

# EVIDENCE TECHNOLOGY MAGAZINE

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## Fingerprints in the courtroom

The article inside was reprinted  
from an article written by  
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# FAIR and ACCURATE

## Qualification of the standard for admissibility of photographs

Written by Sandy Weiss

*This is the first in a series of articles by Sandy Weiss that will explore different techniques that can be used to produce photographs that meet the standard for “fair and accurate” representation.*

*Look for future articles in this series in upcoming issues of **Evidence Technology Magazine**.*

**F**OR MORE THAN A CENTURY, photographic representations of visual evidence have been a mainstay in court. The question of whether a photograph is admissible has always been left to be answered by the judge. In general, the judge tends to use the credibility and competency of the witness who presents the images—plus

other important factors—as parameters for the decision. The opposing counsel has the right to challenge the accuracy of the photographs and to try to demonstrate that the images are not, in fact, as accurate as the witness remembers.

Most often, photographs are allowed into evidence regardless of image quality. It has not often been necessary

for the person who exposed or printed the images to testify, because the photographs merely provide a representation of physical evidence or a crime scene. In other words, the photographs themselves are not considered to be evidence.

At one time, all of the mediums and formats of photography—color or



*These two images both show the same artifact. There is no question that both images are fair representations of this object—but are they accurate? Determining the level of needed accuracy...*

black-and-white, reflective print or transparency, offset or letterpress, silver halide or dye-transfer—had at least one thing in common: they were originally captured on film. Most people around the world are familiar with silver-based photographic images, have a basic understanding of how they were produced, and would probably never stop to think that they might not be “accurate” representations of the subject matter.

Photography has transformed and educated civilized society in many ways. In her 1977 book, *On Photography*, Susan Sontag discussed the impact of photography on life in the 20th Century. She said, “The universal presence of the photographic image in our lives, and as something we take for granted, has made the photograph more real than what it represents and has changed irrevocably our notion of reality.” However, in the courtroom setting, photographs must provide the best possible representation of a very specific reality.

In order to promote a degree of quality and credibility in evidentiary photographs, professional organizations (such as the Evidence Photographers International Council) have written and published photographic standards. All

**There does not seem to be a standard definition or set of parameters for the term “accurate” as it relates to photography in the courtroom.**

of the standards define admissibility, essentially, as a matter of a “fair and accurate representation of the subject portrayed.”

How are photographers and the court to interpret “fair and accurate”?

*Fair* is a relative term. The judge will make the determination of what is fair, and often this call will be based on the credibility of the witness. Even poor photographic quality will not necessarily cause an image to be inadmissible if the judge believes the image is fair and relevant to the proceedings.

But there does not seem to be a standard definition or set of parameters

for the term *accurate* as it relates to photography in the courtroom.

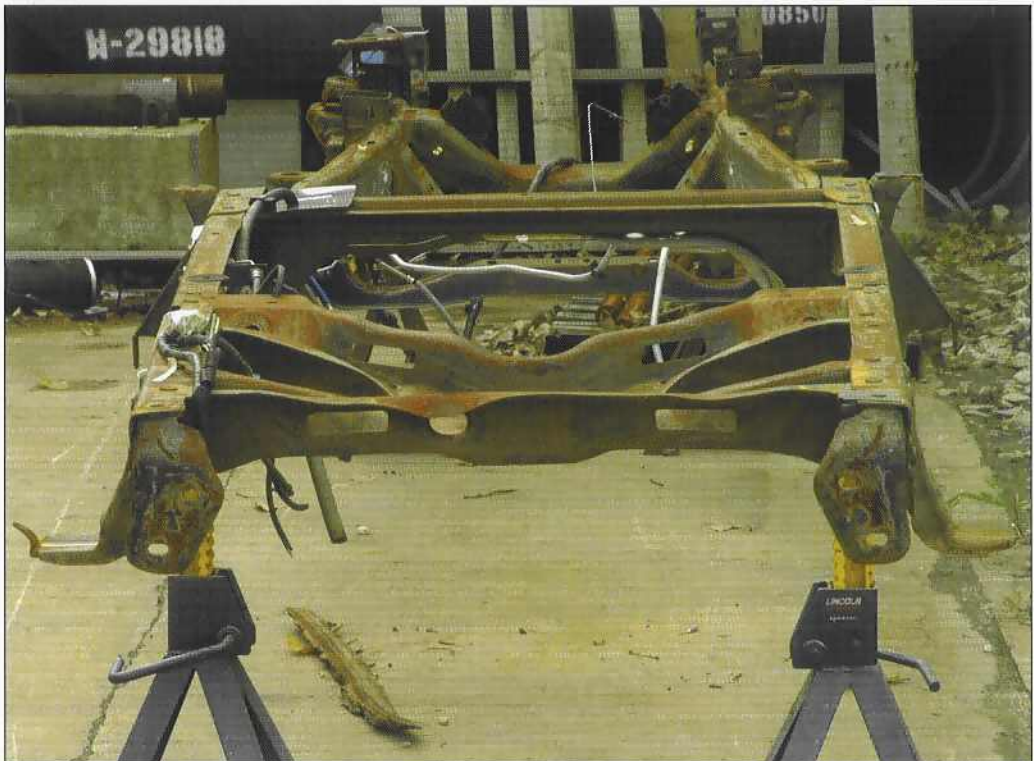
Judge John Panos, a state-court judge in DeKalb County, Georgia, stated, “I would like to see a standard definition of *accurate* made and published. This can be referred to as the standard of the industry.”

Why is this definition necessary? In order to fully understand the situation, you must first consider this example:

In a 1967 Georgia trial, photographs of an accident scene were excluded on the grounds that they did not accurately portray the scene—because they were photographed three years after the accident. Naturally, the site had changed during the intervening three years. In that case, it may seem obvious that the photos presented to the court would not be accurate.

But under a broader definition of *accurate*, one that takes into consideration some of the more subtle and more technical aspects of photography—such as perspective, angle of view, or dimensionality—it is conceivable that *any* photographic image could be excluded.

Terms such as *color management*, *dynamic range*, *resolution*, *perspective*, *angle of view*, or *dimensionality* may not even be fully understood by either



...may have something to do with the use of the photograph, but also depends on your knowledge of important technical aspects of photography such as perspective or dimensionality.

# PHOTOGRAPHY

the professional photographer or the attorney, let alone the juror. After all, how many people can properly explain the difference between vision and perception, and articulate how this correlates to the accuracy of a photographic representation? We cannot take it for granted that anyone in the courtroom understands photography on that level.


Photographers often attempt to create photographs of objects or scenes “as seen” by someone at the moment in question. Of all the purposes or goals that apply to photography, probably the most impossible purpose or goal is to create an image of anything exactly as a person would have seen it. It is, however, possible and much easier to make images and then use those images to help explain how it looked through the human eye.

So in the real world, the definition of *fair and accurate* may come down to what the image is intended to show. In most cases, in order for an image to be a *fair and accurate representation*, it should show the questioned area or object in its most natural state. For

example, if an attorney wishes to show the approximate physical or general area of involvement, then the judge likely will not be too strict in interpreting the term *fair and accurate*. In this case, a photograph of the scene would suffice for the purpose of identifying a location.

On the other hand, if the primary purpose of the image is to illustrate exact details of a scene or object—such as the measured distance between two objects or the details of a latent print—then determining whether the image is *fair and accurate* will require much closer scrutiny.

For example, if an attorney wants to show the exact distance between a crosswalk and a traffic signal, photographic experience and expertise becomes very important. If that photo submitted as evidence were taken by someone lacking that level of experience and expertise, a judge would not allow a witness to testify that, based on the photograph, the distance between the crosswalk and the traffic signal is 25 feet.

Future articles will discuss ways you can improve your photographic skills and develop the expertise needed for images that are as close as possible to *fair and accurate*. The goal is simple: If an attorney asks you, “Are these images a fair and accurate representation of the subject portrayed,” you should be able to answer, “Yes...” and go on to explain why. 

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