

Confrontation and Multiple Analysts

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PRESENTATION OBJECTIVES

- **Examine selected Confrontation Clause precedent**
- **Discuss issues associated with involvement of more than one analyst in relevant analysis**
- **Consider possible solutions**





WANT MORE DETAIL?

- Today's presentation is based in large part on our article:
 - *Confrontation's Multi-Analyst Problem*, 9 *TEXAS A&M LAW REVIEW* 165 (2021)



CONFRONTATION CLAUSE

- “In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him[.]” (U.S. Const. amend. VI.)
- Applies to states via 14th Amendment (*Pointer v. Texas*, 380 U.S. 400 (1965))





SELECTED PRECEDENT





TESTIMONIAL STATEMENT

- ***Crawford v. Washington*, 541 U.S. 36 (2004)**
- ***Cf. Ohio v. Roberts*, 448 U.S. 56 (1980)**





PRIMARY PURPOSE

- ***Davis v. Washington*, 547 U.S. 813 (2006)**
- ***Michigan v. Bryant*, 562 U.S. 344 (2011)**





FORENSIC ANALYSIS

- ***Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009)**
- ***Bullcoming v. New Mexico*, 564 U.S. 647 (2011)**
- ***Williams v. Illinois*, 567 U.S. 50 (2012)**



FORENSIC ANALYSIS

- Cert. Denied: *Stuart v. Alabama*, 139 S. Ct. 36 (2018) (Mem) (Gorsuch J., dissenting)
- Pending Case: *Smith v. Arizona*





MULTI-ANALYST PROBLEM



THE PROBLEM

- Cert. Denied: *Chavis v. Delaware*, 141 S. Ct. 1528 (2021) (Mem) (Gorsuch J., dissenting)
- Revisit: *Williams v. Illinois*, 567 U.S. 50 (2012) (Breyer J., concurring)



JUSTICE BREYER CONCURRING IN *WILLIAMS*


“Once one abandons the traditional rule, there would seem often to be no logical stopping place between requiring the prosecution to call as a witness one of the laboratory experts who worked on the matter and requiring the prosecution to call all of the laboratory experts who did so. Experts—especially laboratory experts—regularly rely on the technical statements and results of other experts to form their own opinions. The reality of the matter is that the introduction of a laboratory report involves layer upon layer of technical statements (express or implied) made by one expert and relied upon by another. Hence my general question: How does the Confrontation Clause apply to crime laboratory reports and underlying technical statements made by laboratory technicians?”



JUSTICE BREYER CONCURRING IN *WILLIAMS*

“[A]ssume that the admissibility of the initial laboratory report into trial had been directly at issue. Who should the prosecution have had to call to testify? Only the analyst who signed the report noting the [DNA] match? What if the analyst who made the match knew nothing about either the laboratory’s underlying procedures or the specific tests run in the particular case? Should the prosecution then have had to call all potentially involved laboratory technicians to testify? Six to twelve or more technicians could have been involved. Some or all of the words spoken or written by each technician out of court might well have constituted relevant statements offered for their truth and reasonably relied on by a supervisor or analyst writing the laboratory report. Indeed, petitioner’s amici argue that the technicians at each stage of the process should be subject to cross-examination.”





SOLUTIONS?





POTENTIAL APPROACHES

- **Interim Communications Not Testimonial**
- **Hypothetical Assumption**
- **More Than Surrogate**





POTENTIAL APPROACHES

- **Segment Representative**
- **Important Analyst**
- **Actual Evidence**





QUESTIONS?



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