

## The Impartiality of the Government Forensic Expert

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The 2009 National Research Council's report *Strengthening Forensic Science in the United States* recommended "removing all public forensic laboratories and facilities from the administrative control of law enforcement agencies or prosecutors' offices" in an effort to ensure the impartiality of government experts. Government forensic experts should be neutral, unbiased witnesses for the courts, analyzing the evidence with an open mind rather than searching for evidence to support a conviction. Some have claimed that practitioners can be impartial even when employed by law enforcement agencies. Are government experts as impartial as they claim? Consider the following questions.

- 1) Prior to testifying, does the government analyst give the prosecutor a list of questions he/she should ask? Would a defense attorney be offered the same list of questions? Does giving the prosecution information that would not be offered to the defense show an expert is more aligned with one side over the other?

**Discussion Point:** Prior to *Daubert*, attorneys were less equipped to question scientific experts and supplying a list of qualifying questions was often suggested to ensure the evidence was understood by the courts. Currently, attorneys should be better educated in forensics and have the knowledge to ask the appropriate questions. If attorneys want/need additional education then they should arrange for a pre-court interview. It is up to attorneys to prepare themselves for a trial, this should not be the concern of an impartial witness.

A government expert should arrive in court prepared to answer questions asked of them, not the questions the expert thinks should be asked. The case at hand is between the prosecution and the defense attorneys. It is up to the opposing counsel to ensure the courts hear the relevant information.

- 2) Does the government expert refer to the defendant as a suspect, instead of a subject?

**Discussion Point:** If an expert is truly impartial, the term 'subject' should be the preferred term to use. Many government experts may use the word 'suspect' out of habit rather than having a preconceived notion of guilt. Experts should be aware that their wording may make them sound less impartial and they should attempt to use more neutral language.

3) Has the government analyst ever questioned why their involvement in a case is available to both the prosecution and the defense, while a defense expert's involvement may be sealed by the courts?

**Discussion Point:** The efforts of a government expert are for the courts. This includes both the prosecution and the defense. Conversely, the work of a defense expert is strictly for use by the defense team. The burden of proof is on the prosecution and this is why prosecutors are not permitted to use information from the defense to uphold their case. Forensic testimony is requested more by the prosecution since they are supplying the burden of proof but it is important for everyone to remember that the role of the government witness is one of neutrality and not an advocate for the prosecution.

4) If a defense attorney asks for copies of case materials, including case notes, is the defense attorney required to get a subpoena? Would the same requirement apply if the prosecution asked for the same materials?

**Discussion Point:** Government forensic endeavors should be available to both the prosecution and the defense. Many forensic units work within the law enforcement realm and the defense has not been afforded the privilege of having access to information they are entitled to. This should be a disclosure issue addressed by an agency's legal unit and the courts. Impartial forensic units should support the idea of open information to both sides.

5) Some people have suggested that government analysts may be biased towards convictions and therefore should not be supplied with suspect information?

**Discussion Point:** Knowing certain information could have unintentional effects on an analyst's conclusion. Not supplying suspect names could help diminish bias but it also increases the amount of work needing to be performed by the analyst. Not supplying suspect names is an extremely inefficient solution to this problem. Experts should have training and awareness of biasing effects to understand the importance of trying to falsify a conclusion instead of being tempted to confirm a preconceived conclusion. This is an essential technique in maintaining impartiality to reduce the effects of biasing information.

6) Is the evidence examined fully or only enough to support the prosecutions supposition?

**Discussion Point:** Due to staffing limitations and time constraints, it may be necessary for a forensic unit to prioritize the work they complete and only perform tasks asked of them as opposed to completing a full examination. This should be acceptable if forensic units are prepared to complete requests from defense attorneys if asked. Forensic units may claim that they would be willing to complete defense requests but many defense attorneys have had problems finding labs willing to fulfill requests.

Impartiality is a scientific requirement that diminishes biases and improves conclusions. Perhaps it's a good time for everyone to reassess their own impartiality and review their role as a government forensic expert.