

Photography: 101

Fair and Accurate; Qualification of the Standard by Sandy Weiss

For over a hundred years, photographic representations of visual evidence have been a mainstay in court. Admissibility of photographs has always been up to the judge, who uses the credibility and competency of the witness presenting the images, along with other important factors, as parameters for the decision. Opposing counsel does have the right to challenge the accuracy of the photo(s) according to the competency issue and to try to show that the image(s) are not in fact as accurate as the witness remembers.

Most often, photographs are allowed into evidence irrespective of image quality as long as the images are not inflammatory. It has also not often been necessary for the person who exposed and/or printed the images to testify, unless they are an expert witness, because it is not the images themselves that are evidence.

Black & white or color, reflective print or transparency, offset or letterpress, silver halide or dye-transfer, magazine, newspaper, wallet or mural-sized, or in any other of an infinity of forms, all photographic prints used to have at least one thing in common; they were originally captured on film. Most beings around the world, are familiar with silver-based photographic images, have a basic idea how they are produced, and recognize the images for what they are with nothing more than an off-hand glance, accuracy being

unsubstantiated but understood.

Photography has transformed and educated civilized society in many ways. In her 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 court, photographs should not be any more or any less than the best possible representation of a very specific reality.

Professional organizations, in order to promote/guarantee a degree of quality and credibility in photographic images, have written and published photographic standards. All the standards define admissibility, essentially, as a matter of a "fair and accurate representation of the subject portrayed". Fair is a relative term and always decided by the judge and tied to the credibility of the witness. Even poor photographic quality will not necessarily cause an image to be inadmissible if the judge thinks the image is fair and relevant to the proceedings. But, there doesn't seem to be a standard definition and/or set of parameters for the term "accurate".

Judge John Panos, a State Court Judge in DeKalb County Georgia says, "I would like to see a standard

definition of "accurate" made and published. This can then be referred to as the standard of the industry." Why is this necessary? For example, in a 1967 Georgia trial, photographs of a site were excluded on the grounds that they did not accurately portray the site of an accident because they were photographed 3 years after the accident and the site had changed. It is conceivable that any photographic images could be excluded because they do not accurately portray the subject in question.

If asked the direct question about a photograph during testimony, "Is this image an accurate representation of the subject portrayed", a truthful and educated witness has no choice but to reply "No". Chances are, an astute attorney will not wait for the witness to reply, "No, but". Terms including color management, dynamic range, resolution, perspective, angle of view, dimensionality, etc, may not even be fully understood by the professional photographer or attorney, let alone the juror. How many people can properly define the difference between vision and perception and understand how it correlates to the accuracy of a photographic representation? We cannot take it for granted that anyone in the courtroom understands photography.

Photographers often attempt to create photographs of objects and/

(Continued on page 7)

Photography: 101 continued...

(Continued from page 6)

or scenes “as seen” by someone else at the moment in question. Of all the tasks in photography, the most impossible is to create an image of anything as someone else would have seen it. It is possible and much easier to make images to explain how something looked to you.

Image capture for court is now predominantly digital. Before a very long time, images produced by film capture will be only a memory (no pun intended). This transition has not been without resistance, but that is a separate issue. While the acceptance of silver-based images, even by relatively uneducated viewers, has been a moot point, digitally produced images are easily and often questioned as far as their authentication. Digital imaging, though in some ways more intrinsically basic than silver imaging, will need a long time, serious education, and the comfort and experience of daily use, for society to grasp a basic understanding of the digital process and workflow.

The judge says, “True and accurate generally means the overall photo showing the questioned area, article, etc should memorialize it in its most natural state. Typically, if the issue involved is very detail oriented concerning an area, article, etc, then true and accurate will require a stricter scrutiny of that photograph”.

For example, in the first instance, if all an attorney wants to show with a photograph is the approximate

physical or “general” area of involvement, then chances are the judge won't be too strict in interpreting true and accurate. Thus a photograph of the scene would suffice for the purpose of identifying the location.

In the second instance, however, if any attorney wants to show exact detail of the distance between a crosswalk and a traffic signal, photographic expertise becomes very important. In this instance, someone cannot give an off the cuff opinion as to distances. Thus, a judge would not allow an attorney who took a photograph showing the traffic signal and the crosswalk to have the witness testify that based on the photograph the distance is 25 feet.

Due to the ease of digital imaging, many people who require images for trial are making their own. There is no longer a great need for a photo-lab. People who used to make a living in the imaging business are now competing with their past clients. It is very difficult to convince people to continue to use the services of a professional when they can do things themselves and save money.

How can that be prevented? In subsequent articles, topics will be discussed in detail that will improve your photographic skills and set you above the amateurs who will not be able to compete with your expertise. Then if an attorney asks if the images you present are a fair and accurate representation of the subject portrayed, you can answer,

yes they are, and also be able to explain why.



Photo #1



Photo #2

Here are 2 images of the same artifact. They are both a fair representation but which is more accurate? Find out in the next issue, which will be on Focal Length and Perspective.

Sandy Weiss is an Illinois Licensed Private Detective #115-001807 and Coordinator of Corporate Communications at Packer Engineering, a multi-disciplinary consulting engineering company in Naperville, IL. Sandy is an EPIC Board Certified Forensic Evidence Photographer and was the 2005 recipient of the Nikon Evidence Photographer of the Year Award. He can be reached at slw@packereng.com or at 630-577-1919.

References: 1) 1977, New York: Farrar Straus & Giroux; 2) Evidence Photographers International Council, for example, in Standards for Evidence Photography, 2004; 3) Paulk v. Thomas, No. 42656, Court of Appeals of Georgia, 115 Ga. App. 436; 154 S.E. 2d 872; 1967 Ga. App. Lexis 1132, Mar 6-17, 1967.

Disclaimer—The statements made and opinions expressed in the FALI Forum do not necessarily represent the official views of the Association, unless so stated, and advertising in this publication does not imply, endorsement or approval by FALI.