



E6 Latent Print Testimony: What Lawyers Should Know to Ask and Examiners Should Know How to Answer

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After attending this presentation, attendees will: (1) gain an understanding of some of the issues challenging fingerprint science in the courtroom in the wake of the 2009 National Academy of Sciences (NAS) Report, *Strengthening Forensic Science in the United States: A Path Forward*, (2) understand what some of the tough questions are that should be asked to ensure the expert is actually knowledgeable about his or her field and is using best practices; (3) understand how to recognize answers that represent outdated thinking and overstating of conclusions; and, (4) be able to recognize the expert who is thoughtful, transparent, and reliable.

This presentation will impact the forensic science community by providing lawyers with the inside knowledge they need to ask meaningful questions of the fingerprint expert and to recognize whether or not the expert has appropriate answers. Defense lawyers should be asking hard questions to ensure that any scientific evidence presented against their client is reliable, while prosecutors should be addressing these topics during pre-trial meetings to ensure that their expert is well-prepared and appropriately representing the science.

Since the 2009 release of the NAS Report, latent fingerprint examiners have been warned by various organizations, including the International Association for Identification (IAI) and the Scientific Working Group on Friction Ridge Analysis, Study, and Technology (SWGFAST), not to use certain phrases in testimony, particularly “zero error rate,” “to the exclusion of all others,” and “100% certainty;” however, many examiners are still testifying to these very things, while many don’t see any good reason why they shouldn’t. Part of the reason this is still happening is that lawyers are not asking the right questions. There is a pervasive feeling in the latent print community that “it can’t happen to me” — many examiners feel that they will never see these challenges and that there is no reason to change from “business as usual.”

Everyone needs to step up their game. Five years after the NAS Report, latent print examiners have had ample time to think about the criticisms of the report and find more appropriate ways to express their findings in court. Lawyers have also had ample time to find the questions that will force examiners to demonstrate an understanding of their own science and an ability to articulate it transparently and without exaggeration. Fingerprint science is reliable and it is probative. It does not require embellishment, but it does require thoughtful, transparent testimony that aids the trier of fact without misleading them through grandiose and unnecessary claims.

This presentation will discuss advanced topics in latent fingerprint testimony. It will describe the reasons the above-mentioned phrases are not appropriate for use in fingerprint testimony and will demonstrate what more modest and transparent responses should look like. Concepts covered will include error rate, discriminability, specificity, uniqueness, individualization, and certainty. Attendees will learn about phrases that are commonly used, yet are not scientifically supportable and should not be permitted in expert testimony. Recent research that supports the reliability of fingerprint conclusions will be reviewed, along with its limitations.

Latent Prints, Testimony, Transparency