



## Jurisprudence - 2017

### **F25 The Academy Standards Board (ASB) for Firearms and Toolmarks: Legal Issues**

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After attending this presentation, attendees will better understand the progress of the ASB on Firearms and Toolmarks toward developing consensus on forensic standards. In particular, issues that relate to lawyers and courts will be emphasized in this presentation so the Jurisprudence Section members and others in attendance can participate in developing consensus on those legal issues.

This presentation will impact the forensic science community by providing information about the ASB's work on standards for forensics and tool marks, and feedback from the participants will impact the work of the ASB itself.

The Annual Meeting of the American Academy of Forensic Sciences (AAFS) in New Orleans, LA will include reports and information regarding the work of the ASBs. The Chair of the ASB for Firearms and Toolmarks, who is a member of that ASB representing issues of jurisprudence as an academic and practicing lawyer, will seek to update the Jurisprudence Section regarding legal issues arising in the ASB and to obtain a sense of the thinking of the Section to return to the ASB. While the Firearms and Toolmarks ASB is concerned with all aspects of the forensic disciplines involved, the Jurisprudence Section will be particularly able to help elucidate aspects related to how these disciplines interact with lawyers and the courts.

As most know, the AAFS has been authorized by American National Standards Institute (ANSI) to create consensus Standards Boards in several of the Forensic disciplines. ANSI, the leading private industry standards group in America, oversees the creation, promulgation, and use of norms and guidelines that affect commerce in this country. As acknowledged by Past President Dr. Victor Weedn, it is both an honor and an opportunity for AAFS to be involved in this process.

In the past 20 years, with increased news of wrongful convictions, there has been a national effort to create standards for the forensic science disciplines, beginning with industry groups and continuing with the Scientific Working Groups (SWGs) created by the Federal Bureau of Investigation (FBI). Following the 2009 National Academy of Sciences (NAS) Report, there was an effort to move standards creation away from the FBI and from the domination of law enforcement in general. AAFS was supportive of this and has participated with the National Institute of Standards and Technology (NIST) and the Organization of Scientific Area Committees (OSACs).

While NIST is within the Department of Commerce, it has been partnered with the Department of Justice (DOJ) in the National Commission on Forensic Science (NCFS). The NCFS, created in 2013, develops policy recommendations for the Attorney General regarding forensic science. The commission is co-chaired by Deputy Attorney General Sally Q. Yates and Under Secretary of Commerce for Standards and Technology and NIST Director Willie E. May. It has been noted that the NAS Report had recommended an independent federal agency be entrusted with this role. The reporting of the OSACs to NIST and to the NCFS for recommendation to the Attorney General has now been characterized by some as keeping forensic standards under law enforcement control.

On the other hand, the DOJ itself, independent of NIST and the OSACs, promulgated its own standards for forensic disciplines during the summer of 2016. The DOJ also has actively participated directly with AAFS through the attendance and participation of Deputy Attorney General Yates and the support of the Attorney General herself. Thus, the DOJ has demonstrated its sincerity in improving forensic standards on its own, through AAFS and in its participation with NIST in the OSAC process. Nevertheless, ANSI and the AAFS have concluded that consensus



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among all of the stakeholders, reached in a non-governmental setting, would be a valuable contribution to the overall process.

As of this writing, the Firearms and Toolmarks ASB (F&T ASB) had an organizational meeting in July 2016 and has scheduled its first full working video conference meeting in September 2016. By the time of this presentation in February 2017, the F&T ASB should have completed other video conferences and an in-person meeting at the AAFS Annual Meeting itself. Given the strength of the other members of this ASB, February 2017 should be a good time to report to the Jurisprudence Section and other interested AAFS members on the legal issues being addressed by the group. It is hoped that those in attendance at the Annual Meeting will be able to provide constructive feedback for delivery to the F&T ASB.

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**Forensics and Toolmarks, Academy Standards Board, Legal**