

Commentary on: Saks MJ, VanderHaar H. On the “general acceptance” of handwriting identification principles. J Forensic Sci 2005;50(1):119–124.

Sir:

Regarding the article authored by Saks and VanderHaar, numerous errors were detected. The focus of this letter is to discuss some of the more egregious errors, and, to offer the correct information regarding general acceptance of forensic document examination.

In his article, Professor Saks writes, “. . . . since *Kumho Tire*, it is common for federal courts to restrict or exclude handwriting expert testimony.” This is false and it is surprising that a law professor would write this factually incorrect statement. In reality, the majority of federal and state rulings found that forensic document examination meets the Daubert requirement of proven reliability. Without exception federal appellate courts have affirmed the admissibility of forensic document examination testimony. In federal district courts, the expert’s testimony was admitted without restriction following 30 Daubert hearings. Testimony has been restricted following 11 hearings, and in each instance the expert’s conclusion was not definitive. There have been a total of 4 exclusions, the last of which occurred in 2002, none of them for reasons involving general acceptance. In each decision, the judge opined that the exclusion applied only to that particular case and was not a universal declaration of exclusion of forensic document examination (1). It is interesting to note that the arguments offered by Professor Saks and his fellow critic were rejected by 28 courts following the Daubert challenges in which they were involved. Professor Saks (2) and the second critic (3) have both been excluded from testifying before the jury. The judges concluded each time that neither critic was qualified to testify as an expert on forensic document examination.

In *Daubert*, the Supreme Court wrote that the proffered theory should meet general acceptance by the relevant community (4). The survey discussed by Professor Saks overlooks the Supreme Court’s qualifier, “relevant community.” Comparing forensic document examiners (scientists who examine handwriting to determine authorship) to members of International Graphonomics Society (IGS) (scientists who measure aspects of handwriting, but do not examine handwriting for authorship) is akin to comparing morticians to medical examiners. Both of these disciplines deal with dead bodies, but, each profession uses scientific methodology that is appropriate and relevant to the specific task at hand.

Comparing apples to oranges in any scientific endeavor will result in useless data. In an article discussing signal detection theory, Professor Saks (one of the co-authors), compared the decision making process of forensic document examiners to firearms examiners by studying the results of CTS proficiency tests (5). According to the results reviewed, firearms examiners were more efficient in their decision-making than document examiners. However, the study is limited in its conclusions because the use of the CTS proficiency test is problematic. As the advisory committee of CTS explained to Professor Saks, any information gleaned may be misleading because “participation rates and response rates are not high enough to provide data that can be relied upon to be representative (6).” In testimony, Professor Saks had to admit that comparing a forensic document examiner to a firearms examiner is indeed, comparing apples to oranges (7). If comparing examiners from the same forensic science classification, i.e., comparative sciences, is comparing apples to oranges, then it should be obvious comparing forensic

document examiners to non-forensic scientists is the equivalent of comparing apples to coconuts.

The survey bore only the name Holly VanderHaar and was originally e-mailed to examiners listed on the ASQDE website. In Professor Saks article, he alleges that a few examiners urged those who received the VanderHaar e-mail to not participate. Making this allegation without any objective evidence reflects the author’s negative bias. The claim by Ms. VanderHaar that she was a graduate student conducting a survey was accepted at face value. Thirty-nine examiners explicitly stated that they would not participate. Most of them noted the ambiguity of the questions and offered assistance to correct the wording to improve the usefulness of the data. One e-mail specifically asked Ms. VanderHaar her focus of study, the professor overseeing the project, and if she was receiving compensation. The fact that there was a problem with the wording of the questions was also stated. The e-mail encouraged Ms. VanderHaar to contact the leadership of the American Society of Questioned Document Examiners (ASQDE) and the American Board of Forensic Document Examiners (ABFDE) to explain her project and seek their endorsement to encourage participation and yield reliable data (8). All of the e-mail responses offered assistance to a graduate student who, based on the wording of the questions, lacked an obvious understanding of the forensic document discipline.

In this survey, Professor Saks wrote that drafts of the survey instrument were reviewed and critiqued by experts in handwriting. However, he fails to identify these individuals so their credentials can be established such as whether they completed a formal two-year training program, are certified by ABFDE, or, members of mainstream forensic document organizations such as ASQDE, AAFS, MAFS, MAAFS, SAFDE, and SWAFDE. Any critique should have been conducted by examiners who possess the same training requirements as those being surveyed. Professor Saks also claimed that he could not stop the survey in midstream when advised there was a problem with the wording of the questions. From the perspective of the ASQDE participants, the e-mail was the first notification of the survey. The 39 responses advising Ms. VanderHaar of the problems with the survey were individually sent and should have been regarded as red flags to the graduate student and Professor Saks. It is not uncommon for those who receive surveys to provide feedback resulting in the rewording of a question in order to elicit accurate information (9). Professor Saks and Ms. VanderHaar’s willful refusal to accept the feedback, re-evaluate their questions, and correct the problem shows utter disregard for good science.

Since 2003, Professor Saks has cited this survey as documentation supporting his opposition to the forensic document profession. In his *United States v. LeCroy* affidavit, Professor Saks used this survey as his justification that forensic document examination did not meet general acceptance. Professor Saks writes, “. . . . “*When writing in a natural way and with no attempt at disguise, no two people write sufficiently alike that one person’s writing could be mistaken for that of another;*” and asked them to indicate the degree to which the belief reflected in the statement is generally accepted among members of their particular field. Among the handwriting examiners, 25% did not believe that the belief was firmly held throughout the field (10).” The question refers to proposition 2 in the survey. 25% would be a significant and disturbing number if the participant pool were closer to 100 instead of 13. 25% of 13 participants equates to 3 or 4. Because the number of participants was not revealed in the affidavit, the use of the percentage can mislead the court by appearing to be more significant than it truly is.

Although there is no reason for a law professor to erroneously state that the majority of federal courts have excluded handwriting, Professor Saks' remaining errors may be the result of his limited understanding of the forensic document field, as well as the remoteness of those conducting the survey. In an article criticizing a survey poll conducted by one of his colleagues, Saks states that the more remote the observer, the more superficial the view (11). This current survey regarding general acceptance is an excellent example of the quality of misinformation that is disseminated by individuals who lack a clear understanding of the discipline because of their superficial review of the literature.

A cursory literature review is the foundation of Professor Saks' knowledge on forensic document examination. In his writings and testimonies, there are no indications he has conducted a thorough reading on the topic of forensic document examination because he quotes only from the older literature. The same holds true for the general acceptance survey. Total reliance on old literature, whether it is in the form of books or articles, does not reveal the discipline's historical progression or the advancements made through continuing research. How accurate would it be to assess contemporary medical science by only reading medical textbooks published in the early 1900s?

The inaccuracies of the information written in the general acceptance article may well lie in the fact that it appears Professor Saks has little experience in conducting his own empirical research. His published articles focus on criticizing the works of those who do conduct research. Judge Fabricant wrote, "... though Professor Saks has published articles in law journals, a legal treatise, and one in the *Journal of Forensic Sciences*, it did not appear he has published any empirical research of his own on any subject, or that he has published anything in the area of research design or methodology (12)." Suffice it to say, it is much easier to be the armchair quarterback than to be the one who actually calls the plays.

It truly is sad to see a member of academia publish an article that contains so many errors and inaccuracies. Forensic document examination has met general acceptance by the relevant scientific community. Conducting a survey that compares apples to coconuts is an exercise in futility. One maxim in research methodology holds true: a finding of fact is only as good as the methods used to find it (13). The scientific community demands this standard of its scientists. One would hope that academia would share the same standards.

References

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