

## F3 Forensic Laboratories: Time to Lawyer Up

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**Learning Overview:** The goal of this presentation is to detail the role of in-house counsel in the forensic laboratory setting and describe the guidance that an in-house attorney can provide to forensic scientists and laboratory management, as well as the advocacy needed for the forensic laboratory in the criminal justice system.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by demonstrating the need to have an attorney advising the laboratory who is familiar with the forensic science disciplines and bound by the same ethical guidelines as the forensic scientists, as well as knowledgeable of how criminal cases are handled in the system.

The in-house counsel for the laboratory has a number of duties, including (but by no means limited to): (1) responding to requests for case documentation and other records, (2) overseeing the laboratory's compliance with court-ordered pre-trial and post-conviction testing orders, (3) managing ongoing case reviews conducted by the laboratory, (4) providing advice on human resource issues and providing required *Giglio* disclosures, (5) advising laboratory management on compliance with federal and state laws and regulations, (6) advocating for the laboratory in the legislative process and in the development of legal rules and procedures, (7) providing legal training for the forensic scientists, and (8) conducting outreach to the legal community.<sup>1</sup>

An in-house counsel will learn that scientists and lawyers do not always communicate well with each other. Legal requirements like *Giglio* disclosures are not well understood by forensic scientists, and most criminal lawyers lack any significant understanding of the scientific principles and processes involved at the lab.<sup>1</sup> In-house counsel can help bridge the gap by encouraging/facilitating communication and providing information.

The 2009 NAS Report, *Strengthening Forensic Science in the United States: A Path Forward*, recommended that funding be provided so that state and local jurisdictions could remove "all public forensic laboratories and facilities from the administrative control of law enforcement agencies or prosecutors' offices."<sup>2</sup> Independence of a forensic laboratory is dampened if the legal advisors provided for that laboratory are employed in prosecutors' offices whose concerns regarding the finality of judgments and political pressures may run counter to the laboratory's ethical obligations to correct errors and honestly communicate with all parties. An in-house attorney, reporting only to laboratory management, can be a more effective advocate for a neutral, transparent laboratory. An in-house attorney who also understands the potential impact of forensic errors on the criminal justice system can better inform and advise laboratory management.

In-house attorneys also need an opportunity to discuss current issues and learn from each other's experiences (and failures) as they navigate their roles. This study has been working with other laboratory counsel to arrange national trainings and develop an association to facilitate ongoing communication and trainings for this previously-siloed group. Advancement of forensic science requires that forensic laboratory counsel work to develop consistent policies and procedures for a level playing field for all participants.

### Reference(s):

1. *Giglio v. United States*, 405 U.S. 150, 153 (U.S. 1972).
2. National Research Council (NRC), Committee on Identifying the Needs of the Forensic Science Community. (2009). *Strengthening Forensic Science in the United States: A Path Forward*. Washington, DC: The National Academies Press.

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### Laboratory Counsel, In-House Counsel, Laboratory Lawyer