

Review of "Handwriting Identification Evidence in the Post-Daubert World"

F.L. "Jim" Lee, Jr., M.S.

Forensic Document Examiner, Tallahassee, Florida

Moenssens, A. "Handwriting Identification Evidence in the Post-Daubert World," Vol. 66:2 UMKC L. REV. 251 (1997).

Moenssens, has over 30 years experience as a professor of law, is a trial lawyer, a Fellow of the American Academy of Forensic Sciences and is an internationally recognized consultant on forensic science issues. This experience has uniquely equipped him to conduct this discussion on the standards needed for "scientific knowledge," the reliability of the science of questioned document examination and the admission of handwriting expert testimony by the courts post-Daubert.

In this 92 page article containing 379 references, the author discusses the narrowness of the Supreme Court in defining what constitutes "scientific knowledge" in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* He suggests a set of factors by which judging the "reliability" of forensic expert testimony may be accomplished in a more "reliable" and realistic fashion, if the technique does not fit the "experimental science" model of Sir Isaac Newton.

In Part I, the author discusses the handwriting identification controversy by focusing on the handwriting specialists. The problem is not resolved by the fact that it is a judge rather than a jury which makes the decision in a *Daubert* hearing on whether handwriting expert identification is scientifically reliable and whether the a handwriting expert is permitted to testify, as questioned document examination, despite a century-and-a-half of court acceptance, is misunderstood by the bench and the bar. Lawyers and judges find it a difficult task to identify the competent handwriting examiner from the incompetent from their respective professional groups and competing claims and fail to recognize the substantial differences that exists in training and methodologies. This can lead to conclusions that blur the technical issues, thereby confusing the legal issues as well. The author maintains that while handwriting examination makes no pretense of being an exact science, part of what the practitioners do is based on measurable data, while another part of it, in particular the comparisons of handwritings, involves making judgements that are rationally based upon the extensive training and experience the experts have received. The probative value of the evalu-

ation and judgement of the handwriting examiner, which is called opinion evidence in the law, is very dependent on the type training and experience the experts have received.

In Part I, the author offers information that is useful in understanding the true "state of the art," and in making a better and more informed selection of handwriting experts. An important ancillary purpose of Part I is to provide a ready source of information that discusses the topic from the perspective of the lawyer as well as from the forensic scientist.

In Part II, the author discusses the Supreme Court's unwitting contribution to the handwriting controversy and the confusion caused by its decision in *Daubert*. Part II also discusses the *Daubert* Court's standards for judging "scientific knowledge" their perceived inadequacy and puts forth a different set of criteria that if adopted may better fulfill the "gatekeeping" functions required by the Supreme Court of trial judges, according to the author.

The author, in Part III, responds to the question of whether handwriting evidence can be properly called a "forensic science." He directly confronts the critics' comments made in recent articles published in law reviews, taking the position that "the critics' articles lack intrinsic worth, suffer from serious research deficiencies, and fail to present a credible critique of handwriting identification."

He goes on in Part III to demonstrate that handwriting identification skills have been validated through two independent research studies conducted by Professor Moshe Kam, a research scientist at Drexel University during the periods 1991-1992 and 1994-1995, respectively. He concludes in Part III that "qualified examiners are respected members of the forensic science."

The article contains an Appendix which should prove to be of assistance to trial lawyers in evaluating the credentials of persons identifying themselves as handwriting experts or questioned document examiners by providing information about the associations in which these persons claim membership or certification. The initials of the various organizations are cross referenced to the name of the organization they represent in List 1 which refers to List 2 where the attorney will find additional information about the organization provided.

The author has performed a valuable service in presenting an objective, properly researched, and well documented rebuttal to both of the *Exorcism* and *Science* and *Nonscience* articles, the authors of which "lacked the objectivity of serious researchers, and the "expertise" to evaluate competently the "proper" methodologies for questioned document examiners or any other forensic scientist." "Because of the distortions, omissions, and many other short comings, the publications can only be dismissed as briefs (poorly documented ones at that) by advocates in support of a cause," according to Professor Moenssens. This stimulating look at "Handwriting Evidence in the Post-Daubert World" is both informative and up-to-date. In my opinion, this article is not only essential reading for trial lawyers, judges and questioned document examiners but it can also serve as a valuable reference source to be used in preparation for Daubert hearings.