



Jurisprudence Section - 2016

F7 Asymmetric Politics and Forensic Science: “Forget It, Jake — It’s Chinatown”

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After attending this presentation, attendees will better understand how asymmetrical politics and information lead to adverse selection and moral hazards. The implications of dependent forensic laboratories to the justice system will be discussed.

This presentation will impact the forensic science community by explaining how asymmetrical politics and information lead to adverse selection and moral hazards and the “forensic failure” they can cause, such as wrongful convictions.

The vast majority of forensic service providers are governmental and operate in a political environment. Politics can trump science when it comes to operational decisions (policy, financial, perceptual). Forensic service providers may be subject to adverse outcomes because of political decisions.

As state agents, governmental forensic laboratories are dependent on their jurisdictional clients (police, prosecutors) for their *raison d’être*. Here, dependence means that one entity (dominant) can expand and be (more or less) self-sustaining while others (dependent) can do this only as a reflection of that expansion. An asymmetrical power relationship exists, with the subordinate entity having little or no ability to change and being relegated to a subordinate position. “In essence, if the rules of the game are biased against you, then you have two choices: to continue to play by the rules and thus continue to be exploited or to rewrite the rules in a way that does not leave you at an unfair disadvantage.”¹

Suggestions to rewrite the rules came from the National Research Council’s (NRC’s) National Academy of Sciences recommendation in its 2009 Report, *Strengthening Forensic Science in the United States: A Path Forward*:

“Scientific...assessment conducted in forensic investigations should be independent of law enforcement efforts either to prosecute criminal suspects or even to determine whether a criminal act has indeed been committed. Administratively, this means that forensic scientists should function independently of law enforcement administrators.”²

Suggesting is one thing, succeeding is another. Several jurisdictions have attempted independent forensic agencies with varying success. Power imbalances still exist in these attempts, leading to adverse selection and moral hazards. Adverse selection occurs when buyers and sellers have access to different information, leading to undesired results. If a bank set one price for all checking account customers, it loses money on both the low-balance and high-activity customers. Likewise, if attorneys demand that all cases are a “priority,” then none are: all suffer equally. Moral hazards result when one party takes risks because they won’t incur the potential cost of taking that risk. For example, when a prosecutor demands that evidence be tested even though experts from the dependent laboratory explain that the results will not provide useful information, then the prosecutor incurs a risk of resources on the laboratory. Unnecessary work needlessly consumes resources, wastes time, and delays the working of meaningful evidence.

Asymmetric information begins a downward spiral. Ultimately, market failure (the inefficient allocation of resources) may result. If other outcomes exist that improve one situation without worsening another, then market failure exists. Multiple scenarios for forensic science provision are possible, which would improve the quality and delivery of the science without adversely affecting justice outcomes. Arguably, the forensic industry is facing a type of market failure.

“Forget it, Jake; it’s Chinatown.” The last line from the famous movie, *Chinatown*, relates to the detective Jake Gittes. As a young police officer in Chinatown, Gittes once tried to protect a woman, but instead his efforts hurt her; this pattern is repeated in the movie’s storyline. “Forget it, Jake; it’s Chinatown” is an encouragement to Gittes to forget the current tragedy, just as he “forgot” the circumstances surrounding his time in Chinatown. Helpless to assist, Gittes sees how his intentions to do what was right were perverted by a corrupt and ineffective environment. Forensic science as Chinatown means that police and prosecutors will continue to bully laboratories, making them more susceptible to attacks by the defense. The profession becomes cynical about its future, as do stakeholders (police, lawyers, courts, media, the public). Punch drunk, laboratories will fail, services will falter, and the industry will stagger to its demise. Absent the political will to support forensic science sorting itself out independent of law enforcement and absent the intellectual infrastructure in forensic science to do the sorting, confidence in the profession will continue to be eroded. Failure, regrettably, is an option.



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Reference(s):

1. Ishiyama J., Breuning M. 2010. 21st Century Political Science: A Reference. *Sage*. Page 330.
 2. National Academy of Sciences National Research Council. 2009. Strengthening Forensic Science in the United States: A Path Forward. Washington, D.C. Page 22.
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Market Failure, Wrongful Convictions, Independence