



## Jurisprudence Section - 2016

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### **F27 Naked DNA: Mounting an Inadvertent Transfer Defense in Cases With Little or No Corroboration**

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After attending this presentation, attendees will have a working knowledge of primary, secondary, and tertiary transfer of DNA evidence and how this is a viable defense in criminal cases. Attendees will be provided a brief history of the research of inadvertent transfer, including documented cases of inadvertent transfer at crime scenes. Attendees will be given litigation strategies for defending inadvertent transfer cases with little or no corroborating evidence from investigation and motions through closing arguments.

This presentation will impact the forensic science community by offering practical litigation strategies for presenting a defense of inadvertent transfer in the courtroom where there is little or no corroborating evidence. This presentation will impact the broader forensic science community by elucidating the ongoing problems and issues surrounding the reality of inadvertent transfer in criminal cases. This presentation also serves to educate our justice partners about the serious risks inherent in the introduction of DNA match evidence into an investigation and into the courtroom when corroborating evidence is weak or non-existent.

Imagine that a man is arrested in his home for the murder of someone he has never met. The police interrogate him for hours and end the questioning by telling him his DNA was found on the victim's body. The man is adamant he is innocent. The science appears to be correct. As a defense attorney, where do you begin? Although we now have actual evidence of inadvertent transfer at crime scenes, defense attorneys do not understand how to prepare and present this defense to jurors who are not educated on this topic and judges that are apprehensive about admitting this evidence. A successful inadvertent transfer defense requires presentation of a cohesive theory from start to finish.

The preparation of an inadvertent transfer defense begins with proper investigation and the use of discovery to obtain necessary information. Attendees will also be taught to explore officer bias as a result of the DNA match through discovery and cross-examination. Motions *in limine* are the next line of defense, in which attendees will learn to utilize *Kelly-Frye* principles to preclude or limit criminalists from giving opinion testimony on probabilities of DNA transfer or identifying the method of transfer. After a discussion of preparation, the conversation will turn to presentation of the evidence in court to a jury.

This presentation will highlight that jurors want to know that inadvertent transfer is a reality and not a theoretical defense construct. Juror education on an inadvertent transfer defense will begin with thoughtful *voir dire* questions and the use of real-life examples in the cross-examination of the criminalists or direct examination of defense experts. Finally, education of the bench on this defense will include submission of jury instructions requiring corroboration of the DNA match to sustain a conviction. Overall, this presentation will provide solid case preparation materials on the defense of inadvertent DNA transfer.

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#### **DNA, Inadvertent Transfer, Litigation**