E15 Evaluating Quality in Crime Laboratory Casework: What Should Lawyers Know and How They Can Evaluate a Crime Lab

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After attending this presentation, attendees will have a better understanding of ways attorneys will be able to evaluate forensic science lab reports and testimony proffered in criminal trials.

This presentation will impact the forensic science community by informing trial advocates of the ways forensic laboratories operate and explaining how to obtain important information through discovery and cross-examination to assist the court and jury in reaching a conclusion in criminal cases.

Consider a government forensic science laboratory that routinely provides testing services to the police and prosecution. Over time the laboratory's clients implicitly trust the work product of the forensic lab. Challenges by the defense bar are expected but often not taken seriously. After all, in an adversarial criminal justice system, it is expected that the "other side" will try to diminish a crime laboratory's findings.

In truth, there are scant ways for the police or prosecution to know if their forensic lab conducts reliable work. Laboratory clients have limited scientific expertise. They are, after all, police or lawyers and not scientists. How can they know if they are obtaining the sort of reliable, quality scientific evaluation the criminal justice system requires?

The burden to determine whether a forensic laboratory's examination is accurate often falls on the defense. While police and prosecutors have a vested interest in the quality and reliability of a forensic lab's work product, they may not know the proper questions to ask the expert or laboratory's management if everything is okay or even if there are problems of which the prosecution should be aware. In some cases, prosecutors and police investigators assume that all is well. And questions raised by lawyers on "the other side" are considered as unfounded issues.

Laboratory accreditation offers one way to evaluate the quality work product but it does not guarantee that the forensic science laboratory's efforts are up to standard. Accreditation is an indicator. It's fair to say that an accredited laboratory offers a better chance of quality analyses but accreditation cannot offer absolute guarantees.

Recently, we have seen examples of forensic labs that are part of police organizations that were not accredited. Not being accredited is not, *ipso facto*, proof of poor work, but it ought to raise questions to the parent law enforcement agency overseeing a crime lab: should our crime lab be accredited? Prosecutors might also wonder if something is not quite right. But what of the police agency or prosecutor's office who doesn't even recognize that the lack of accreditation or certification, or the existence of any quality assurance program, might be a harbinger of poor-quality forensic work? There are troubling instances where this, indeed, has been the case.

The prosecutor's *Brady* obligation that requires them to provide exculpatory information to the defendant may help, but sometimes it will not. In some cases, labs and their personnel may not think to alert prosecutors about the crime lab's shortcomings. Prosecutors may not recognize that a particular failing should be brought to the defendant's attention or simply may not tell the defense. Thus, discovery becomes the vehicle for the defendant to evaluate a crime lab's work.

The defendant is often at a disadvantage because he or she may not fully understand the day-to-day operation of a laboratory or simply not know the right questions to ask.

An American Bar Association (ABA), Criminal Justice Section taskforce recently drafted a resolution *"requiring laboratories to produce comprehensive and comprehensible laboratory and forensic science reports for use in criminal trials."* The resolution made the following recommendations 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.

These recommendations are a start. Defense attorneys should determine if labs use standard testing protocols which have been validated; if experts have been properly trained in testing procedures and take periodic proficiency tests; if lab reports are reviewed by qualified lab personnel before the case can be reported out; if labs maintain records of past errors and how the errors were corrected; etc. Understanding the accrediting process will help attorneys on both sides to determine whether forensic science used in a case is reliable and accurate and is helping, rather than hindering, the justice system.

Quality Assurance, Brady Material, Discovery

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