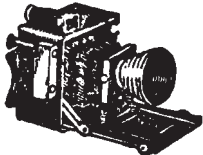




THE PRINT

The Official Publication of the Southern California Association of Fingerprint Officers
An Association for Scientific Investigation and Identification Since 1937

April/May/June 2008 Volume 24 Issue 2



OFFICERS 2008

PRESIDENT
Marvin Spreyne
Riverside District Attorney (Retired)
(760) 349-3581
spreyne@scafo.org

FIRST VICE PRESIDENT
Amy Hines
Riverside District Attorney's Office
(951) 304-5398
hines@scafo.org

SECOND VICE PRESIDENT
Mari Johnson
Los Angeles Sheriff's Dept.
(213) 989-2163
mari.johnson@scafo.org

SECRETARY
Teri Eklund
San Diego Police Dept.
(619) 525-8481
eklund@scafo.org

SERGEANT AT ARMS
Amy Adams
Los Angeles Police Dept.
(310) 676-3677
adams@scafo.org

CHAIRMAN OF THE BOARD
Craig Johnson
Los Angeles Sheriff's Dept.
(323) 260-8562
craig.johnson@scafo.org

DIRECTOR
Lisa Jackson
Los Angeles Sheriff's Dept.
(213) 989-2163
jackson@scafo.org

DIRECTOR
Mariah Dennstedt
Department of Homeland Security
(619) 498-9981
dennstedt@scafo.org

DIRECTOR
Cindee Lozano
Fullerton Police Dept.
(714) 974-3170
lozano@scafo.org

DIRECTOR
Larry Rodriguez
Santa Barbara Sheriff's Dept.
(805) 681-4126
rodriguez@scafo.org

HISTORIAN
William F. Leo
Los Angeles Sheriff's Dept.
(213) 989-2163
leo@scafo.org

TREASURER
Debbie Stivers
Glendale Police Dept.
(818) 548-3149
stivers@scafo.org

PARLIAMENTARIAN
Susan Garcia
Los Angeles Sheriff's Dept.
(213) 260-8563
garcia@scafo.org

EDITOR
Steven Tillmann
Los Angeles Sheriff's Dept.
(213) 989-2163
tillmann@scafo.org

WEBMASTER
Alan McRoberts
McRoberts Forensic Investigations
(951) 693-9082
mcroberts@scafo.org

WWW.SCAFO.ORG

“Subjective” – The Misused Word

William Leo, M.S., C.L.P.E.

In 1999, while reading the defense motion for a Daubert hearing in *U.S. v Byron Mitchell*, I repeatedly saw fingerprint identification referred to as subjective and unreliable. Over the years I have heard some latent print examiners take the position that friction ridge identification was objective, while others stated that it was subjective. Because of Mitchell, I wanted to determine what subjective and objective truly meant, so I could effectively respond to attacks while testifying.

The legal definitions of the words “subjective” and “objective” as used by lawyers during attacks on fingerprints are:

Black’s Law Dictionary, Eighth Edition:

Subjective: Based on an individual’s perceptions, feelings, or intentions, as opposed to externally verifiable phenomena.

Vs.

Objective: 1. Of, relating to, or based on externally verifiable phenomena, as opposed to an individual’s perceptions, feeling, or intentions <the objective facts>. 2. Without bias or prejudice; disinterested. <because her son was involved, she felt she could not be objective>. Cf. Subjective

The above definitions are used during arguments before courts, when advocates (including some academics) attack the reliability of fingerprint identification as a subjective process. The forensic identification community and fortunately, society has prevailed and won those attacks, despite the incorrect use of the word “subjective” by a number of prominent fingerprint examiners on the witness stand and in some contemporary literature.

The definitions of the words “subjective” and “objective” as used in the English language and as defined in various English language dictionaries are:

Webster’s New World Dictionary and Thesaurus, 2nd Ed, 2002

Dictionary – Subjective: of or resulting from the feelings of the person thinking; not objective; personal

Thesaurus – Subjective: nonobjective, introspective, arbitrary; see internal

Vs.

Dictionary – Objective: 1. Existing as an object or fact, independent of the mind; real 2. determined by the realities of the thing dealt with rather than the thoughts of the writer or speaker. 3. Without bias or prejudice.

Thesaurus – Objective 1. Existing independently of the mind, actual, external, material, scientific, sure, extrinsic, measurable, extraneous, 2. Free from personal bias, detached, impersonal, unbiased; accurate, fair

Webster’s New World Dictionary, College Edition provides the following definitions:

Subjective: 1. Affected by, or produced by the mind or a particular state of mind; of resulting from the feelings or temperament of the subject, or person thinking, rather than the attributes of the object thought of: as, a subjective judgement. 2. Determined by and emphasizing the ideas, thoughts, feelings, etc. Of the artist, writer, or speaker. 3. In grammar, nominative. 4. In philosophy, having to do with any of the elements in apprehension or apperception derived from the limitations of the mind rather than from reality independent of mind. 5. In medicine, designating or of a symptom or condition perceptible only to the patient. 6. In psychology, a) existing or originating within the observer’s mind and, hence, incapable of being checked externally or verified by other persons. b) introspective.

Vs.

Objective: 1. Of or having to do with a material object. 2. Having actual existence or reality. 3. a. Uninfluenced by emotions or personal prejudices: an objective critic. b. Based on observable phenomena; presented factually: an objective appraisal. 4. **Medicine.** Indicating a symptom or condition perceived as a sign of disease by someone other than the person affected. **OBJECTIVE n.** 1. Something that actually exists.

Cambridge’s Online Dictionary:

Subjective: Influenced by or based on personal belief or feelings, rather than based on facts.

Vs.

Objective: Not influenced by personal beliefs or feelings; based on real facts. It’s an admirably objective and impartial report. Science is usually concerned only with objective facts that can be proved or disproved. Objectively: Judges are supposed to weigh the evidence in each case logically and objectively.

After a review of dozens of English language, law, and medical dictionaries, there are four common denominators to the word “subjective”. These are:

- Personal feelings
- Free from outside influence
- Created and exists only in the mind
- Cannot be externally verified

During rulings in Daubert hearings, courts have addressed whether or not friction skin identification is an objective or subjective process. Despite the incorrect use of the word “subjective” by examiners on the witness stand, the courts have looked beyond the word and analyzed the process.

The following three court cases are specific examples of how the incorrect use of the word “subjective” caused the courts to investigate further into the reliability of friction ridge evidence:

US v. Salim, Criminal Action No. 01-CR. 02 (DAB), US District Court for the Southern District of New York (2002)

“The Plaza Court, after a detailed and in-depth analysis of the basic premises of fingerprint identification, **appeared to have been troubled by what it repeatedly referred to as a high degree of subjectivity in the evaluation stage:** “it is difficult to see how fingerprint identification--the matching of a latent print to a known fingerprint--is controlled by any clearly describable set of standards to which most examiners subscribe.” Plaza, 179F.Supp.2d at 514. Accordingly, the Plaza Court allowed the presentation of testimony as to the entirety of the fingerprint identification process, with the exception of “evaluation testimony”, i.e., that a particular latent print is in fact the print of a particular person.” See id. at 516. **This Court is unpersuaded by such reasoning, for it hearkens to an imprudently stringent understanding of scientific objectivity. Contrary to the Plaza reasoning, the mere fact that an expert utilizes his or her expertise and training to determine whether there is enough agreement of the various print ridge formations to be able to individualize and ultimately, to “match” a print, does not constitute an absence of standards to render the technique unreliable. Rather, the methods of comparison are in fact testable such that both parties can subject prints to verification.**”

United States v. Wade Havvard, 117 F.Supp.2d 848 (D.C.Ind. 2000)

“In this case, Havvard contends in essence that an opinion about whether a given latent fingerprint is from a particular finger is a subjective opinion that is not sufficiently reliable to be admitted. Although the argument may seem improbable, Havvard pointed out that the examiner designated to testify at trial about the fingerprint refused to identify a given standard in terms of the number of

“points” or features that must be identical between the latent print and the comparison print before an identification opinion can be given. **In addition, when that examiner testified at Havvard’s trial, he described his opinion as ‘subjective’.**”

“The refusal to provide a clear standard and **the expert’s description of his opinion as “subjective” at least raise a fair question about identification opinions under Daubert and Kumho Tire. See Kumho Tire, 526 U.S. at 144-45, 157-58, 119 S.Ct. 1167 (upholding exclusion of opinion about cause of tire failure based on experience and visual inspection, and absence of at least two of four supposed signs of under inflation where methodology was not shown to be reliable).**...

...the fact that some **professional judgment and experience** is required also does not mean that expert testimony is inadmissible. It is instead the hallmark of expert testimony, so long as it can otherwise meet the standards of reliability set forth in Daubert and Kumho Tire.”

In Havvard, the Court was forced to have a Daubert Hearing because of the testimony of the fingerprint examiner witness. After an analysis of the process and conclusions reached by the examiner, the Court properly replaced the word “subjective” with **“professional judgement”**. This was a much more accurate phrase to describe how a fingerprint examiner evaluates ridge detail and reaches a conclusion.

Commonwealth v. Terry L. Patterson, 445 Mass 626; 840 N.E. 2d 12; (Mass 2005)

During oral arguments before the Supreme Court of Massachusetts, the State’s Attorney stated that fingerprint identification was a “subjective analysis”. At that point one of the Justices stopped the attorney and stated **“I don’t understand what that means? — I have compared thousands of prints and I know it when I see it, but no one else does?”** The Justice was correct in that subjective means exists only in the mind of the beholder and cannot be seen by anyone else. At that point, the State’s Attorney just restated that fingerprint identification was a subjective analysis, and tried to compare it to a medical doctors’ diagnosis of a disease, which further confused the justices.

Once again, based on information provided to the State’s Attorney by latent print examiners, an incorrect explanation of what we do and how we form conclusions was provided to the Court. And once again the Court looked beyond the word, did their own objective analysis of the process and correctly ruled that latent print identification is a reliable form of evidence and is admissible.

In a well known text on friction ridge identification, the author created his own definition of the word subjective as being “influenced by a person’s knowledge, state of mind, or ability”. This definition conflicts with the legal and English language dictionary definitions as cited above. Knowledge and ability are the products of an examiner’s training, education, and experience. Training, education, and experience are also the outside influences which provide the examiner with the skills and ability to make objective decisions during examinations, which is what sets experts apart from lay witnesses.

I read a posting on a popular fingerprint blog website, where one respected examiner asked the question: How can an objective analysis, followed by an objective comparison, result in an subjective evaluation? The answer is: **it can’t**. A trained competent examiner doing an objective analysis; an objective comparison, will arrive at an objective, verifiable, and repeatable conclusion based on an objective evaluation.

When a decision is made based on how you feel about it, it is a subjective decision. When a decision is made based upon facts or information provided, it is an objective decision. Can there be subjective elements to the decision making process? Of course, however that does not make the process subjective. The forensic examiner should strive to ensure that the conclusions reached during an examination are as objective as possible.

An example of a subjective decision would be the following:

As you approach an intersection, you close your eyes and based on how you feel at that moment, you either stop at the intersection or decide to go through it.

Compare this with the objective decision:

As you approach the intersection you look at the light and see that it is red, evaluate cross traffic, see the motor officer sitting at the intersection, and are influenced by the **fact** that there is a law against running red lights, so you stop. Your decision was based not on your feelings, but on observable phenomena and outside influences. Congratulations! You

made an objective decision, possibly saved your life, and avoided a ticket.

Friction ridge identification is an objective process based on a comparison examination, using skills acquired through training and experience, and subjected to verification. The conclusions can be supported and demonstrated to other examiners, and the basis for the conclusions can be explained to courts and juries. This is why friction skin identification has withstood the test of time in the judicial systems of not only the United States, but the World.

In the case of individual fingerprint examiners – the clearer the details compared, the less subjective the evaluation; the higher the skill level, based on training and experience (both training and experience are outside influences, that can be verified and tested), the less subjective the evaluation is; and, as noted over and over again by the courts, the fact that the conclusions can and have been verified also mitigates any subjectiveness in the process. Identifications are based on the agreement of friction ridge formations and their appearance – period.

The fact that computers can be programmed to duplicate the identification process done by fingerprint examiners with amazing accuracy is just another example of just how objective the process of fingerprint identification is. In some applications, computer identification of fingerprints are done without human intervention or verification.

Few human endeavors enjoy the deserved reputation for reliability that fingerprint identification has achieved.

The more subjective a process is, the less reliable it is. The more objective a process is, the more reliable it is. The courts are concerned with reliability and alert to the word “subjective”. It has been suggested that the word “subjective” is not a “bad word” – **but it is**, when the concern is reliability, which is at the heart of a Daubert challenge.

Now it is time to take the subjective test:

The Fingerprint Examiner’s Subjective Test

1. Is your conclusion based on A or B:
 - A. An examination and comparison of the features of the prints.
 - B. Your personal perception, feeling, or intentions.
2. Can your conclusion be verified?
 - A. Yes
 - B. No

3. Can you show or demonstrate to a another examiner, what you **examined** that provided you with the information that allowed you to form a conclusion?

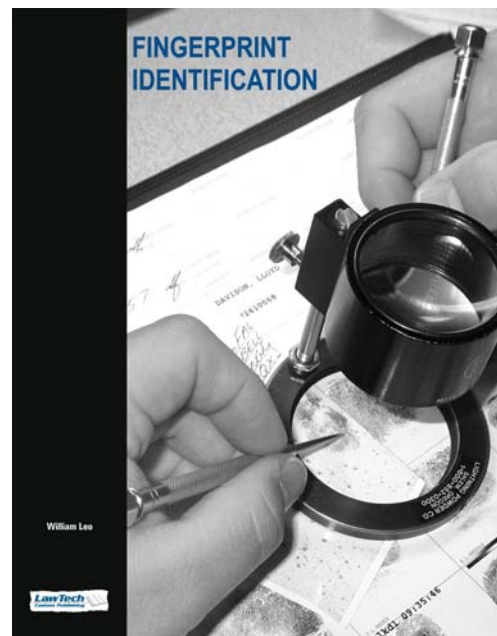
- A. Yes
- B. No

If you answered “A” to the above three questions, you have proven that the conclusion of a friction ridge comparison is an objective conclusion, not a subjective one. If you answered “B” to any or all of the above three questions, perhaps, you should re-evaluate how you are doing friction ridge examinations, or you could become a palm reader.

The courtroom is an adversarial environment where the main weapon used is words. This is also the workplace of the expert witness. The better armed the expert is with an understanding of the words being used, the better prepared the expert is to explain and defend his or her conclusions in courts of law.

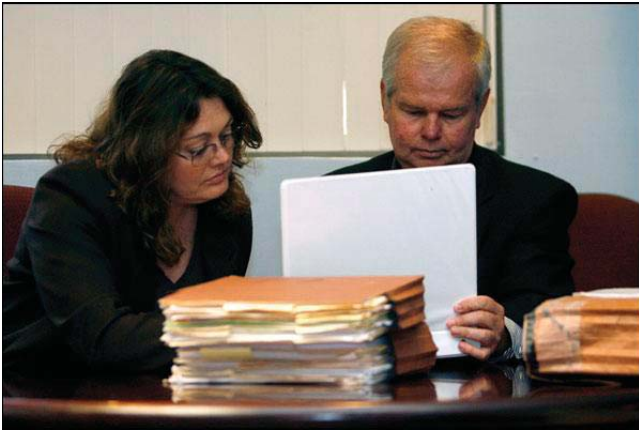
William Leo, M.S., C.L.P.E.
Training Coordinator, Latent Print Section
Scientific Services Bureau
Los Angeles Sheriff’s Department
www.FingerprintIdentification.net

This article appears in the Journal of Forensic Identification, Vol. 58, No. 1, January/February 2008, pp. 6-13.T



I would like to thank Bill Leo for this article and all of Bill’s contributions to The Print. Please take a moment and visit his website at www.fingerprintidentification.net to read more of Bill’s articles

Print match helps break cold case



Escondido police Detective Sgt. Diana Provost and Cold Case Homicide Team Inv. Chuck Gaylor are part of team that effected the arrest of a suspect in a 1977 Escondido murder.

DON BOOMER Staff Photographer

(The following article was submitted by Past President Barbie Beghtol, from an article in the North County Times Newspaper. Thanks for the submission, Barbie.)

ESCONDIDO ---- The news release, dated May 2, 1977, was to the point: “Body was in a garage. Victim had been beaten severely. Identity is still unknown at this time.”

That night, Officer Chuck Gaylor was patrolling the city’s east side, a rookie just a month out of the police academy. He didn’t respond to the scene, but was captivated.

“It was exciting and very interesting,” he said Thursday. “There were very few murders at the time, and even fewer unsolved murders.”

Little did he know that the killer would walk free and police would find no reliable leads ---- until last August, 30 years later. And little did he expect then to be on the Cold Case team that brought a suspect, 59-year-old Michael Keith Moon, into custody early in December, charged with the long-ago murder.

The victim, a 24-year-old undocumented Mexican migrant worker named Liborio Landin-Vallin, was found with no identification at a construction site in the 600 block of Falconer Drive. Police weren’t able to identify him positively until a month after the slaying.

The case went unsolved. Decades passed.

But Gaylor stayed alert to the case, checking in periodically with detectives assigned to it. He saw no reason to give up.

“After all, there’s no statute of limitations on murder,” he said.

But he found few reasons for hope, either ---- until last Aug. 21.

That day, fingerprint analysts at the state Department of Justice notified Escondido police that a partial bloody fingerprint depicted in a photograph of the crime scene matched a fingerprint belonging to Moon, a convicted killer now living in Reno, Nev., according to a court affidavit filed by Gaylor.

Gaylor is now retired and a charter member of the Escondido Police Department’s Cold Case Homicide Team, formed last May at the request of Chief Jim Maher.

He recruited a relative dream team of five retired and current law enforcement professionals. Sgt. Diana Provost supervises the team, which also includes current homicide Detective Greg Gay, retired FBI agent Norman Wight, retired San Diego Police homicide Lt. Ed Stevens and Gaylor, a retired Escondido sergeant who’s also a lawyer.

The group earlier had submitted photographs of the fingerprints and the crime scene ---- the only evidence that still exists from the initial investigation ---- to the Justice Department. Rodents had eaten or defecated on portions of the rest of it, Gaylor wrote.

But the matching fingerprint lead, while exhilarating, was just the beginning, Provost said.

“It was the lowest rung on the ladder,” she said.

The team went into high gear, haunting the evidence room “night and day,” Lt. Bob Benton said. Over the next three months, the team interviewed more than 30 people, crisscrossing the nation to meet them.

President's Message

The original case file thickened to about a foot of yellowed news clippings, interview transcripts and contact lists. The affidavit shows the careful work the team did tying Moon to the murder.

Landin-Vallin's cousin, Gabriel Landin, told police in 1977 that he and Landin-Vallin had played pool at a bar with a white man the night of April 30, 1977. The description Landin gave of the white man was similar to a description of Moon at the time, Gaylor wrote.

Another witness, Fernando Varona, told police in 1977 that a white man with a similar description to the one Landin had given police had provided Varona, another man and Landin-Vallin a ride home from the bar. Varona told police he walked a friend inside his home, but when he returned after no more than three minutes, the car with Landin-Vallin and the white man was gone, Gaylor wrote.

Moon told police in December 2007 that the aunt of his former common-law wife had owned that bar. Moon also said that in 1977, he lived on Oak Hill Drive in Escondido, about a mile away from the scene of Landin-Vallin's death, Gaylor wrote.

Gaylor's December 2007 affidavit resulted in a Superior Court judge issuing an arrest warrant for Moon, who pleaded not guilty last week to a murder charge in connection Landin-Vallin's death. Moon remains jailed with bail set at \$2 million. Moon's preliminary hearing is scheduled for March 12.

Moon was convicted of first-degree murder in an unrelated case in Nevada in 1982 and in 1991 was arrested in Illinois in connection with a stabbing at a bar.

His continued criminal behavior gave the team extra motivation to bring him to justice, fearing him capable of more violence, Gaylor said.

"We all jointly feel a sense of relief."

Contact staff writer Dan Simmons at (760) 740-5426 or dsimmons@nctimes.com.

The anticipation of another great training presentation by William 'Bill' Leo was the draw of a large attendance at our April meeting. And what an in-depth presentation it was, as usual. The preparation for the meeting was successfully completed by Director Cindee Lozano (assisted by her husband Ray) and the SCAFO board members.

The training topic was with perfect timing considering the renewed effort by those that continue to challenge the science of fingerprint identification. In my comment at the meeting concerning a particular law student's recent remarks directed to Bill Leo I stated that the student "should not show up at a gun fight with a knife" (If you do not know what you're talking about then stay on the porch).

Again the science of fingerprint identification is in the news, with such inaccuracy that we have to shudder. Comments like "fingerprint analysis is basically an art" "it's never been tested" "fingerprint evidence is a subjective, untested, unverifiable identification procedure" project that either those making these type of comments are so misinformed, or have personal agendas, or that those fingerprint examiners testifying in a court of law are not properly educating the court on the science of fingerprint identification and it's time-tested history.

During the April meeting we had a moment of silence directed to the passing of Anthony Fortier, late husband of member Cynthia Fortier. At the conclusion of the meeting member Maria Gaspar tripped and broke an ankle. The mother of member Barbara Maestas recently passed away and Steve Tillmann, our Editor and a Past President is home recuperating after a stay in a hospital. I ask the membership to keep these families in their thoughts and prayers. Congratulations are in order for newly sworn in member Nakia Berry!

Additional information on our 17th Annual Training Seminar scheduled for October 10th and 11th was announced by 2nd Vice-President and seminar coordinator Mari Johnson. The registration form can be obtained from both THE PRINT and on our website (ww.scafo.org).

Bill Leo, our Historian and a Past President, and Susan Garcia, our Parliamentarian and a Past President, are working on our June 7th meeting, of which will be in the Los Angeles area. An informational notice will be displayed on our website and is to be mailed out to the membership. We look forward to having the membership in attendance.

Fraternally,

Marvin Spreyne

MINUTES OF APRIL MEETING

DATE: April 12, 2008
LOCATION: Cask 'n Cleaver, Riverside
HOST: Cindee Lozano
SECRETARY: Teri Eklund
PROGRAM: Past Presidents' Night - Bill Leo speaker
'Recent Comments in Courts on Fingerprint Comparisons
CALL TO ORDER: General meeting, 1846 hours by President Marvin Spreyne
PLEDGE OF ALLEGIANCE Led by Past President of 1986, Steve Evans
ATTENDANCE:
PAST PRESIDENTS: Bob Goss (2001); Steve Evans (1986); Dell Freeman (1973); Bill Leo (1996); Alan McRoberts (1991); Susan Garcia (2006).

EXECUTIVE BOARD: President Marvin Spreyne, 1st Vice President Amy Hines, 2nd Vice President Mari Johnson, Treasurer Debbie Stivers, Secretary Teri Eklund, Sergeant at Arms Amy Adams, Directors Mariah Dennstedt, Cindee Lozano, Larry Rodriguez, Parliamentarian Susan Garcia, Webmaster Alan McRoberts, Historian Bill Leo.

EXECUTIVE BOARD Absent: Chairman of the Board Craig Johnson, Director Lisa Jackson, Editor Steve Tillmann

Members and guests present: 70

OLD BUSINESS:

Second Readings:

Stacy Burris, Gloria Zavala, Anna Bell, Bryanna Toussaint, Jennifer Sommerfeld
Motion to Accept: Susan Garcia
Second: Rodrigo Viesca

Swear Ins:

by 1996 Past President Bill Leo
Nakia Berry of Los Angeles Sheriff's Dept.

OTHER: A moment of silence was observed for the passing of member Cynthia Fortier's husband.

"Every man owes a part of his time and money to the business or industry in which he is engaged. No man has a moral right to withhold his support from an organization that is striving to improve conditions within his sphere."

- President Theodore Roosevelt, 1908

For subscription or membership information, or address corrections contact:

S.C.A.F.O. Teri Eklund, Treasurer
P.O. Box 21273
El Cajon, CA 92021
eklund@scafo.org
\$20.00 yearly subscription (attendance required for membership)
\$30.00 yearly for International Subscriptions

C.S.D.I.A.I. Felita D. Chapman
P.O. Box 125
Fairfield, CA 94598
(707) 208-2348
csdai-sectre@sbcglobal.net
\$25.00 yearly membership

I.A.I. Joe Polski, Chief Operations Officer
2535 Pilot Knob Road, Suite 117
Mendota Heights, MN 55120-1120
(651) 681-8566 iaisecty@theiai.org
\$60.00 yearly membership

Introduction of Past Presidents in attendance.

NEW BUSINESS:

First Readings

Rebekah Ford of Riverside County DA's Office
Recommended by: Steve Evans
Stacy Ann Sellars of Santa Ana Police Dept.
Recommended by: Heather Heider

ANNOUNCEMENTS:

Seminar Update from Mari Johnson - one more speaker to confirm and seminar preparations will be complete. Updated information will be sent out by Secretary Teri Eklund when last speaker is confirmed.

June meeting will be held in the Murrietta area. Date and time to be announced. Topic will be 'Updates in Homeland Security'

Reminder from Bob Goss - 40th CSDIAI Conference at Double Tree, Ontario, CA from May 4 - 8

ATTENDANCE DRAWING of \$25.00 won by:

Karin Owens of San Bernardino Sheriff's Department

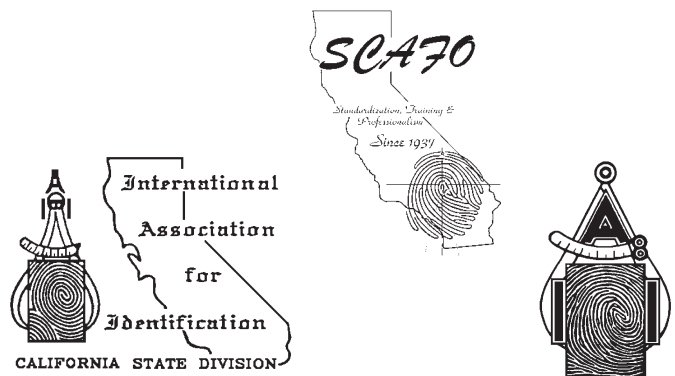
DOOR PRIZES:

Provided by Cindee Lozano and the Executive Board

MOTION TO ADJOURN:

Rodrigo Viesca
Second: Mari Johnson

MEETING ADJOURNED: 2045 hours



SCAFO ANNUAL TRAINING SEMINAR

OCTOBER 10TH AND 11TH, 2008

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ONTARIO, CALIF.**

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DOUBLETREE HOTEL ONTARIO AIRPORT
1-909-937-0900**

**REGISTRATION CHAIR: MARI JOHNSON
2ND VICE PRESIDENT
MARI.JOHNSON@SCAFO.ORG**

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SCAFO Members:
Get "yourname@scafo.org".
See instructions on the
website's email page.

-- Upcoming Events/Schools/Seminars--

June 7, 2008

S.C.A.F.O. Meeting
Anaheim, Calif.

August 17 -23, 2008

International Association for Identification
Louisville, KY

October 10 - 11, 2008

S.C.A.F.O. Annual Training Seminar
Ontario, Calif.



*Southern California Association of Fingerprint Officers
An Association for Scientific Investigation and Identification Since 1937*