



Jurisprudence Section - 2016

F38 Loss of the Fingerprint Exemption: Implications of Changes in Professional Practice

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After attending this presentation, attendees will better understand the nature and implications of the fundamental changes in the latent print field that have already significantly altered the standards to which existing rules of evidence apply.

This presentation will impact the forensic science community by enabling legal and forensic science practitioners to use existing processes to implement improvements that will increase the quality of latent print evidence.

The courts and forensic science community are responding to broad changes in the forensic science profession. Acceptance of evidence and standards based on historical practice is being replaced by requirements for scientific practices and a clearer distinction between fact and interpretation. These changes are particularly significant for fingerprints.

Forensic fingerprint examination has fundamentally changed. Looking broadly at practices throughout the United States, it is clear this is a period of upheaval and adjustment. For more than a century, unlike virtually all other types of physical evidence, latent print evidence had been exempt from the requirements of universally recognized good scientific practices; specifically: (1) no well-defined procedure was required; (2) no documentation of observations was required; (3) no measurements were required; and, (4) no separation of laboratory results and interpretations was required.

For latent print evidence to meet existing rules of evidence, it must be conducted in a way that acknowledges and reduces these risks. Scientific practices are an important part of reducing and controlling risks. They also allow the detection of errors and the correction of mistakes. All scientific practices require that there is a well-defined procedure, that measurements be employed, that the results of the examination are documented, and that there is a discrete, transparent, and well-justified step from these results to their interpretation. In the legal context, exempting latent print evidence from good scientific practices meant, effectively, that rules of evidence, as applied to other forensic examinations, were not applied. Latent print work was exempt from meeting the burden of proof and exempt from meaningful confrontation of the evidence. Furthermore, decision-making, by latent print examiners, included embedded personal priorities and assumptions that encroached on the trier of fact's decision making.

The changes that have removed the fingerprint exemption will be examined. Unambiguously, good latent print examination practices have dramatically changed over the past ten years. With this change, there has been a significant alteration of the standards to which existing rules of evidence apply. At the same time, the effects of the long-tolerated fingerprint exemption are still widely seen: unacceptably risky practices, conducted and interpreted by technicians, with neither the awareness nor understanding of this risk, and operating in environments lacking the oversight, documentation, and quality management that is necessary to mitigate these risks.

There has been considerable progress moving latent print evidence toward new, more scientifically driven practices and there will be additional changes as research on such aspects as human factors, error rates, documentation, and measurements continues.¹ Change is the nature of scientific progress itself — necessarily occurring as the fingerprint exemption is set aside. How quickly the changes will be incorporated into the courts is unclear. At a minimum, there will be slow, steady, inevitable change, arising from standards and guidelines developed through the Scientific Working Group on Friction Ridge Analysis, Study and Technology (SWGFAST) and through the Organization of Scientific Area Committees (OSAC). These will be implemented in forensic operations that acknowledge and embrace the universal needs for a quality management system and for the adherence to accreditation requirements. When these operations are formally accredited, there will also be an enforcement mechanism. But how and when will such changes reach the small, local jurisdiction with a few practitioners or the large operation run for many years as an effective arm of law enforcement, administered by non-scientists, and run based on law enforcement and economic and political criteria?

For changes to extend broadly to these areas, judges must recognize that fingerprints are no longer exempt — the standards applied to all types of expert evidence also apply here — and other officers of the courts must challenge latent print examination and interpretation practices, still in widespread use, that are now: (1) recognized as scientifically deficient; and, (2) bear unnecessary and unjustifiable risk.



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Reference(s):

1. Stoney D.A. Emergence of Scientific Latent Print Practices. Proceedings of the American Academy of Forensic Sciences, 66th Annual Scientific Meeting, Seattle, WA. 2014.
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Latent Print Evidence, Procedures, Admissibility