E9 ABA's Proposed Changes to Legal Practices That Impact Expert Testimony

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After attending this presentation, attendees will learn about the American Bar Association's recommendations on how to change legal practices to shape the interaction of law and forensic science regarding admissibility of evidence, questioning of and instructions to jurors regarding scientific evidence, contents of laboratory reports, uniform vocabulary, as well as what ethics lawyers should expect from forensic scientists they hire.

Forensic science is the application of science to the law, and is therefore dependent upon the legal system's procedures for admissibility of evidence, discovery requirements, juror education, and establishing ethics for expert witnesses. The American Bar Association is the most influential organization representing lawyers and judges in the United States. Its views and recommendations must be taken seriously by the forensic science community. Every practicing scientist will want to attend this presentation to learn what changes they may expect next time they appear in court. This presentation will impact the forensic science community by pointing out changes on the horizon, as the American Bar Association's views and recommendations must be taken seriously by the forensic science community.

The American Bar Association, America's largest organization representing attorneys, has passed several resolutions calling on lawyers and judges to change their practice and procedure in the courtroom. These resolutions will impact laboratories and the testimony of forensic scientists. Included in these resolutions are:

RESOLUTION #101, urging federal, state, territorial, and local governments to adopt pretrial discovery procedures requiring laboratories to produce comprehensive and comprehensible laboratory and forensic science reports for use in criminal trials to include identification of:

1. The procedures used in the analysis.
2. The results of the analysis.
3. The identity, qualifications, and opinion of the analyst.
4. The identity and qualifications of those who participated in the testing including peer review or other confirmatory tests; and,
5. Any additional information that could bear on the validity of the test results, interpretation or opinion.

RESOLUTION #101C, urging judges and lawyers to consider the following factors in determining the manner in which expert testimony should be presented to a jury and in instructing the jury in its evaluation of expert scientific testimony in criminal and delinquency proceedings:

1. Whether experts can identify and explain the theoretical and factual basis for any opinion given in their testimony and the reasoning upon which the opinion is based.
2. Whether experts use clear and consistent terminology in presenting their opinions.
3. Whether experts present their testimony in a manner that accurately and fairly conveys the significance of their conclusions, including any relevant limitations of the methodology used.
4. Whether experts explain the reliability of evidence and fairly address problems with evidence including relevant evidence of laboratory error, contamination, or sample mishandling.
5. Whether expert testimony of individuality or uniqueness is based on valid scientific research.
6. Whether the court should prohibit the parties from tendering witnesses as experts and should refrain from declaring witnesses to be experts in the presence of the jury.
7. Whether to include in jury instructions additional specific factors that might be especially important to a jury's ability to fairly assess the reliability of and weight to be given expert testimony on particular issues in the case.

RESOLUTION #101D, urging urges judges and lawyers to consider the following factors in formulating jury *voir dire* in criminal cases where forensic science evidence is contested:

1. Jurors' understanding of general scientific principles, including specialized training in science, knowledge or education in science and experience with laboratory practices.
2. Jurors' understanding of specific scientific principles relevant to the forensic science evidence that may be presented at trial, including specialized training, knowledge or education in the specific scientific discipline utilized in the case [chemistry, toxicology, engineering, etc.].
3. Any preconceptions that jurors may have about the forensic science evidence; and,
4. Jurors' bias for or against scientific evidence, including whether scientific results will be accepted or rejected without consideration.

PROPOSED RESOLUTION #300, urging counsel to utilize proposed Guidelines for Conduct of Experts Retained by Lawyers. These Guidelines pertain to Integrity/Professionalism; Competence; Confidentiality; Conflicts of Interest and Disclosure; and Contingent Compensation.

To assess the viability and impact of these resolutions, an expert panel of lawyers and both public and private forensic scientists will discuss the recommendations.

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