JD**, and *Jeremy C. Brehmer, JD**, *Law Office of Richard O. Middlebrook, APC, 5201 California Avenue, Suite 450, Bakersfield, CA 93309*

After attending this presentation, attendees will begin to appreciate the conflict between science-related decisions and policy-related administrative decisions made by a crime laboratory as to its desire to be transparent in its process and its data reporting.

This presentation will impact the forensic science community at large by providing a starting point for discussing and focusing the debate between those who are in favor of transparency and those who are not. The impact to the forensic science community is to provide data to sharpen and highlight this debate. To date, this is the first formal and systemic experiment that tests this apparent divergence of thoughts.

Interaction at previous AAFS meetings between criminal defense attorneys and forensic scientists employed by various state crime laboratories has led to collegial interactions that have suggested criminal defense attorneys would be welcome to visit such laboratories. Such visits would include interactions with the laboratory administration, bench analysts performing the forensic assays, photographs of instruments, examining procedures, and observing actual forensic specimens being processed.

The present study was designed to test the following hypothesis: State crime laboratories will permit criminal defense attorneys to visit individual laboratories, observe forensic specimen analyses, photograph pertinent laboratory equipment, have interactive sessions with employed forensic scientists, and access to standard operating procedures.

For evaluation of the hypothesis, a standardized letter was sent to heads of crime laboratories in all 50 states plus the District of Columbia. The letter identified requesters as criminal defense attorneys who practice DUI defense. The letter asked the following:

- Will you grant us a tour of your laboratory?
- Will you allow us to take pictures of your laboratory?
- Will you give to us a current uncontrolled copy of your policy, procedures and instructions used for blood ethanol analysis?
- Will you give us evidence of the validation of your assay and method? If not, why not?
- Will you grant us an interview (no more than 30 minutes) with your most proficient analyst who routinely performs blood alcohol analysis?

As in any questionnaire research, less than 100% response was observed. Findings suggest that there exists a gap between what bench forensic scientist perceive as openness to criminal defense attorneys and what the laboratory administrators are willing to permit.

Data collected included:

- Date the letter was sent;
- Date the letter was received (tracked by certified letter, return receipt requested with restricted delivery);
- The date of the response (if any);
- The nature of the response.

The follow through with any commitments the laboratory made as to the requests of one through five above.

The substantive responses to the above five requests and the actual fulfillment of any commitments that were made related to the five requests above were compiled. This data was collected and analyzed for the edification of the forensic science and legal defense communities and to enhance their spirit of cooperation. A fact-based, data-driven presentation that outlines the findings of the above will be presented. The underlying raw data will be available for attendees to review.

Transparency of Crime Laboratories, Administrative Control of Crime Laboratories, NAS Recommendation #4