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## FINGERPRINT EVIDENCE

FRANK S. BLOCK<sup>1</sup>

THE era of scientific fact-finding which originated in the late nineteenth and early twentieth centuries forced its conclusions into all fields of endeavor. The first to feel and accept this growing force was the bar. The justices and teachers of law realized that science could help them in deciding weighty judicial questions. This thought is clearly expressed in the introduction by Dean Wigmore to Albert S. Osborn's book, *Questioned Documents*.<sup>2</sup> Dean Wigmore says in part:

A century ago the science of handwriting study did not exist. A crude empiricism still prevailed. This hundred years past has seen a vast progress. All relevant branches of modern science have been brought to bear. Skilled students have focused upon this field manifold appurtenant devices and apparatus. A Science and an Art have developed. A firm place has now been made for the expert witness who is emphatically scientific, and not merely empiric.

Each age has its crimes, with the corresponding protective measures,—all alike the product of the age's conditions. In each age, crime takes advantage of conditions, and then society awakes and gradually overtakes crime by discovering new expedients.<sup>3</sup>

Perhaps the greatest aid science has made to law is in its contribution of various forms of personal and posi-

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<sup>2</sup> Second Edition, Boyd Printing Company, Albany, N. Y. 1929.

<sup>3</sup> *Questioned Documents*, vii.

tive identification, such as studies of X-rays, microscopes, microphones, means of identification of writing and fingerprints. With the help of these devices, criminal justice was enabled in overcoming one of its most serious difficulties—inability of positive identification. This article, as the title implies, deals with fingerprint evidence—what is said regarding it, however, applies equally to the other forms of personal identification.

During the nineteenth century it was discovered that the papillary ridges on the finger tips are studded with small pores that exude perspiration in a continuous flow which causes the finger to be constantly moist.<sup>4</sup> Consequently, each time a smooth surface is touched, an individual print is made.<sup>5</sup> The theory was advanced by Sir Francis Galton that by drawing a straight line from the center, or core, of the fingerprint to the divergent ridges, or delta, and counting the ridges that crossed this line, as well as dividing the various shapes of these lines into set classes, one could form a system of identification practically perfect and unforgeable. He further proved by experiment that these prints were permanent, not changing from birth to death, nor then until the period of decomposition;<sup>6</sup> also, that the chances were sixty-four billion to one against there being duplicate fingerprints.<sup>7</sup>

The origin of this type of evidence is rather uncertain. It is said that Egyptian monarchs had rings made, upon the back of which were their thumb prints. These rings were used upon all royal orders.<sup>8</sup> A second source of information claims that the first known fingerprint is preserved today in the British Museum on the Assyrian

<sup>4</sup> Lee Seymour, *Fingerprint Classification* (The Author, Los Angeles, 1913) p. 80; Francis Galton, *Finger Prints* (Macmillan and Co., New York, 1892) pp. 2, 57, 58.

<sup>5</sup> Galton, *Finger Prints*, pp. 31, 168.

<sup>6</sup> Galton, *Finger Prints*, p. 97.

<sup>7</sup> Galton, *Finger Prints*, p. 110. However, see Albert Wehde and John Nicholas Beffel, *Finger-Prints Can Be Forged* (Tremonia Publishing Co., Chicago, 1924) p. 36.

<sup>8</sup> *People v. Jennings*, 252 Ill. 547.

Clay Tablets;<sup>9</sup> while a third source claims that the Chinese used fingerprints as a means of identification as early as the seventh century A. D.<sup>10</sup>

From the date of origin to the nineteenth century, the science of fingerprinting seems either to have been lost or discarded. In 1823, Purkenje, later professor of Anatomy in the University of Breslau, submitted to that institution for the degree of Doctor of Medicine a Latin thesis dealing with the examination of the cutaneous system.<sup>11</sup> From that time on, fairly rapid strides were made in the development of this re-discovered science.

During the eighteenth century the British government was finding almost impossible the task of identifying the large and illiterate population of India. One of the worst evils was in the case of pensioners. When a pensioner died, other natives appeared to draw his stipend, and thus many were receiving an undeserved livelihood from the government. In 1858, Sir William J. Herschel hit upon the plan of identifying the natives by fingerprints. Its success was immediate and rapidly became the sole means of signature and identification used throughout India for every purpose.<sup>12</sup>

In 1892, Sir Francis Galton, whose works are still considered the greatest authority on fingerprints, published his first book, which explained the various classifications of prints and put each class into such form as to make its use practicable. A young Argentine, Vucetich, (by some credited with having preceded Galton in his experiments) worked out the present system and reduced the classifications to a workable few.<sup>13</sup>

From this time on a growing interest was shown by the police departments of the various nations. The French

<sup>9</sup> C. Ainsworth Mitchell, *Science and the Criminal* (Little Brown & Co., Boston, 1911) p. 51.

<sup>10</sup> Berthold Laufer, *History of the Finger-Print System, Annual Report of the Smithsonian Institute, 1912* (Government Printing Office, Washington, 1913) p. 648.

<sup>11</sup> C. Ainsworth Mitchell, *The Expert Witness* (D. Appleton & Co., New York, 1923) p. 38.

<sup>12</sup> William J. Herschel, *origin of Finger-Printing* (Oxford University Press, London, 1916) p. 9.

police department adopted a system of fingerprints for the detection of criminals about 1882. In 1901 the English metropolitan police, under Sir Edward R. Henry, adopted a similar system. Sir Henry made possible a central bureau and clearing house for keeping records of prints taken. Today, the central bureau, Scotland Yards, has what is considered the most complete criminal files in the world.<sup>14</sup>

The success of this new system of detection was widely heralded and the examples of its results were so outstanding that they attracted the attention of the United States government. A commission which was sent to England to investigate returned with such a favorable report that the war department established a bureau in 1891 for the detection of deserters.<sup>15</sup>

There is some controversy as to who started in this country the fingerprint record as a means of identifying criminals. Once it was introduced, however, it spread to the police departments of the various cities, until today every city of any size has an identification bureau, and the United States government maintains a central bureau at Washington. Some states have passed laws establishing state bureaus for identification records and requiring that the police take fingerprints of every person arrested and send them to the state bureau.<sup>16</sup> The laws also state that these fingerprints may be used as evidence upon trial of a case.

Further discussion of fingerprint evidence naturally divides itself into four subtopics—first, admissability; second, expert testimony; third, weight of evidence; fourth, constitutionality.

No cases, apparently, are on record in which the admissability of fingerprint evidence is questioned. This type

<sup>13</sup> *People v. Sallow*, 165 N. Y. S. 915.

<sup>14</sup> Wehde & Beffel, *Finger-Prints Can Be Forged*, p. 27; Mitchell, *Science and the Criminal*, p. 51 et seq.

<sup>15</sup> Seymour, *Fingerprint Classification*, preface.

<sup>16</sup> Compiled Laws of the State of Michigan 1915, Act 183, sec. 1820; New York Parole Act 1919, Ch. 659, sec. 78. See Cal. L. Rev., Nov., 1919, VIII, 25.

of evidence is accepted chiefly on its scientific perfection and its value to law because of its near infallibility as a means of identification. One of the British courts has gone so far as to say that the reliability of fingerprint evidence is such a soundly established fact that evidence of the individuality of fingerprints is hardly required.<sup>17</sup>

The first case on record of the admission of fingerprint evidence by the courts is the celebrated Thomas Herbert Castleton's Case of England,<sup>18</sup> decided in 1909, in which the Lord Chief Justice held that fingerprint evidence was admissible although it was the sole grounds of identification.

In the case of *Parker v. The King*,<sup>19</sup> the defendant Parker was convicted by means of fingerprints found on a bottle at the scene of the burglary. Chief Justice Griffith made the following statement in that decision:

Signatures have been accepted as evidence of identity as long as they have been used. The fact of the individuality of the corrugations of the skin on the fingers of the human hand is now so generally recognized as to require very little, if any, evidence of it, although it seems to be still the practice to offer some expert evidence on the point. A fingerprint is therefore in reality an unforgeable signature. That is now recognized in a large part of the world, and in some parts has, I think, been recognized for many centuries.

In three cases in India, the British courts again upheld the previous opinions.<sup>20</sup>

The first real recognition of fingerprints in this country was in the case of *People v. Jennings*,<sup>21</sup> which was handed down in December, 1911, and today is considered one of the most outstanding cases on admission and acceptance of fingerprint evidence. This decision is

<sup>17</sup> *Parker v. The King*, 14 Commonwealth Law Rep. (Australia) 681.

<sup>18</sup> 3 Crim. App. Rep. 74.

<sup>19</sup> 14 Commonwealth Law Rep. (Australia) 681.

<sup>20</sup> *Emperor v. Sahdio*, I. L. R. 3 Nagpur Law Rep. 1; *Emperor v. Abdul Hamid*, I. L. R. 32 Calcutta 759; *Emperor v. Hulost*, 7 Crim. Law Jour. (India) 406.

<sup>21</sup> 252 Ill. 534.

quoted in practically every case requiring a statement on fingerprint evidence, and it is often found in textbooks on the subject. In this decision Chief Justice Carter said:

When photography was first introduced it was seriously questioned whether pictures thus created could properly be introduced in evidence, but this method of proof, as well as by means of X-rays and the microscope, is now admitted without question. . . . We are disposed to hold from the evidence of the four [expert] witnesses who testified and from the writings we have referred to on this subject, that there is a scientific basis for the system of fingerprint identification and that the courts are justified in admitting this class of evidence; that this method of identification is in such general and common use that the courts cannot refuse to take judicial cognizance of it. Such evidence may or may not be of independent strength, but is admissible, the same as other proof, as tending to make out a case. If inferences as to the identity of persons based on the voice, the appearance or age are admissible, why does not this record justify the admission of this fingerprint testimony under common law rules of evidence? The general rule is that whatever tends to prove a material fact is relevant and competent.

The Illinois case was followed four years later by two cases setting forth the same contention. In one of these, *State v. Connors*,<sup>22</sup> this statement was made:

Of course the circumstances in different cases as they arise cannot be expected to be alike, but the principle of law, once settled as we conceive it to be . . . , determines the legal propriety of admitting testimony of the same general character.

In the other decision given in the New York case of *People v. Roach*,<sup>23</sup> Justice Seabury said:

In view of the progress that has been made by scientific students and those charged with the detection of crime in the police departments of the larger cities of the world, in effecting identification by means of fingerprint impressions, we can-

<sup>22</sup> 87 N. J. L. 419.

<sup>23</sup> 215 N. Y. 592.

not rule as a matter of law that such evidence is incompetent. Nor does the fact that it presents to the court novel questions preclude its admission upon common-law principles. The same thing was true of typewriting, photography, and X-ray photographs, and yet the reception of such evidence is a common occurrence in our courts.

These decisions have been followed in rapid succession by many others<sup>24</sup> in none of which is found a single doubt as to the admissibility of fingerprint evidence. In fact, the courts readily accept its help as a means of identification. Its acceptance by the courts is based on the recognition of the scientific foundation and perfection of this system of identification.

A clear impression of the qualifications of a fingerprint expert are given by Chief Justice Carter in *People v. Jennings*,<sup>25</sup> where he permitted comparisons of fingerprints to be made by witnesses, who for several years had made a study of fingerprints in connection with detective bureaus and had had actual experience in identifying persons by that method.

The qualifying of an expert in this line is no different from that in any other case requiring the testimony of one skilled in a particular line of endeavor. The usual line of questioning is as to where the witness received his training qualifying him to act as an expert, also, the number of prints he examines each day or week. Dean Wigmore makes the following suggestion on the subject:

A witness expert in the subject [of fingerprints] must state that the system of interpretation used by him in inferring identity of marks was a system accepted in the profession. There are several such systems; they differ chiefly in practical convenience only.

The witness must further be able to state that the particular marks used as a basis of inference were distinct and numerous enough to afford an inference, under the system which he

<sup>24</sup> *Young & Griffin v. State*, 68 Ala. 569; *People v. Storrs*, 207 N. Y. 247; *State v. Kuhl*, 42 Nev. 185; *Moon v. State*, 22 Ariz. 418; *McGarry v. State*, 82 Tex. Crim. Rep. 597.

<sup>25</sup> 252 Ill. 534.

employs; and also that the marks thus used for study were reproduced or transferred by some reliable process from the original object on which they were impressed.<sup>26</sup>

The thoroughness and certainty by which the expert is shown to be qualified will greatly affect the weight given to the testimony. The jurymen has read that people can be identified by fingerprints, and he knows that police agencies employ these methods to apprehend criminals. He knows nothing further, however. The attorney must show the jury just how certain this particular expert can be of his identification and why he can be so certain.

The prosecution in the case of *State v. Moon*<sup>27</sup> used an excellent method for convincing the jury of the expert's ability and the soundness of fingerprint evidence in proving identity. The fingerprint expert made two prints of one finger of each of the jurymen and had them put into a hat. Explaining to the jury as he proceeded just what he was doing, he picked the prints out one at a time and paired them properly within a few minutes. One can readily imagine what weight the jury gave to his testimony.

It is a rule of evidence that questions of admissibility are for the courts to decide, but that questions regarding the weight of testimony are for the jury to decide. The foregoing discussion has shown that fingerprint evidence and expert testimony have been held admissible by the courts. The next step is to note what the courts have to say about the weight to be given to all this testimony.

Justice Minturn, in *State v. Cerciello*,<sup>28</sup> held that the court "quite properly" left to the jury determination of the weight and importance as evidence of the testimony of an expert witness. One is impressed with the fact that in giving opinions, the courts seem to go out of their way

<sup>26</sup> John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (2d Ed.), sec. 414 (2) & (3).

<sup>27</sup> 22 Ariz. 418. This evidence was admitted over objection, and the admission was later sustained by the upper court on the ground that it merely explained the technique of a subject hard for the layman to grasp.

<sup>28</sup> 86 N. J. L. 309. See also *State v. Connors*, 87 N. J. L. 419.

to emphasize that consideration of the weight of evidence is entirely up to the jury.<sup>29</sup>

*Emperor v. Abdul Hamid*<sup>30</sup> presents an outstanding example of this matter of leaving the judgment of the weight of evidence to the jury. Here, the fingerprint impressions were badly blurred—so much so, that the expert had difficulty in tracing the markings. The justice set forth the statement that the evidence of the expert was admissible but that it need not be a proving factor. Just how much weight should be accorded such evidence was entirely in the hands of the jury.

The Fifth Amendment to the United States Constitution, which sets forth that no man shall be required to give evidence against himself, has been bodily incorporated into most of the state constitutions. It has been claimed that forcing a man to make prints of his fingers for the purpose of comparing them with the prints found at the scene of the crime, is forcing him to give testimony against himself.

It is well known that the first ten amendments to the United States Constitution are considered applicable only to the federal courts. This contention is clearly stated in *State v. Atkinson*<sup>31</sup> as follows:

In the first place, we do not understand that the limitations imposed by the fourth and fifth amendments have any application to the powers of the state government, but apply only to the powers of the federal government. As was said by Waite, C. J. in *Spies v. Illinois*, 123 U. S. at page 166: "That the first ten Articles of Amendment were not intended to limit the powers of the state governments in respect to their own people, but to operate on the National Government alone, was decided more than a half century ago, and that decision has been steadily adhered to since." Nor can it be said that the Fourteenth Amendment has had the effect of extending the operation of the Fourth and Fifth Amendments to the States.

<sup>29</sup> *People v. Roach*, 215 N. Y. 592; *Moon v. State*, 22 Ariz. 418; *State v. Kuhl*, 42 Nev. 185; *People v. Jennings*, 252 Ill. 534.

<sup>30</sup> I. L. R. 32 Calcutta 759.

<sup>31</sup> 40 S. C. 363.

Since most states have similar sections in their constitutions, this phase of the question is comparatively unimportant. The origin of this privilege of not having to testify against oneself was set forth in *Brown v. Walker*.<sup>32</sup>

The maxim, *nemo tenetur seipsum accusare*, had its origin in a protest against the inquisitorial and manifestly unjust methods of interrogating accused persons, which has long obtained in the continental system, and, until the expulsion of the Stuarts from the British throne in 1688, and the erection of additional barriers for the protection of the people against the exercise of arbitrary powers, was not uncommon even in England.

In *State v. Ah Chuey*<sup>33</sup> the following was said:

In the early history of England accused persons were compelled to testify in answer to any criminal charge brought against them. With the advancing spirit of the age it was claimed that no man ought to be compelled to accuse himself of any crime, and by degrees the rule was changed to its present state in accordance with what seemed to be the public sentiment of the country. . . . It was . . . adopted to prevent the evils which had resulted from the custom of other countries in compelling criminals to give evidence against themselves and of being "subjected to the rack or torture in order to procure a confession of guilt," [unknown in England according to Blackstone].

It is a recognized fact that in most cases a privilege may be waived as long as the accused knows what he is doing. The right to waive this privilege is upheld in *State v. Zdanowicz*,<sup>34</sup> *Angeloff v. State*,<sup>35</sup> *Cordes v. State*,<sup>36</sup> and *State v. Jones*.<sup>37</sup> These opinions show that the waiver of the privilege is recognized by the courts

<sup>32</sup> 161 U. S. 591.

<sup>33</sup> 14 Nev. 79.

<sup>34</sup> 69 N. J. L. 619.

<sup>35</sup> 91 Ohio St. 361.

<sup>36</sup> 54 Tex. Crim. App. 204.

<sup>37</sup> 153 Mo. 460.

and that the defendant may give evidence that might tend to convict him.

Forcing the accused to make fingerprints is widely believed to be unconstitutional. In principle, however, it should not be so considered, and the decisions in cases concerned with the admissibility of other evidence obtained without the accused's consent would warrant a deduction that the same reasoning would apply where the evidence is fingerprints. Dean Wigmore offers a very lucid explanation of the limitation of the privilege. He says:

The limit of the privilege is a plain one. From the general principle it results that an inspection of the bodily features by the tribunal or by witnesses cannot violate the privilege, because it does not call upon the accused as a witness, *i. e.* upon his testimonial responsibility. That he may in such cases be required sometimes to exercise muscular action—as when he is required to take off his shoes or roll up his sleeve—is immaterial, unless all bodily action were synonymous with testimonial utterance; for, as already observed, not compulsion alone is the component idea of the privilege, but testimonial compulsion. What is obtained from the accused by such action is not testimony about his body, but his body itself. Unless some attempt is made to secure a communication, written or oral, upon which reliance is to be placed as involving his consciousness of the facts and the operations of his mind in expressing it, the demand made upon him is not a testimonial one. Moreover, the main object of the privilege is to force prosecuting officers to go out and search and obtain all the extrinsic available evidence of an offense, without relying upon the accused's admissions. Now in the case of the person's body, its marks and traits, itself is the main evidence; there is ordinarily no other or better evidence available for the prosecutor. Hence, the main reason for the privilege loses its force.<sup>38</sup>

In the case of *State v. Ah Chuey*,<sup>39</sup> Justice Hawley

<sup>38</sup> John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law* (2d Ed.), sec. 2265.

<sup>39</sup> 14 Nev. 79.

gives an explanation of why fingerprints and comparable things could not come under the constitutional privilege.

Confessions of persons accused of crime, whenever obtained by the influence of hope or fear, are excluded because in considering the motives which actuate the mind of man they might be induced to make a false statement. . . .

In a case of homicide the defendant makes evidence against himself by being compelled to surrender the weapon with which the offense was committed, for it can always be used as evidence against him. A burglar is compelled to give evidence against himself when he is forced to surrender false keys and other burglarious instruments found in his possession. A counterfeiter is compelled to give evidence against himself when the dies he had manufactured and used are discovered and brought into court for inspection.

From whatever standpoint this question can be considered, the truth forces itself upon my mind that no evidence of physical facts can, upon any established principle of law, or upon any substantial reason, be held to come within the letter or spirit of the constitution. . . .

Under the law, as it existed for many years in the several states, a defendant was not allowed to testify in his own behalf. If the principle contended for by the appellant is correct, Parker ought not to have been allowed to exhibit his feet to the jury, because this was allowing him to make evidence in his own behalf. Would any court in christendom, in construing such a law, refuse to allow the defendant to establish a fact in his own favor in the manner allowed in Parker's case?

Let us try by comparison now to see what this privilege really is. It has been held generally that the defendant may be required to stand up for the purpose of identification.<sup>40</sup> In *State v. Prudhomme et al.*,<sup>41</sup> it was held to be no violation of constitutional rights to require the defendant to place his feet in such a position that they might be seen by the jury and the witnesses who might

<sup>40</sup> *State v. Reasby*, 100 Iowa 231; *People v. Goldenson*, 76 Cal. 328; *Parker v. State*, 133 Ind. 130.

<sup>41</sup> 25 La. Ann. 522.

testify as to the comparison of the defendant's shoes with the tracks found near the scene of the murder.

The courts have frequently affirmed the power to take, preserve, and make reasonable use of data for the identification of persons accused of crime. In *People v. Van Wormer*,<sup>42</sup> the court held that when the shoes of the defendants were taken and placed in the tracks found near the scene of the murder, it was permissible and not in contravention of any constitutional right. The court cited *People v. Gardner*<sup>43</sup> as its authority. This rule permitting the introduction of evidence concerning footprints which the defendant had been required to make, or which had been made from the shoes taken from him for the purpose of comparison, has been applied in various cases.<sup>44</sup> *State v. Graham*<sup>45</sup> gives the following opinion:

If an officer who arrests one charged with an offense had no right to make the prisoner show the contents of his pocket, how could the broken knife, or the fragment of paper corresponding to the wadding, have been found? If, when a prisoner is arrested for passing counterfeit money, the contents of his pockets are sacred from search, how can it ever appear whether or not he has on his person a large number of similar bills, which, if proved, is certainly evidence of the scienter? If an officer sees a pistol projecting from the pocket of a prisoner arrested for a fresh murder, may he not take out the pistol against the prisoner's consent, to see whether it appears to have been recently discharged? Suppose it be a question as to the identity of the prisoner, whether [it be] a person whom a witness says he saw commit a murder, and the prisoner appears in court with a veil or mask over his face: may not the court order its removal in order that the witness may say whether or not he was the person whom he saw commit the crime?

<sup>42</sup> 175 N. Y. 188.

<sup>43</sup> 144 N. Y. 119.

<sup>44</sup> *Thornton v. State*, 117 Wis. 338; *State v. Nordstrom*, 7 Wash. 506; *Morris v. State*, 124 Ala. 44; *State v. Fuller*, 34 Mont. 12; *Carlton v. People*, 150 Ill. 181.

<sup>45</sup> 74 N. C. 646.

A photograph which was taken against the will of the accused was allowed as evidence in the case of *Shaffer v. United States*.<sup>46</sup> Here, a witness had seen the defendant commit the crime and might have recognized him again had he not grown a beard since the time of the crime. A photograph taken at the time of arrest was introduced and identified but was objected to on the grounds of "involuntary evidence against defendant." The court said:

In taking and using the photograph there was no violation of any constitutional right. There is no pretense that there was any excessive force or illegal duress employed by the officer in taking the picture. We know that it is the daily practice of police to use photographic pictures for the discovery and identification of criminals, and without such a means many criminals would escape detection or identification.

In a case where there was evidence admitted which had been obtained by forcing the defendant to put his foot into a box of ashes and sand in order to compare the foot print with those found at the scene of the crime. the judge said:

We think that officers having a prisoner in custody have a right to acquire information about him, even by force and that, for example, when his photograph is taken or his measurements taken, it is simply the act of the officers and is not compelling him to give evidence against himself.<sup>47</sup>

This view is sustained in civil cases in which the controversies concern the right of officers to take measurements for police records.<sup>48</sup> In these civil cases we get a different type of opinion, but all hold that police have the right to use all reasonable means for the suppression of crime, and fingerprinting a man is considered reasonable as a police power.

Chief Justice Magie in *State v. Miller*<sup>49</sup> held that when a man had wounds on his body which were examined in

<sup>46</sup> 24 App. D. C. 417 (Certiorari denied 196 U. S. 639).

<sup>47</sup> *United States v. Cross*, 20 D. C. 365.

<sup>48</sup> *Downs v. Swann*, 111 Md. 53; *Jacobson v. Massachusetts*, 197 U. S. 11; *Schulman v. Whitaker*, 117 La. 703; *Crowley v. Christensen*, 137 U. S. 86.

<sup>49</sup> 71 N. J. L. 527.

prison by a doctor who testified as a witness on the trial, this was not forcing the man to give evidence against himself.<sup>50</sup> It has been held not to be giving evidence against oneself when the fingerprints were made upon a special blotter by getting the defendant to sign his name at which time he made an impression on the blotter, of his fingerprints.<sup>51</sup>

Before concluding this section, the opinion of Justice Earl in the case of *People v. Gardner*<sup>52</sup> can be used to state again the purpose of the constitutional provision:

The main purpose of the provision was to prohibit the compulsory oral examination of prisoners before trial, or upon trial, for the purpose of extorting unwilling confessions or declarations implicating them in crime. . . . A murderer may be forcibly taken before his dying victim for identification, and the dying declarations of his victim may then be proved upon his trial for his identification. A thief may be forcibly examined, and the stolen property may be taken from his person and brought into court for his identification. A prisoner's person may be examined for marks and bruises, and then they may be proved upon his trial to establish his guilt; and it would be stretching the constitutional inhibition too far to make it cover such cases, and cases like this, and the inhibition thus applied would greatly embarrass the administration of justice.

In all of these cases cited it has been held that the defendants' constitutional right was not violated. This study brings us to an idea that is expressed by Justice Holmes in *Holt v. United States*:<sup>53</sup> "Another objection is based upon an extravagant extension of the Fifth Amendment." Justice Holmes has really sounded the keynote of the whole point. The Fifth Amendment and various state paragraphs were set up originally with the purpose in mind of allowing a privilege, but this matter has been

<sup>50</sup> See also *O'Brien v. State*, 125 Ind. 38 and *State v. Tettaton*, 159 Mo. 354.

<sup>51</sup> *State v. Cerciello*, 86 N. J. L. 309.

<sup>52</sup> 144 N. Y. 119.

<sup>53</sup> 218 U. S. 245.

so extended today that the courts find themselves fighting this so called privilege and its extension rather than upholding it.

In summarizing, one concludes, from the list of cases cited, that the courts universally accept the admissability of finger print evidence and welcome the assistance experts give in deciphering the evidence, although they are careful to instruct the juries that the matter of weight to be given this evidence is entirely up to them, the jury. The final conclusion is that the acceptance and use of this type of evidence is absolutely not unconstitutional.