



Jurisprudence Section - 2015

F41 The Discovery Motion for “Scientific Stuff:” Don’t Expect to Get It, Find It, or Recognize It (Even if You Do Get It) if You Have No Idea What You’re Looking For!

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The goal of this presentation is to focus on documentation which should be available through a discovery motion for review by both sides as a part of pre-trial discovery. Specific technical documents and operational protocols will be identified. The objective will be to provide a lawyer with the answer to the question: What am I looking for and what could it mean?

This presentation will impact the forensic science community by enhancing the knowledge base of what to request in a discovery motion and what to expect from the forensic science laboratory. (Since the credibility of a forensic scientist’s testimony could be inversely proportional to the number of four-syllable words which are used without an explanation in a “lawyerly discussion,” the technical jargon in this presentation will be minimized.) There are required laboratory documents which the defense should request and which the prosecution should be aware of in order that both sides can fulfill their responsibilities to the courts in evaluating the elements associated with the case at hand.

Some of the more common questions lawyers wonder about in reviewing a forensic analysis or discussing the analysis with the “expert” are: (1) what does “get it” mean; (2) do I know exactly what I am looking for or looking at; (3) why didn’t someone tell us about this; (4) what do all those big words mean and are they important; (5) how am I supposed to cross-examine an expert when I have no idea what he/she is talking about or when I don’t understand what was done in my case; and, (6) standards, what are standards?

Most forensic science laboratories in the United States have nothing to hide and issue reports which reflect conformance to standards. Most laboratories have subscribed to the oversight of external accrediting bodies and state-wide commissions to maximize the probability that everything is transparent in the management and operational aspects of valid science. Disclosure of what is happening behind those doors with signs dictating “Authorized Personnel Only” is there for the asking; however, there are times when the defense and even the prosecution should be more inquisitive in seeking answers to questions which have a legal impact on what is happening behind those locked doors. The prosecution can usually pay a visit to the laboratory for a sit-down. The reality is that these “sit downs” with the prosecution occur far too infrequently. The “other side” faces a more daunting challenge. The defense, if they want to see anything, may be asked to a court order. Sometimes there may be valid reasons for denying admission to certain part of the laboratory (like the vault) to “unauthorized personnel.” Even when the defense is allowed into the laboratory, all they will usually see are white coats, dropper bottles, flasks, microscopes, humming machines with robotic arms picking up small rubber-capped vials, and row after row of computer monitors with images of straight lines, curved lines, or columns of numbers.

The properly worded discovery motion is one effective way to obtain the answers to the most important questions. The challenge for the lawyer is this: How do you get what you need if you don’t know what you are looking for and if “you do get it,” what does it all mean? Many discovery motions are couched in terms of “give me everything you’ve got.” Even if and when “everything” is provided, the lawyer probably has no idea what “everything” (all that paper with charts and lines and paragraphs with four- to six-syllable words) really means.

So the next step is to ask for a CV or Bio and proficiency test results. Nearly everyone will recognize an academic degree or the fact that the analyst passed a proficiency test. The issue here is that this information will provide very little if anything about the “case at hand.” Most analysts have college degrees and most analysts pass a proficiency test. If they don’t pass a proficiency test, they’ve probably been “rehabilitated.” Then there are the requests for “six months of calibration and maintenance records for those machines.” Even with the reams of paper which are produced for this request, there will be little information obtained with which to evaluate the relevance, reliability, and validity of what was done in the “case at hand.”



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The factors in determining the reliability of any scientific analysis conducted in a laboratory can be “discovered” by evaluating documentation related to how the laboratory is managed; whether the laboratory is conforming to scientific standards which have become pro-forma requirements in forensic science laboratories; whether the data in the case at hand conforms to reporting protocols; whether all of the documentation supports the conclusions; whether alternative explanations are possible for those conclusions; and, whether all of the information which may be exculpatory is being provided. A properly worded discovery motion for specific documents can provide some level of assurance that the answers to the relevant questions related to the case at hand are actually being provided, remembering that nothing is absolute. Standards do exist and conformance to those standards is the foundation of a laboratory’s credibility.

Discovery Motion, Scientific Standards, Scientific Data