



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
U.S. Department of Commerce

Abstract

Proposed Topic

Notice and Demand Rules

Sponsoring Subcommittee

Reporting and Testimony Subcommittee

Type of Work Product Proposed

Views Document

Statement of the Issue

As a result of U.S. Supreme Court decisions examining the right of confrontation many laboratory examiners are required to attend trials even though the results of their examinations are not challenged by the defense.

Background

The U.S. Supreme Court has decided a number of cases involving the relationship of expert evidence—testimony and laboratory reports—and the Sixth Amendment right of confrontation. In *Melendez-Diaz v. Massachusetts*, the Court ruled that a laboratory report is not admissible unless the person making the report is subject to cross-examination. The majority opinion in *Melendez -Diaz* endorsed the use of notice and demand statutes and rules.

To avoid having examiners attend trials when their findings are not contested, some jurisdictions have adopted notice-and-demand rules. These procedures permit the admission of a laboratory report if (1) the defense is notified before trial that the prosecution intends to introduce the report at trial and (2) the defense fails to demand the presence of the analyst as a witness. In other words, failure to demand the analyst's presence constitutes a waiver of the right of confrontation. Of course, the report must accompany the notification.

The “simplest” notice-and-demand statutes do not place any additional burden on the defense—i.e., simply notifying the prosecution that the defense “demands” the examiner's presence suffices. The Commission should encourage the adoption of this type of notice-and-demand statute.