

Commentary on: Page M, Taylor J, Blenkin M. Forensic identification science evidence since *Daubert*: Part I—a quantitative analysis of the exclusion of forensic identification science evidence. *J Forensic Sci* 2011;56(5):1180–4.

Commentary on: Page M, Taylor J, Blenkin M. Forensic identification science evidence since *Daubert*: Part II—judicial reasoning in decisions to exclude forensic identification evidence on grounds of reliability. *J Forensic Sci* 2011;56(4):913–7.

Sir,

We refer to two articles in the recent issues of the *Journal of Forensic Sciences* by Page et al. (1,2). Our response is concentrated solely on the Forensic Document Examination (FDE) aspect of the authors' research. We wish to bring to the attention of the Journal's readers and the authors of the two papers some matters for consideration.

Progress of the Profession

After the 1993 *Daubert* ruling, FDE was one of the first of the identification sciences to be subjected to the *Daubert* criteria in the case of *United States v. Starzecpyzel* (3). The first two Forensic Document Examiner (FDE) expert exclusions in *United States v. Fujii* (4) and *United States v. Saelee* (5) were the impetus for the forensic document community to reexamine the foundations of the profession, strengthen them, and inform the legal community. The *Daubert* Group, consisting of FDEs, was established and prepared the proffered expert for the next *Daubert* challenge to handwriting evidence, which was *United States v. Prime* (6). In the *Prime* case, the court admitted the FDE's testimony ruling that the all the *Daubert* criteria had been met. This outcome was momentous and lead to successful outcomes for FDEs in many other admissibility challenges. The few subsequent exclusions of qualified examiners were usually the result of little to no prior preparation by the prosecuting attorney for the *Daubert* hearing or the decision by the court to exclude the expert witness in absentia based on precedent.

The forensic document community has worked very hard to successfully meet the *Daubert* and *Kumho* requirements. Empirical research to examine and strengthen the foundations of the science is exemplified by studies that have been conducted and are ongoing by academics at Drexel University, SUNY Buffalo, and University of California, San Diego in the United States and La Trobe University in Melbourne, Australia. Three major research projects involving collaboration with academics and FDEs are currently funded by the National Institute of Justice. While there is still a great deal of work to be done, we wish to assure the Journal's readers that FDEs will continue to conduct research in conjunction with the academic community in the United States and internationally to move our science forward.

Reliability and Qualifications

Page et al. may not be aware that despite the intent of the *Daubert* trilogy to keep junk science out of the courts, the courts

continue to allow unqualified or marginally qualified "experts" to testify. This is frequently manifested as an inability of the "expert" to explain the examination methodology and bases for conclusions. Although the *Daubert* guidelines were meant to make the judge the "gatekeeper" of scientific evidence, it seems that judges are very lenient in allowing unqualified or even just marginally qualified persons to testify as experts in the area of questioned documents. The authors themselves even note on page 1 of Part I that "The courts thus still appear extremely reluctant to deny the admission of forensic science evidence testimony in both civil and criminal trials." This reluctance has allowed many unqualified or poorly qualified examiners to give expert testimony in FDE. They then prominently cite their testimony statistics as part of their credentials and describe themselves as "court-qualified," thereby giving themselves a modicum of undeserved respectability and an appearance of being qualified experts.

We strongly disagree with the final conclusion in Part II of the article which states that "none of the issues discussed in this paper can be successfully addressed by the legal community."

At least eight of the FDE exclusions listed in the *Daubert* Tracker (<http://www.dauberttracker.com>) expert witness database were based on the lack of expert qualifications. One "expert" alone is responsible for four of the exclusions, even though a court concluded as early as 1998 that he was a "charlatan." Yet, most if not all of these unqualified experts continue to testify in court. Allowing testimony from unqualified "experts" is a serious concern for the FDE community as it impacts the overall credibility of the science.

Page et al. provide a helpful list (see Table 2 of Part II) for avoiding judicial exclusion. We wish to add an equally critical recommendation that the judge evaluate the credentials of every expert witness. For the FDE, that would include Board certification through certification bodies that are accredited by the Forensic Specialties Accreditation Board (FSAB) or membership in organizations that also test applicants, such as the American Society of Questioned Document Examiners (ASQDE).

References

1. Page M, Taylor J, Blenkin M. Forensic identification science evidence since *Daubert*: Part I—a quantitative analysis of the exclusion of forensic identification science evidence. *J Forensic Sci* 2011;56(5):1180–4.
2. Page M, Taylor J, Blenkin M. Forensic identification science evidence since *Daubert*: Part II—judicial reasoning in decisions to exclude forensic identification evidence on grounds of reliability. *J Forensic Sci* 2011;56(4):913–7.
3. *United States v. Starzecpyzel*, 880 F. Supp. 1027 (S.D.N.Y. 1995).
4. *United States v. Fujii*, 152 F Supp 2d 939, 942 (ND Ill 2000).
5. *United States v. Saelee*, 162 F Supp 2d 1097 (D. Alaska 2001).
6. *United States v. Prime*, 220 F Supp 2d 1203 (W.D. Wash 2002).

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