



### E6 Federal Criminal Discovery

Linda Kenney Baden, JD\*, 15 W 53 St, Apt 18 B/C, New York, NY 10019; Peter Neufeld, JD\*, Innocence Project, 40 Worth St, Ste 701, New York, NY 10013; Michael T. Ambrosino, JD\*, U.S. Attorney's Office, 555 4th St, NW, Washington, DC 20001; Haskell M. Pitluck, JD\*, 573 Lake Ave, Crystal Lake, IL 60014; Stephanie Domitrovich, JD, PhD\*, Sixth Judicial District of PA, Erie County Court House, 140 W 6th St, Rm 223, Erie, PA 16501; and Paula H. Wulff, JD\*, 3201 Russell Rd, Alexandria, VA 22305

The goal of this presentation is to explore how the attorneys in the process can facilitate the proper transfer of discovery material.

The FBI Laboratory at Quantico processes thousands of cases every year. Many of these requests come from state agencies. Ultimately, laboratory examiners and FBI case agents may testify in state criminal trials. The interplay of federal criminal discovery in state trials varies as a result of multi-jurisdictional local rules. However, all discovery must satisfy the inherent rules of *Brady* and *Giglio*. The role of the attorneys in requesting proper discovery material and delivering or achieving the receipt of this information is very important. How such information is handled and provided to parties is inherently critical to the judicial process. This presentation will impact the forensic science community by examining the varying roles and duties of the attorney from the generic framework down to the specific concluded cases including Casey Anthony, Santae Tribble, and Kirk Odom.

Scientific evidence is a critical and crucial element in seeking the just resolution in criminal case proceedings. Federal laboratories, for example, the FBI Laboratory at Quantico, Virginia, the ATF&E Laboratory in MD, process thousands of cases every year involving evidence associated with federal and state criminal investigations. As a result, federal laboratory examiners may be called upon to produce discovery documents and testify in both federal and state criminal proceedings. The interplay of federal criminal discovery responsibilities in producing discovery material to state attorneys is further complicated as a result of multi-jurisdictional local rules which direct or provide guidance to state prosecutors regarding what must be provided to opposing counsel. However, all discovery must satisfy the inherent rules of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) which require prosecutors disclose exculpatory evidence or information that impeaches the credibility of government witnesses against a defendant. The role of the attorneys, as the proponent in offering the scientific evidence and associated testimony, in requesting proper and comprehensive discovery material, the laboratory's role in providing all relevant documents; and the delivery these documents by the government to the defense is inherently critical to facilitate a fair and accurate process that convicts the guilty and sets the innocent free.

More than three decades after a rape victim identified Kirk L. Odom based on eyewitness testimony, new DNA testing of evidence, a hair fragment, stains on a pillowcase, and robe confirmed Odom's innocence. The U.S. Attorney in the case in a court filing stated that "More than 30 years after Mr. Odom's conviction, DNA testing reveals that he suffered a terrible injustice. The United States expresses its profound regret for the harm suffered by Mr. Odom, and requests that this court immediately vacate Mr. Odom's convictions and dismiss the indictments against him with prejudice." In 1978, Santae Tribble was accused of murder, in part, based on a single hair that supposedly matched Tribble's "in all microscopic characteristics" from a stocking worn by the killer. In 2012, federal prosecutors moved to have Tribble's 1980 conviction vacated based, in part, on this testimony and subsequent scientific testing of the case evidence. What discovery obligations attach to any scientific testing conducted by either the government or the defense on the evidence?

From the time a defense attorney seeks discovery, for example, in a case such as *Florida v. Casey Anthony*, or begins a new challenge based on scientific evidence, what is the interplay between the forensic laboratory, the prosecutor (federal or state), and the defense? If a laboratory determines that prior scientific testing of case evidence was incorrect, how does that information get transferred to the relevant parties: the defense attorney, defendant, and the courts? How do judges view the exchange of discovery? What are the legal and ethical requirements for all involved?

This panel presentation will explore these cases and other contemporary issues involving: (1) new scientific testing of old cases and how the attorneys in the process can facilitate the proper transfer of discovery material; (2) how judges are the gatekeepers of the search for the truth; and, (3) the varying roles and duties of the attorney from the generic framework down to the specific concluded cases including cases the panelists have been involved in including those of Casey Anthony, Santae Tribble, and Kirk Odom.

**Casey Anthony, FBI Lab/Quantico, Federal Criminal Discovery**