

## Authors' Response

Sir,

We are grateful for the insight provided into how the Forensic Document Examiner community is attempting to address some of the issues associated with this form of testimony and applaud the profession for this continuing effort. We also could not agree more that there is certainly fault on the courts' behalf in allowing unqualified and "charlatan" experts to testify in this and other forensic identification evidence fields. The reluctance of judges to exclude forensic evidence of this nature has also been noted by legal academics (1,2), and it is precisely in the circumstances noted by the Mohammed and Singer—where experts may only be marginally qualified—that the requirement to scrutinize reliability of the proffered evidence becomes even more critical.

We would offer the following caution; the requirement for qualification of an expert witness as one is set at a deliberately low threshold and should rightfully include a multifaceted assessment of an expert's knowledge, skill, experience, training, and education (3). This liberal approach can make it difficult to exclude evidence of experts who are simply not Board-qualified, or members of various organizations, as suggested by Mohammed and Singer. *Kumho*'s "task at hand" requirement provides clear direction to judges to evaluate forensic testimony as applied to the circumstances of the case before them (4), and we would suggest that it is the "reliability" clause, as articulated in Rule 702, that is the mechanism

by which to exclude evidence offered by such "fringe" experts, rather than invoking issues of qualification. The latter clause of Federal Rule 702 (whereby it is deemed that the testimony must be the product of reliable principles and methods, and the witness must have applied the principles and methods reliably to the facts of the case) is a far more powerful tool for judges to wield in the war against unworthy expert's opinion and one that demands proper assessment of the evidence beyond that of simply qualifications.

## References

1. Risinger DM. Goodbye to all that, or, a fool's errand, by one of the fools: how I stopped worrying about court responses to handwriting identification (and "forensic science" in general) and learned to love misinterpretations of *Kumho Tire v. Carmichael*. *Tulsa L Rev* 2007;43:447–76.
2. Saks MJ. The legal and scientific evaluation of forensic science. *Seton Hall Law Rev* 2002;33:1167–87.
3. *Federal Rules of Evidence*. Arlington, VA: Federal Evidence Review, 2011.
4. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

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