Law 101: Legal Guide for the Forensic Expert

by Doris Wells

A new course helps forensic specialists prepare for testifying in court.

In 2009, the U.S. Supreme Court ruled in *Melendez-Diaz v. Massachusetts* that defendants have a right to cross-examine forensic laboratory analysts in criminal cases.[1] Before *Melendez-Diaz,* it was common for analysts to submit reports of forensic findings without appearing in court. The *Melendez-Diaz* decision, however, determined that a laboratory report could not be admitted into evidence in place of live testimony. The Court ruled that under the Confrontation Clause of the Sixth Amendment, forensic scientists who perform laboratory testing and analysis for the prosecution and submit a report must be made available for testimony in court.[2]

Melendez-Diaz has far-reaching implications for the forensic and legal communities, but one of its practical outcomes is that forensic experts who conduct testing and analysis for criminal cases must be prepared to testify in court on the results of the testing.

The prospect of giving expert testimony can be intimidating, and preparation is critical. A new self-paced, online training course from NIJ, "Law 101: Legal Guide for the Forensic Expert," is intended to help specialists prepare to give testimony in court. Although designed for forensic experts, it can be helpful to any witness who has limited experience testifying in court. It is particularly useful for specialists who have little knowledge of the criminal justice process.

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In the first three months after it was released, approximately 500 people took the training, putting it on track to become one of NIJ's most popular online courses.

The content is divided into modules that can be used as a broad overview of the judicial process, as individual chapters on specific aspects of analyses and testimony, or as a primer or refresher on a particular topic.

The Role of a Forensic Expert

Forensic experts can be employed by a variety of entities, such as federal, state or local laboratories or academic institutions. They may be called on to be expert witnesses or hired as consultants to contribute specialized knowledge and advice on scientific or technical issues. Forensic experts may be subpoenaed or appointed by the court to assist the judge or jury in a criminal or civil case, to help an indigent criminal defendant, or to provide a third opinion on information and evidence previously reviewed by the prosecution and defense experts.

Regardless of how or why expert witnesses are called to testify, they must be prepared. They must test evidence or gather technical information related to the case. When testing evidence, they must follow standard lab protocols and procedures. They must proceed step-by-step, in an orderly and

logical way, to obtain the test results, facts and information on which conclusions are based.

After gathering information, expert witnesses must develop that information into effective reports that are written in plain English, reflect use of the scientific method and include valid documentation. Expert witnesses and the attorneys or courts who request them must work together to stay focused on the most important issues in the case and to help each other understand technical and legal terms.

Being prepared and organized helps expert witnesses add a sense of professionalism to their testimony. It also helps during the crucial — and sometimes laborious — pretrial discovery process undertaken by opposing attorneys to learn the underlying facts surrounding a matter in dispute. Discovery involves providing requested information to members of the opposing side that may help them prove their case. It is structured and driven by deadlines imposed by the court or by procedural rules.

Tips for Testifying in Court

Expert witnesses must convince the judge or jury that their testimony is sound and truthful. They must be highly knowledgeable, organized, alert, unflappable and ethical:

- **Knowledgeable** — Show that you are up to date, have command of the subject matter in your field, and are knowledgeable about the Federal Rules of Evidence and any state or jurisdictional laws relevant to the case. Know how to use such things as demonstrative evidence (an item not from the crime scene that is used to illustrate a point).
- **Organized** — Be able to easily reference and locate key pieces of evidence. Reports should always be updated to include results of retesting, further testing of previous evidence or testing of new evidence.
- **Alert** — Answer questions promptly and intelligently. How you respond could affect your credibility. Recognize the unauthorized appearance of evidence denied through motion in limine (a pretrial motion that bans evidence from trial for various prejudicial, irrelevancy or constitutional reasons).
- **Unflappable** — Do not appear combative or annoyed during questioning, especially during cross-examination (questioning by the opposing attorney).
- **Ethical** — Know the ethical standards of conduct. Do not be persuaded into presenting false testimony. Display objectivity, not advocacy.

Testifying as an expert witness can be daunting, but the legal roadmap of procedures and advice offered by the "Law 101" training can be an invaluable tool.

Modules in "Law 101: Legal Guide for the Forensic Expert"

1. Sources of Scientific Evidence
2. Report Writing and Supporting Documentation
3. Importance of Case Preparation
4. Subpoenas vs. Promises to Appear
5. Affidavits
6. Being a Court-appointed Expert
7. Discovery
8. General Testifying Tips
9. Depositions
10. Pretrial
11. Trial
12. Post-trial, Presentencing
13. Ethics for Experts

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Notes

1. 129 S. Ct. 2427 (2009), available at http://www.supremecourt.gov/opinions/08pdf/07-591.pdf. For additional information on the case, including amicus briefs and analysis of the opinion, see http://www.scotusblog.com/case-files/cases/melendez-diaz-v-massachusetts.
2. The issue of whether the accused has the right to confront the particular analyst who did the laboratory testing (as opposed to an analyst who testifies as an expert witness regarding results obtained by another analyst) was argued before the Supreme Court in *Williams v. Illinois* on December 6, 2011.

For more information:

- To take the free online course "Law 101: Legal Guide for the Forensic Expert," visit http://www.dna.gov/training/law101.