



Questioned Documents Section – 2006

J8 The Admission of Expert Linguistic Evidence in Cases of Disputed Authorship

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After attending this presentation, attendees will understand the position of forensic stylistics both within the field of forensic linguistics and with respect to the current criteria for admissibility of expert evidence.

This presentation will impact the forensic community and/or humanity by clarifying aspects of the current scientific and legal statutes of the analysis of style in disputed authorship cases. It is aimed at those working in the area of questioned authorship.

Thumbnail History of Admissibility Standards: FRE 702 authorizes judges to allow expert testimony under these conditions: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

The basis for evaluating the conditions of FRE 702 for the admission of expert testimony was (and still is in many States) the "general acceptance" test as prescribed by *Frye v. United States*, 293 F. 1013 (App. D.C. 1923), specifying that expert opinion based on scientific technique is admissible if the technique is generally accepted as reliable in the relevant scientific community.

The basis for meeting the conditions of FRE 702 were then expanded and changed in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 951 F.2d 1128 (1991): general acceptance was no longer a condition for scientific evidence to be admissible, and determining the reliability and relevancy of the evidence was the task of the Court. *Daubert* recommended that the trial judge flexibly apply four criteria to assess the reliability of expert testimony: 1. Can or has the theory or technique been tested? 2. Has the theory or technique been subjected to peer review and publication? 3. Is there a known or potential rate of error? 4. Are there standards controlling the technique's operation? 5. Is the theory or technique generally accepted within a relevant scientific community?

The *Daubert* criteria for meeting the reliability requirements of FRE 702 were then clarified by *Kuhmo Tire Company, Ltd., v. Carmichael*, 119 S.Ct. 1167 (1999), which held that the *Daubert* standards of admissibility applied to all expert testimony, whether scientific or technical, and that the criteria suggested in *Daubert* were factors that "may" be used by the trial judge in gate keeping role, emphasizing that the Court was not required to use each factor in making its decision.

State of the Science: How and to what extent forensic stylistics meets admissibility criteria will be discussed. Examples from a few challenging cases and from interesting data sets will be used to demonstrate strengths and limitations of the present approach.

State of the Law: The extent to which linguistic evidence has been proffered and admitted in disputed authorship cases will be presented in the following three categories:

Non-admission of expert testimony in cases of disputed authorship: Discussed will be cases which have been cited as not admitting evidence of disputed authorship: *U.S. v. Clifford*, 704 F.2d 86 (3d Cir. 1983); *U.S. v. Van Wyk* (83 F. Supp.2d 551 (D. N.J. 2000)). Included are two additional cases in which there is a difference of opinion regarding admission of linguistic testimony.

Admission of expert testimony by non-linguists in cases of disputed authorship: Mentioned and cited are over 60 case decisions wherein linguistic evidence of authorship was admitted, including stylistic features such as format of document (physical arrangement, indentation, margin width, spacing, use of a letter for a number or vice-versa, strikeouts and corrections, opening and closing of letters, typist identification, word division); capitalization; abbreviations; dates and titles; punctuation; spelling; word choice; syntax; paragraph structure; content; and first language other than English.

Admission of expert testimony by linguists in cases of disputed authorship: Cited and briefly discussed are a large number of U.S. and foreign cases of disputed authorship wherein the testimony of one or more linguists was admitted. These cases include appellate decisions as well as lower court trials of various civil and criminal matters.

Forensic Linguistics, Forensic Stylistics, Admissibility Criteria