



E10 The Admissibility Status of Latent Print Evidence — Has the Problem Really Gone Away? And Whose Problem Is It?

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The goal of this presentation is to present a brief history of research supporting current methods used to compare latent prints, and to discuss how the legal requirements for admissibility under *Daubert* are (or are not) met by the currently existing research.

This presentation will impact the forensic community and/or humanity by provoking thought to the sufficiency of empirical data supporting *Daubert* challenges to latent print evidence. If this data is found to be insufficient, additional research solutions should be sought.

Although latent print evidence has been accepted in U.S. courts for almost one hundred years, changes in admissibility requirements for expert evidence under *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 US 579 (1993) has exposed latent print analyses, as well as several other forensic disciplines to increased scrutiny. Latent print examiners assert methodological validity based upon their long-standing courtroom acceptance and lack of contention in the scientific community at large. Although this assertion was previously sufficient to meet a *Frye* standard of general acceptance, there is disagreement over whether it satisfies the current admissibility criteria under *Daubert*. While some lower courts continue to admit latent print evidence, citing historical acceptance as *de facto* proof that the procedures used to examine latent prints are adequate, it appears likely that latent print examination and *Daubert* admissibility issues will continue to be tested in higher courts. With *Daubert* requiring an appropriately scientific foundational basis (including replicable analyses through hypothesis testing experimental design, rigorously collected empirical analyses, and sound statistical validation), the US practice of determining identity between latent and inked prints on print quality rather than a quantified number of print match points seems to open this forensic discipline to legal challenge. Under present practice, two examiners could independently call a match by looking at mostly different latent print minutiae. Though the result of such analyses may be valid and true, it may not satisfy the scientific standards. Moreover, there appear to be some limitations in the way the scientific process is followed in today's latent print examinations. For example, based on discoverable materials and the courtroom testimony of experts, most latent print examiners make few, if any, notes. Although replication is central to the scientific process, in latent print examination, similarly qualified examiners would be hard-pressed to pick up the case file of a fellow examiner and be able to reproduce, or even determine which points were identified, in the original examination.

These issues remained largely unquestioned prior to 1999 because the data *Daubert* require were never asked for in discovery. In September 1999, however, in *US v. Byron Mitchell, Criminal Action No. 96-407, US District Court for the Eastern District of Pennsylvania*, a *Daubert* hearing challenged the admissibility of latent print evidence. Although the judge ultimately denied the motion and admitted the evidence, the challenge opened the door. Numerous challenges followed, but all were quashed, until January 7, 2002 when Judge Louis Pollack ruled partially against admitting latent print evidence in *U.S. v. Llera Plaza, January 7, 2002; Cr. No. 98-362-10, 11, 12, US District Court of the Eastern District of Pennsylvania*. In reaching his decision, Judge Pollack conducted an in-depth analysis of the methods used to compare latent prints, concluding that they did not satisfy the *Daubert* criteria. A few months later, after granting the prosecution's motion to reconsider the case, Judge Pollack reversed himself, saying that he had changed his mind.

At a time when problems in crime laboratories are all too frequently headline-making news, accreditation is becoming an icon of quality. Although accreditation is still voluntary for forensic laboratories, approximately half the nation's crime labs have taken that step to enhance their credibility, respectability and commitment to professionalism. Accreditation confers these elements so successfully that three states with past problems (Oklahoma, New York and Texas) have taken remediation to a new level by actually **requiring** that their laboratories become accredited. In order to attain accreditation from the only accrediting body specific to forensic examinations, the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLDLAB), all analytical units within the applicant agency must meet or exceed the Board's standards. This condition appears to be at the root of several unusual institutional changes including the administrative removal of the latent print section from the crime laboratory's management, or the legislative exemption of latent print examination from a State's statutory mandate to seek accreditation.

Moreover, there has been vigorous opposition to providing funding to stimulate basic research to permit statistical validation of latent print identification. Some acknowledged experts in latent print examination have publicly argued that adequate research to support *Daubert* challenges already exists, is readily available, and further research would be a waste of time, effort and dollars. Similar to



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the 1990s debate about the validity of DNA statistics, the broader scientific community is unconvinced by the data seen to date, and suggests the type of data *Daubert* requires have not yet been generated. This talk focuses on the breadth and scope of this very debate using the recent history of *Daubert* hearings on latent prints to frame the question we, as forensic scientists, must be prepared to answer.

Latent Prints, *Daubert*, Research