



### E6 Fingerprint Comparison Standards and Discovery Practices for the Trial Advocate

Brian J. Walsh, BS, JD\*, Cook County Public Defender, Forensic Science Division, 2650 South California, 7th Floor, Chicago, IL 60608

The purpose of this abstract is to address issues arising from trial challenges to fingerprint identifications: whether *Daubert* reliability issues are viable in light of recent cases; how SWGFAST Guidelines address issues in comparison and identification; and what are the responsibilities of the trial advocate in discovery practices and trial preparation.

Although courts continue to accept fingerprint identifications as unassailable, there have been recent cases showing errors in fingerprint identifications. As forensic science moves into the 21st century, critical comparison to the development of standards and discovery practices in other forensic disciplines, particularly DNA and this presentation will impact the forensic community and/or humanity by acting as an effective means to preserve the integrity of the identification procedures used in the adversarial system of justice.

The purpose of this paper is to address issues arising from trial challenges to fingerprint identifications: whether *Daubert* reliability issues are viable in light of recent cases; how the Scientific Working Group on Friction Ridge Analysis, Study and Technology, (SWGFAST) Guidelines address issues in comparison and identification; and what are the responsibilities of the trial advocate in discovery practices and trial preparation.

Fingerprint identification has been in use in forensic science and accepted by the criminal courts since the early part of the 20th century. At the end of the 20th century fingerprint identification was attacked under various theories of reliability under the *Daubert* standards of admissibility (e.g., *U.S. v. Mitchell* and *U.S. v. Plaza*). Although courts continue to accept fingerprint identifications as unassailable, there have been recent cases showing errors in fingerprint identifications as forensic science moves into the 21st century.

In Boston, in 2004, Stephan Cowans was released from prison after a fingerprint used to convict him of shooting a police officer was acknowledged not to be his. Post trial analysis of DNA evidence was used to exonerate the man. Law enforcement described the misidentification as an honest mistake by the technician.

In Scotland, in 1999, a former detective, Shirley McKie, was cleared of perjury charges arising from her claims that a fingerprint at a homicide scene was not hers. Scottish law enforcement had previously identified the fingerprint as McKie's.

Also, in 2004, Brandon Mayfield was released after Spanish officials conceded that fingerprints on a bag near the March terrorist bombing site in Madrid were erroneously identified as Mayfield's. The error in identification was attributed to a substandard quality image of the latent fingerprints.

Issues in these and other cases put the forensic science and legal communities on notice to scrutinize the methods employed and bases for the conclusions made in comparisons and identifications. SWGFAST has published guidelines to develop consensus standards in the latent print community including standards for qualification, training, quality assurance, professional conduct, and conclusions. SWFAST has also identified areas for research including review of latent print training, the use of digital enhancement, and the sufficiency of exclusion, among others.

As forensic science evolves in the 21st century, fingerprint identification continues to be an important discipline even with the use of DNA analysis as the cutting edge technology in identification. Developments of legal standards in discovery and due diligence review in DNA cases will be compared to practices in fingerprints, with specific recommendations for the trial practitioner in discovery, discovery requests, case evaluation, trial preparation, and trial.

Areas the trial advocate must be prepared to address include how the evidence fits the theory of the case and the sufficiency of the physical evidence, quality and quantity of the latent print. In discovery, a full copy of the case file is necessary, including documentation of the evidence procession and collection, fingerprint evaluation, comparisons, and searches, as well as the latent prints and comparison standards. Evaluation of the case includes review of the methods used and conclusions made, interview of the analyst and possible independent review. The use of these practices act as an effective means to preserve the integrity of the identification procedures used in the adversarial system of justice.

#### Fingerprints, Discovery, Trial Preparation