



F43 Justice Cannot Happen in a Vacuum: Toward a Better Representation of the Science, the Client, and the Case Through Open Communication

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Learning Overview: The goals of this presentation are to educate analysts, prosecutors, and defense lawyers about each other's respective role and perspective on a criminal case to promote accurate and clear communications regarding scientific conclusions between the prosecutor, defendant, law enforcement, and the trier-of-fact (i.e., judge, jury). This presentation will demonstrate how open communication benefits each participant in a criminal case and ultimately best serves justice.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by providing a better understanding of the roles and perspectives of the other participants in a criminal case and by providing tools to better communicate with each other. This presentation will impact attendees by increasing their competence and performance in their respective roles of representing the defendant, the government, or the scientific data through meaningful, open, and transparent communications.

Hypothesis: More effective, transparent, and well-informed communication between analysts, prosecutors, and defense lawyers about scientific findings aid in making critical decisions and lead to a better representation of the scientific data in criminal litigation.

The American system of justice is, by design, an “adversarial” system. Yet we are in an interrelated polygon of communication where we rely on information from each other to best do our respective jobs. The prosecutor must prove the government’s case beyond a reasonable doubt, and the defense attorney must present reasonable doubt to the finder of fact. As Chief Justice John Roberts wrote, “Federal prosecutors, when they rise in court, represent the people of the United States. But so do defense lawyers—one at a time.”¹ However, forensic scientists represent neither the “people” collectively, nor the defendant individually. Instead, they represent the scientific data in the case and the integrity of their laboratory’s work.

While the defense attorney’s and the prosecutor’s roles may be necessarily at odds, the forensic scientist is neither side’s ally nor adversary. Yet many analysts express concern about disappointing prosecutors or facing antagonistic cross-examinations by defense attorneys. These concerns, both by individual analysts and laboratory management, along with excessive workloads for all parties, can lead to policies that restrict communications between the scientists and the lawyers. Reports and testimony may communicate conclusions that comport with laboratory policies and procedures. However, restricted follow-up communications may lead to inadequate, or even misleading, representation of the data and their conclusions when the lawyers and/or fact finders are ill informed. This may ultimately result in unintended serious legal consequences (e.g., wrongful convictions, releasing the true perpetrator).

This presentation will explain the roles of the prosecutor, defense lawyer, and analyst in a panel discussion with members of each respective group. The defense perspective will explain the “one at a time” approach to defending the people of the United States and the constitutional duty to provide zealous advocacy for each client in each case. The defense panelist will discuss best practices for evaluating forensic evidence in constructing a theory of defense and advising an individual client. These goals are not aimed at discrediting sound science or making the analyst look foolish. Instead, they are geared toward contextualizing the science in a way that comports with the lawyer’s duties.

The prosecution perspective will explain the government’s need to understand the forensic evidence clearly. Once the prosecutor comprehends the forensic evidence, it can be presented unambiguously at all stages of the criminal justice process. How forensic evidence can inform charging decisions, plea negotiations, and trial strategy will be discussed. The importance of open communications with the analyst and the laboratory about the meaning of the conclusions and the manner in which the test was performed will also be discussed.

Ways in which laboratories can successfully work in an unbiased and neutral manner with everyone will be discussed. Best practices for reporting findings, providing effective testimony, and facilitating open communications will be presented. Examples of incomplete, misleading, or confusing report wording and testimony from actual case reports and transcripts will be presented and discussed.

This presentation will recommend steps that everyone involved in a criminal case can take to improve communications. Defense lawyers, consistent with their obligation to provide “effective assistance of counsel” must seek out training in forensic science and educate themselves before taking on a case. Prosecutors’ offices also must provide training to line attorneys in the capabilities and limitations of forensic science and how to accurately and fairly explain scientific evidence to a jury. Laboratories must openly and transparently provide information and encourage pre-trial meetings with all attorneys involved to ensure the data and conclusions, and their limitations, are effectively communicated.

Reference(s):

¹. *Kaley v. United States*, 571 U.S. --- (2014).

Communication, Collaboration, Reports/Testimony