



## Jurisprudence Section - 2013

### E16 Judges' Evaluation of Evidence When Considering Post-Conviction Relief

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After attending this presentation, attendees will understand how recent U.S. Supreme Court decisions have impacted forensic expert testimony.

This presentation will impact the forensic science community by explaining how recent U.S. Supreme Court decisions concerning forensic experts and the Confrontation Clause directly affect their participation in the criminal justice system.

Any convicted person can file a petition to secure relief, which can include the granting of a new trial or resentencing for the offense. One may be eligible for post-conviction relief if: (1) the conviction violated the U.S. (or state) Constitution; (2) the Court was without jurisdiction to declare the judgment and/or sentencing it rendered; (3) the person's sentence exceeded the maximum allowed by law; (4) a person is held beyond his/her sentence; (5) a defendant failed to file a petition in a timely manner not due to his or her fault; (6) significant changes have occurred in the law that apply to the case; (7) the defendant can demonstrate clear and convincing evidence that the facts of the case are such that no reasonable fact-finder would have found him/her guilty beyond a reasonable doubt; or, (8) newly discovered evidence is found that, if presented at the time of trial, would be verdict-changing. This research examines the last of these criteria by evaluating judges' impressions of newly-discovered evidence and how these impressions impact a petition for relief.

In a post-conviction relief proceeding, a defendant can raise an argument concerning ineffective counsel or can outline a claim that evidence which existed at the time of trial but was only discovered *after* trial would in fact be verdict-changing in the minds of the jurors had it been presented originally. Petitions are initially reviewed by a Superior Court "gate keeper" judge who determines whether the petition is timely and whether a legitimate claim exists under the law. If these requirements are satisfied, the petition is then passed on to the original trial court Judge who determines if the claims necessitate a new evidentiary hearing. If a hearing is granted, the Judge could decide to grant a new trial.

This research aims to discover which evidence is most probative to judges when deciding whether or not to grant evidentiary hearings based on post-conviction relief petitions. The goal was specifically interested in learning about judges' impressions of evidence that reflects changes which have evolved in both science (e.g., DNA typing) and scientific theory (e.g., criteria for diagnosing shaken baby syndrome). Post-conviction petitions used in this research will be modeled after actual petitions filed in the state of Arizona. Judges will be asked to read a post-conviction petition which contains one or more of these types of evidence, and then will be asked questions about their impressions of the evidence presented and how likely they would be to grant an evidentiary hearing. It is predicted that certain changes in science, evidence quality, type of crime, and subjective beliefs will all play a part in the decision-making process when a Judge is appealed to during the post-conviction process.

This research and presentation will impact the forensic and judicial community by giving insight into judges' judgments and decision-making processes during the review of post-conviction relief petitions, and determining which types of evidence (forensic or other) are most probative when considering these petitions.

**Post-Conviction, Decision-Making, Evidence Evaluation**