F21 Upstream Remedies to Prevent Wrongful Convictions: Beating *Daubert* to the "Gate"

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After attending this presentation, attendees will better understand proposed strategies for improving the transparency and scientific practice of forensic science.

This presentation will impact the forensic science community by sharing strategies for improving the transparency and scientific practice of forensic science through changes in national policy and laboratory practice.

In February 2013, the Department Of Justice (DOJ) and the National Institute of Standards and Technology (NIST) announced that the agencies entered a Memorandum Of Understanding (MOU) to create a National Commission on Forensic Science (NCFS) to set federal forensic science policy and the Organization of Scientific Area Committees (OSAC) to establish documentary standards in forensic science disciplines. The creation of these two agencies has spurred a national investment in forensic science. While the initiation of these bodies is an important follow-up to some of the recommendations of the National Academy of Sciences' 2009 Report, Strengthening Forensic Science in the United States: A Path Forward, additional national policy and laboratory practice changes are needed to improve the fragmented forensic science system in order to establish greater confidence in forensic science for all participants in the criminal justice system.

National policy changes that can support more transparent and reliable forensic science include: (1) A federal forensic science research agenda — a strategy needs to be established for forensic science research that incorporates the input of all federal agencies with an interest in forensic science as well as all federal science agencies that fund research. Research goals and questions should be set in advance to guide funding (more questions can develop as research studies advance) and agencies should oversee research funding in its areas of expertise; and, (2) setting standards for forensic processes AFTER research is complete. Many forensic science processes or components of forensic testing methods have been well established by rigorous, peer-reviewed research. Those processes should move forward for documentary standards setting at the OSAC. Processes in need of more scientific clarification must be thoroughly researched, then evaluated for measurement by NIST. Only after these two conditions have been met can the OSAC proceed with documentary standards setting. NIST has taken on the responsibility of validation research in forensic science and should set measurement standards for and evaluate the validity, reliability, and limits of forensic processes before documentary standards are set.

Laboratory practices that can support more transparent and reliable forensic science include: (1) testimony should be reviewed to meet the limits of science. Forensic science disciplines need to incorporate a more inclusive scientific community — such as researchers in adjacent areas of science and statisticians — and not just rely on general agreement between practitioners to establish testimony that reflects the current state and limitations of any forensic science process. Scientists should focus testimony on the testing documented in the reports and acknowledge that scientific statements made in testimony need to be supported by objective science. Last, the Federal Rules of Civil Procedure require that experts submit "Rule 26" reports that provide the experts' opinions, conclusions, and the bases thereof in advance of trial. Adopting "Rule 26" reports for criminal cases would establish a forensic scientist's opinion and limit the interference of attorneys in scientific conclusions; (2) definition of customer. A critique of the forensic science system is the perception of a lack of independence. One way that forensic science providers can demonstrate to criminal justice stakeholders that their mission is to provide independent scientific analyses to the system is to change the definition of the customer. In the United Kingdom, where crime laboratories also submit to the International Organization for Standardization (ISO) 17025 accreditation, the customer is defined as the courts in addition to the entity ordering the product or service. Redefining the definition of customer will empower forensic science providers to accommodate the needs of all forensic science end users; and, (3) reports and case files need to be transparent, comprehensive, and accessible. As impartial scientific work products, forensic laboratory reports and case files should provide a comprehensive communication of the test, results, and limits, and should be readily accessible. Understanding that the complement of laboratory material may be too voluminous for a report, if materials are to be included in the case file, they must be complete, organized, and the table of contents should be included in the report. Reports must also include a statement that, in order to fully understand the testing in this case, one needs the case file which is available upon request.

Policy, Transparency, Testimony

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