

LANGUAGE BARRIERS

**CREATING STANDARD TERMINOLOGY TO
MITIGATE FORENSIC ERRORS IN THE COURTROOM**

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What is being communicated?

- *“Bad Science is what forensic science becomes when an attorney or prosecutor, who often display all the ethics of a full-grown hamster, get a forensic scientist to play ball, to get with their program and see their big picture.”*



Failure to communicate

- Miscommunications yield misinformation, mischaracterizations, misunderstandings and sometimes completely miss the point.
- Expectations can be unmet when either attorneys or scientists aren't listening to each other or expect an answer and get something else.

United States v. Crisp, 324 F.3d 261 (4th Cir. 2003).

An Example of Fingerprint Analysis Under *Daubert*

“Under *Daubert*, a trial judge need not expend scarce judicial resources reexamining a familiar form of expertise every time opinion evidence is offered.”

Does adversarial testing count?

- Theory: the use of scientific evidence in a criminal proceeding provides the real “test” of its reliability.
- Reality: Daubert/Frye/adversarial system don't function as a test.
 - Most cases never get there anyway

Things are rarely straight forward



Limited Information

Investigator

[REDACTED]

This office has identified the latent print images submitted on [REDACTED]. The fingerprint images have been **positively identified** as the following subject:

A little more information

Synopsis

COMPARISON OF SUBJECT(S):
1.) [REDACTED]
2.) [REDACTED]
3.) [REDACTED]
4.) [REDACTED]

VICTIM ELIMINATIONS ROLLE [REDACTED] **ITY SHERIFF'S OFFICE.**

IDENTIFICATION OF:
2. [REDACTED] **613 (AP#8)**
3. [REDACTED]

AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (A.F.I.S.):
AP#8

LATENT(S)/PHOTO(S) LIFTED BY:
[REDACTED] **SHERIFF'S OFFICE**
[REDACTED] **SHERIFF'S OFFICE**

COMPARISON TO ENVELOPE(S):
PRINT QC#1, PRINT QC #2 AND PRINT QC #3

VERIFICATION(S):
[REDACTED] **TY SHERIFF'S OFFICE**
[REDACTED] **SHERIFF'S OFFICE**

MULTIPLE IDENTIFICATIONS MADE BY DIFFERENT INDIVIDUALS, IDENTIFICATION(S) MADE BY:
[REDACTED]

Not good enough for AFIS, but good enough for individualization?

Evidence:

On 05/10/2012, the laboratory received the following evidence from the [redacted] Sheriff's Office via Lockbox.

- 005 Sealed package identified as containing wall section
- 006 Sealed package identified as containing CD-R

Results and Conclusions:

Item # 6 has been validated using the DCS-4 system. The latent print has been visually examined and was found to be of value for comparison purposes but is not AFIS quality.

The latent print ,labeled as Open Homi , has been visually compared to and individualized as the left index finger of a fingerprint card bearing the name [redacted]

Oh, really?

Technical notes and data supporting the conclusions and findings in this report are maintained within the laboratory case records.

Lost in translation...

Synopsis

COMPARISON OF SUBJECT(S):

[REDACTED] (KNOWN FINGERPRINTS/PALMS RECEIVED FROM

IDENTIFICATION OF:

[REDACTED] (KNOWN FINGERPRINTS/PALMS RECEIVED FROM

LATENT(S)/PHOTO(S) LIFTED BY:

[REDACTED] COUNTY SHERIFF'S OFFICE

COMPARISON TO ENVELOPE(S):

PRINT QC#1

VERIFICATION(S):

[REDACTED] COUNTY SHERIFF'S OFFICE

[REDACTED] COUNTY SHERIFF'S OFFICE

How it's put into a detective's report

Narrative

2011-01777

Supplement #8

Armed Robbery

On 01/18/2011 I completed a second work order (#34685) requesting that two ATM receipts recovered in [redacted] Is Liquor be processed for prints. At least one print of value was recovered from one of the ATM receipts. I subsequently submitted a work order (# 35044) to have this print compared to known prints of Patrick Vargas. I was subsequently advised by [redacted] that the print recovered from the ATM receipt matches [redacted] prints.

Where is the work?

I compared the print(s) determined to be of comparison value in this case to the available known prints of the aforementioned subject(s) yielding the following results:

<u>*Location of latent</u>	<u>*Comparison Results</u>	<u>*Subject Identified</u>
Int alarm panel cover	Right Palm	<input type="text"/>

The remaining latent prints were determined to be of no comparison value.

“Inconclusive” with explanation

Six latent fingerprints and two latent palm prints noted on Exhibits JO2 (4), JO2 (7), JO2 (11), and JO2 (17) were **not identified** with the prints of [REDACTED].

Two latent palm prints and two latent impressions (lower joint of a finger) noted on Exhibits JO2 (12), JO2 (18), and JO2 (20) were compared with the prints of [REDACTED] with **inconclusive results** due to insufficient standards.

For a conclusive examination, fully recorded inked fingerprints including the 2nd the 3rd joints of the fingers and fully rolled inked palm prints of [REDACTED] should be submitted to the Latent Print Section.

Built on different premises

- Different assumptions and frames of reference between a lawyer's world and scientific world
- Legal research and scientific application have different methods and ends in mind.
 - Truth vs. justice

Effects of Inconsistencies

- Judge, jury, attorneys develop false perceptions and assumptions about the forensic evidence
- Difficult to have another examiner come in and evaluate the finding

What is said v. what is heard



Lack of clarity

- Lack of limitation or context translates into:
 - Overstatement
 - Exaggeration
 - Misuse
- Attorneys will ask for “gap filler” testimony or fancy adjectives.

How do we fix it?



NATIONAL COMMISSION ON FORENSIC SCIENCE



Inconsistent Terminology

Type of Work Product: Views Document

Recommendation

It is the view of the National Commission on Forensic Science (NCFS) that the forensic science community should endeavor to make terminology more consistent within a particular discipline and across disciplines.

Training

- Lawyers, scientists and judges talking to each other
 - Not just when they have a case together

Questions?