



# Jurisprudence Section - 2015

---

## F46 In or Out? What is the Threshold for Admissibility?

*Julie Maxwell, JD\*, 510 15th Street, NW, Rochester, MN 55901*

---

After attending this presentation, attendees will be more prepared to answer the question, what is the threshold for admissibility? Attendees will gain knowledge and an understanding about some of the tools which the forensic community uses and whether those tools are being used for investigative versus evidentiary purposes.

This presentation will impact the forensic science community by prompting defense and prosecution attorneys to be more careful in their examination of information gathered from the use of forensic tools. This presentation will urge attorneys to make a determination of whether information is being used merely as part of the overall investigation by law enforcement or whether that information is to be used at trial for acquittal or conviction.

The admissibility of forensic evidence has always created some challenging questions for the bench and bar. To be admissible, evidence must meet the standards set forth in the rules of evidence as well as the standards articulated by *Frye* and more recently, *Daubert*. Yet outside of the types of forensic evidence that meet these standards, there are forensic tools used for investigative purposes which are not intended to be and should not be considered evidentiary in nature. For example, the use of polygraphs to establish whether an individual is lying or preliminary breath tests to establish a blood alcohol concentration.

This presentation will explore an examination of the Rules of Evidence and the *Frye* and *Daubert* standards to help understand what the criteria are for evidence to be deemed admissible. It will further explore the category of forensic tools that are designed for “investigative purposes” and how these are and/or should be treated by criminal courts.

What makes a test “presumptive” versus “confirmatory” and why are these distinctions important? This presentation will explore the admissibility of other tools such as narcotic identification kits and “hits” to the DNA database. It will look at examples where these distinctions of “presumptive” and “confirmatory” are not fully appreciated by lawyers and the problems created when attorneys and judges do not think in these terms. The idea that “presumptive” does not equal “truth” must be considered when determining admissibility or inadmissibility.

The 2009 National Academy of Sciences Report, *Strengthening Forensic Science in the United States: A Path Forward*, found that lawyers “often lack the scientific expertise necessary to comprehend and evaluate forensic evidence.” Even six years later, this observation continues to ring true. Lawyers still struggle with how to understand and evaluate forensic evidence. Exploring the distinctions between what can and should be used for investigative purpose and whether such tools should be admissible may lead to a richer understanding of the interplay between forensic science and the courtroom, which can benefit the entire criminal justice system.

---

### **Admissibility, Investigative, Evidentiary**