



E51 Strategies for Defendant Notification in the Wake of a Major Nonconformance in a High-Volume Forensic Discipline

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After attending this presentation, attendees will understand how stakeholders can work collaboratively to provide notice to defendants in the wake of a high-volume forensic failure. The specific example used will be a major forensic nonconformance in Texas in the controlled substance discipline, where 36 counties and 4,944 cases in Texas were potentially affected by a single examiner's misconduct. Participants will also learn about stakeholder efforts to establish a statewide notice protocol for use in future similar cases.

This presentation will impact the forensic science community by addressing challenges and solutions for effectively notifying defendants about major forensic nonconformances where thousands of cases may have been impacted in a large and diverse state, as well as strategies for providing access to competent legal resources for affected defendants.

The Texas Forensic Science Commission (Commission) is charged by statute with investigating allegations of negligence and misconduct in the state's crime laboratories. The statute also requires crime laboratories in Texas to self-disclose facts to the Commission that may indicate negligence or misconduct in the laboratory. After conducting a thorough investigation, the Commission must release a public report describing the alleged negligence or misconduct and issuing recommendations for corrective action as appropriate.

In one recent example, the Commission conducted a comprehensive review and released a report describing misconduct by a forensic examiner in a controlled substance case. The nonconformance in that single case raised questions about the integrity and reliability of the examiner's work in close to 5,000 other cases. Prosecutors, defense attorneys, and members of the judiciary faced significant challenges in achieving effective defendant notification in the dozens of Texas counties affected, some of which covered large urban areas while others were located in smaller, more remote rural areas.

To address concerns regarding notification with such a large and diverse group of counties, the Commission brought affected stakeholders together to discuss the best approach. The group included the Texas District and County Attorney's Association, Texas Criminal Defense Lawyer's Association, the Office of Court Administration, the Commission on Indigent Defense, and the Innocence Project of Texas. Each stakeholder group agreed to play a role in reaching out to affected prosecutors, regional presiding judges, defense attorneys, and others affected. Letters and emails were sent to affected prosecutors, and members of the defense bar are still engaged in the ongoing process of reaching out to defendants (after the initial prosecutor contact) to provide effective notice and access to representation, especially in smaller counties.

In early 2013, the Commission and Texas Criminal Justice Integrity Unit (Integrity Unit) recognized the issue of defendant notification in high-volume cases merited a discussion among a broader group of stakeholders, with the hopes of establishing consensus for a notice protocol for future cases. In fact, it soon became evident that Texas was not alone as the Commission began receiving calls from other states facing similar high-volume notification challenges.

In July 2013, the Commission and the Integrity Unit convened a meeting of more than sixty forensic science stakeholders representing crime laboratories, prosecuting attorneys, defense attorneys, the judiciary, law enforcement, policy makers, and policy advocates. The purpose of the meeting was to discuss strategies for establishing a notice protocol for future cases, and to determine how to streamline the process and realize increased efficiencies in a state that strongly values local and decentralized control.

Recognizing that a state-funded public defense system is highly unlikely in Texas, participants identified existing state agencies and organizations that can play a greater role in the notification process. Participants also emphasized the importance of notice redundancy, and suggested many enhanced training opportunities to ensure stakeholders understood their respective roles. The group discussed special challenges faced by rural prosecutors and strategies for addressing them. The Commission and the Integrity Unit also plan to create a training video on the impact of *Brady vs. Maryland* that is specifically geared toward forensic scientists.¹ The Texas State Bar will assume a greater role in identifying and training attorneys on forensic science issues with specific focus on how to effectively process an appellate writ in a



Jurisprudence Section - 2014

forensic nonconformance case. Finally, participants emphasized the critical importance of educating members of the legislature and the public on these issues. These strategies will be discussed in detail to encourage creative and collaborative responses by affected parties in other states as they face similar challenges.

Reference:

1. *Brady vs. Maryland*, 373 U.S. 83 (1963).
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