# Wildlife DNA Forensics Course

## Lecture E4

# **Prosecution Issues**

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No: E4	Lecturer: R. Ogden	Date: 05/08/10
Introduction		
The use of forensic evidence in a prosecution needs careful consideration. The forensic analysis affects what your can prove about a crime. The evidence available should direct the questioning of suspects. The use of forensic evidence in court is often challenged. This lecture will examine how evidence is treated in court and introduce ways to improve your chances of a successful prosecution.		
Lecture Aims		
• Too • Too • Too • Too	consider the best questions to ask Inderstand how the court will ass hink about how the defence will to Inticipate problems with forensic	when using forensics ess forensic evidence y to attack forensic evidence evidence and plan ahead
Lecture Summary		
<ul> <li>The questions an investigation should match the available forensic tests</li> <li>Exclusion testing is powerful, but requires statements from the suspect</li> <li>Expect your evidence to be questioned by the court and by the defence</li> <li>Challenge the forensic evidence yourself, before the courtroom</li> <li>The chain of custody is the single most important issue</li> <li>Anticipate lines of defence and try to counter these before trial</li> </ul>		
Further Reading		
None		



#### Aims

- To consider the best questions to ask when using forensics
- · To understand how the court will assess forensic evidence
- · To think about how the defence will try to attack forensic evidence
- · To anticipate problems with forensic evidence and plan ahead

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#### Asking the right question

In forensics, it is necessary to reduce the investigation to a set of questions that can be answered.

E.g. The man with a young cockatoo:

Stopped on the edge of a national park with bird

- Claims it is captive-bred and he is releasing it
- Suspect it came from recently disturbed nestConfiscate the animal and take a DNA sample
- What do you want to prove?



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#### Exclusion vs Identification

#### Species issues

The laboratory may not be able to identify everything, but they probably can tell you what it isn't.

E.g. Bloodstains on a knife - you suspect came from a bear

Suspect claims it is from a chicken

Lab can confirm that it is definitely not bird blood

= demonstration that suspect is lying

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### Exclusion vs Identification

#### Captive breeding issues

It is almost impossible to prove that something is 'wild'

You can only demonstrate that it is not from certain parents.

The 'captive breeding' defence can only be disproved by testing the claimed parents and demonstrating exclusion of the offspring

Very important to insist that the suspect identifies the claimed parents

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### **Exclusion for Traceability**

#### Problem:

Identification of legal timber: match sample to specific forest?

Identification of legal timber: match sample to specific tree?

#### Solution:

Identification of illegal timber sample via exclusion from batch

### Owners were







### Asking the right question

To ask the right question:

Understand the offence being committed

Understand what the forensic analysis can and cannot prove

Make sure you:

Get a statement from the suspect identifying the evidence

Discuss with the forensic scientist what the test can and cannot show

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### Defending the Evidence

Forensic evidence can (and should) be challenged

- Challenge by the court (judges)
- Challenge by the defence
- Important not to consider weaknesses of forensic evidence as well as strengths
- Increases the chance of evidence being accepted

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### Defending the Evidence

#### Challenge by the courts

- Scientific challenge
  - Has the technique been validated?



- Does the laboratory have accreditation?Has the technique been published?
- Have the same results been obtained in other labs?
- Have the results been interpreted correctly?
- These issues can only be addressed by the forensic scientist, it is their responsibility...

... but it is your investigation!

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### Defending the Evidence

Challenge by the defence

Evidential challenge

#### Has the chain of custody been maintained?

This is the single most important issue in any case!

- Common to all cases
- Easy for the defence to understand
- Easy for the jury to understand
- Easy to get wrong
- Easy to cause doubt

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#### Defending the Evidence

Challenge by the defence

- · Chain of custody
  - Must be intact
  - Must be documented
  - Must follow seamlessly with signatures from evidence collection through to the courtroom
- · The defence does not want to discuss the forensic evidence

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### Defending the Evidence

Forensic science is not a 'golden bullet' (CSI is not real life)

- You will always need additional (non-forensic) evidence
- Anticipate lines of defence what are the likely excuses?
   Can you test for these?
  - Limit the excuses that are available
- Most legal systems require all evidence to be submitted to the defence before a trial think about the effects of this.
- If it is the first time you have used forensic evidence in an investigation, get advice from others (e.g. officers working with human forensics).

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### Using Forensic Evidence

#### Role of the Forensic Scientist

- Forensic scientists are expert witnesses
- They do not work for the prosecution
- They are working to help the *court*
- Do not encourage bias
- Forensic scientists must be independent
- Forensic scientists must be seen to be independent

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#### Using Forensic Evidence

#### What you can do to help forensic scientists

- Consider whether forensic scientists may require supervision in the lab
- Consider whether testing may need to be carried out elsewhere
- Consider whether tests should be repeated in another lab

#### Before court

- Forensic scientists will be nervous, uncertain and worried about appearing in court.
- Communicate with them, offer help / advice.
- A happy, confident forensic scientist is a better witness!

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### Summary

- The questions you ask in an investigation should match the available forensic tests
- Exclusion testing is very powerful, but requires statements from the suspect
- Expect your evidence to be questioned by the court and challenged by the defence
- Challenge the forensic evidence yourself, before the courtroom
- The chain of custody is the single most important issue
- Anticipate lines of defence and try to counter these before trial

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