

Commentary On: Saks MJ, VanderHaar H. On the "General Acceptance" of Handwriting Identification Principles. J Forensic Sci 2005;50(1):119–26.

Sir:

I would like to add some additional comments to those already published about this paper in the September 2005 issue of *JFS* (1,2). The previous two commentaries raised some very valid points and clarified some errors on the part of Saks and VanderHaar in their paper, but there is more that needs to be pointed out.

First, for those not already familiar with this issue, some background on Prof. Saks might be helpful. In 1989, Saks, along with co-authors D. Michael Risinger and Mark P. Denbeaux, published an article in the University of Pennsylvania Law Review entitled *Exorcism of ignorance as a proxy for rational knowledge: the lessons of handwriting identification "expertise"* (3). After citing several tests, two of which are very old (1939 and 1975), the authors concluded that "... no available evidence demonstrated the existence of handwriting identification expertise." Since this article, Saks and his co-authors have built a cottage industry devoted to attacking forensic document examiners (FDEs) and their profession whenever they have the opportunity.

Although riddled with inaccuracies (4–6), the "Exorcism" article did have the very beneficial effect of stimulating more research in the field of forensic document examination. Since that 1989 article, there has been some extensive testing done by several researchers to investigate the claimed abilities of FDEs (7–14). These research projects have determined that the basic tenets of handwriting identification that were tested have been found to be valid, that properly trained forensic document examiners can identify handwriting, and that we are better at it than lay people. All of these findings are contrary to the assertions of Saks, Denbeaux, and Risinger.

In their article, Saks and VanderHaar make the claim that "At present, the most supportive ground for admission of handwriting identification expert opinion testimony would seem to be its 'general acceptance within the particular field.'" To make such a claim would be to ignore all of the facts that are available. Under *Daubert*, four factors are mentioned that may be considered for admitting expert testimony. Later decisions have said that it may not be necessary to consider all of these factors, and there may be other factors that should be considered in a particular situation. But let's look at these four particular factors and see how the forensic document examination field stacks up.

1. *Whether the theory or technique can and has been tested:* a review of the published literature in this field will convince any reasonable reader that this factor has, indeed, been satisfied by the profession.
2. *Whether the theory or technique has been subjected to peer review and publication:* of the references listed (7–14), all but one has been published in a peer-reviewed journal.
3. *The known or potential rate of error and whether there are standards controlling the technique's operation:* a number of Dr. Kam's studies have produced clearly defined error rates for the profession in the tested areas. Further, the American Society for Testing and Materials has published a number of standards for the profession in Volume 14.02 of its Annual Book of ASTM Standards.
4. *Whether the theory or technique has been generally accepted by the scientific community:* contrary to any claims by Saks

and VanderHaar, this factor was clearly met many decades ago.

Thus, even if all four factors mentioned in *Daubert* are considered, the forensic document examination field has certainly met all these requirements for admission. It is difficult to believe that someone as well-read as Saks claims to be would not be aware of all of this information. If, as he should be, he is aware of this material, it is disingenuous for him to state that "... the most supportive ground for admission of handwriting identification expert opinion testimony would seem to be its 'general acceptance within the particular field.'"

One of the foundational considerations of the Saks/VanderHaar study was the homogeneity of the group of forensic document examiners. Their statement was that, concerning their 10 propositions, they wanted to know "... what the degree of consensus is within a homogeneous group of forensic document examiners." Later in their article, they state that "... an elementary principle of sampling is that the more homogenous the population being sampled, the smaller the sample needs to be in order to be representative." Further, "... the use of a single homogeneous organization of this type makes it much less likely that representativeness is a problem." However, in response to the commentary by Dan C. Purdy (1), Saks and VanderHaar admit that "The result is that our sampling frame of forensic document examiners, and presumably our sample, is less homogeneous than previously thought." Obviously, there is a very large crack in the basic foundation on which their results rest.

Saks and VanderHaar claim that "Drafts of the survey instrument were reviewed and critiqued by experts in handwriting ..." None of these reviewers were named, but considering Prof. Saks' oft-displayed disdain for forensic document examiners, one must assume that none of them were a part of this review panel. Looking at the wording of some of the 10 propositions, it is even more apparent that people who actually do this type of work for a living had no part in reviewing the propositions. According to Kelly and Carney (2), 39 individual responses were received by Saks and VanderHaar pointing out problems with their survey. In their paper, Saks and VanderHaar state that "... those entreaties were refused ..." It is interesting to observe that the two authors consider 13 responses to be significant, but 39 responses are not. This attitude reeks with a level of bias that should never be a part of any legitimate research.

As many of these 39 responders informed Saks and VanderHaar, some of the wording of the propositions was very poor. For instance, Proposition 3 refers to the "... atomized elements of the writing." I do not recall ever having seen that term used in any literature from forensic document examiners, and it most certainly does not appear on any of the pages referenced for this proposition from A. S. Osborn's book (15). It is assuredly not a common term used routinely by forensic document examiners.

Proposition 10 is a gross distortion of what Osborn says in his book. I will leave it to readers to read or re-read the page referenced for that question, page 106, and decide if Proposition 10 accurately reflects what is stated in the book.

In light of the facts, the only logical conclusion that can be drawn is that Saks and VanderHaar designed a flawed survey, blamed forensic document examiners when they refused to be a part of the flawed survey, and then drew conclusions that have no firm foundation.

References

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