



## F13 Transparency to the Defense Is Essential to Truly Pursue “Justice Through Truth In Evidence”: A Defense Perspective on Discovery Reform in New York and a Possible National Standard

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**Learning Overview:** The goal of this presentation is to offer a defense perspective on why robust discovery laws that mandate specific laboratory disclosures could benefit all parties and the criminal justice system as a whole. After attending this presentation, attendees will gain some insight into defense priorities and how laboratory transparency is essential to the pursuit of “justice through truth in evidence.” In addition, attendees will be educated on the history, challenges, and lessons learned from the extensive discovery reform that took effect in New York in 2020. Finally, an additional goal of this presentation is to offer proposals for how the system may increase efficiency by moving from resistance thinking to acceptance and transparency in discovery.

**Impact on the Forensic Science Community:** This presentation will impact the forensic science community by providing all attendees—whether attorney, laboratory, or law enforcement—a greater understanding of how cooperation and full transparency could benefit all relevant stakeholders. This presentation will attempt to close the awareness gap that often divides parties over who should get what, when, and why. Finally, this presentation will propose new ways to streamline discovery from a defense perspective to ensure robust disclosures, building toward a new understanding between players often adversarial to one another.

**Hypothesis:** There can be no question that in the pursuit of “justice through truth in evidence,” a full commitment to providing comprehensive discovery to the defense is essential.<sup>1-3</sup> For the defense, this includes what may be considered standard or traditional DNA discovery items, like lab reports and basic data. But it also includes other less traditional items necessary to understanding that discovery. Where resources are limited and time is always of the essence, it may be tempting for a laboratory to prioritize efficiency and economy. However, justice is only truly served when full transparency and disclosure are a top priority.

Discovery regulations and practice vary across the country.<sup>4</sup> From a defense perspective, without the full force of clear statutory laws to mandate specific discovery in an adversarial system, the defense will continue to confront systemic resistance to efforts to obtain all necessary discovery. Without clear statutory guidance, the defense will often be called upon to justify each individual item of discovery requested. These piecemeal battles can often hamstring counsel, court, and the lab in inefficient and counterproductive ways. As an alternative, this presentation proposes new ways of thinking about DNA discovery to ensure justice is achieved.

As an example and cautionary tale, this presentation will examine the history and recent discovery reform in New York state.<sup>5</sup> For many years, the defense bar was forced to practice largely in the dark, under narrow discovery rules that came to be known as the “blindfold laws.”<sup>6</sup> For DNA discovery in New York City, the defense fought repeatedly over the relevance and necessity of various material from the Office of the Chief Medical Examiner (OCME), creating lengthy and contentious delays in court proceedings. Prosecutors routinely opposed providing these materials, arguing that providing various materials were burdensome, excessively time consuming, even warning of possible defense manipulation of data.<sup>7</sup> Some progress was made, but it was unnecessarily slow and difficult, with many judges denying access for varying reasons.<sup>8</sup> Once the reform took effect, discovery obligations changed drastically overnight. This presentation will specifically address the myriad ways these statutory changes have affected discovery practice in New York City, examine the history of this change, and discuss the challenges and victories that have come along with it.

### Reference(s):

1. *Brady v. Maryland*, 373 U.S. 83 (1963).
2. *Kyles v. Whitley*, 514 U.S. 419, 421-422 (1995).
3. Janet Moore. *Democracy and Criminal Discovery Reform After Connick and Garcetti*. 77 Brook. L. Rev. 1329 (2012).
4. *Expanded Discovery in Criminal Cases: A Policy Review*. Published by The Justice Project, avail. at [https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death\\_penalty\\_reform/expanded20discovery20policy20brief.pdf](https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death_penalty_reform/expanded20discovery20policy20brief.pdf).
5. CPL §245.20.
6. Ashley Southall and Jan Ransom. Once as Pro-Prosecution as Any Red State, New York Makes a Big Shift on Trials. *New York Times*, May 2, 2019.
7. *People v. Stover*, Ind. No. 1512/2015 (filings and decision, March 16, 2016 (Stolz, J.)).
8. *People v. Mohammed*, 52 Misc.3d 242, May 6, 2016 (Sup. Ct., Bx Cty) (Barrett, J.).

### Transparency, Criminal Defense, DNA Discovery Standards