



## Questioned Documents Section - 2016

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### J20 Critics Say the Darndest Things!

*Jan S. Kelly, BA\*, 9360 W Flamingo Road, #110-400, Las Vegas, NV 89147*

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After attending this presentation, attendees will better understand the impact of criticisms against forensic document examination by members of academia. Statements made during testimony by the critics and how the forensic document community responded to the criticisms will be discussed.

This presentation will impact the forensic science community by educating the Forensic Document Examiner (FDE) as to statements made during a critic's testimony of forensic document examination and how this criticism influenced the examiner's court preparation.

Academia entered the forensic science arena as critics against specific forensic science professions in the late 1980s. Initially, criticisms appeared in venues that do not offer forensic document examiners the same level of access given to academia, such as law review journals and speaker presentations at judicial conferences. The forensic document profession was one of the first forensic sciences to attract academic critics. By the late 1990s, critic attacks on forensic science expanded to latent prints, firearms, and other forensic science disciplines. Not only did the number of disciplines coming under fire by academic critics increase, opportunities for the critics to express their criticisms also increased as they began appearing in the courtroom as defense witnesses.

Testimony offered by university professors against FDEs presented a unique situation during a time when the courts were adjusting to their gatekeeping role of incorporating the Daubert five-prong test instead of *Frye's* general acceptance criteria. Rule 702 in the Federal Rules of Evidence states: "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case."<sup>1</sup> The primary issue the courts faced was that the critic did not present himself as an "expert" in the field he was criticizing, but as a "friend of the court." The critic's testimony focused on the premise that FDEs could not prove the main tenets of the document discipline. Being challenged by a witness whose only knowledge of the field was from reading Albert Osborn's treatise *Questioned Documents* and Ordway Hilton's *Scientific Examination of Questioned Documents* was difficult because the critic's interpretation of the treatises was inaccurate. Admittedly, FDEs were not prepared to respond to an attack that was summarized with the critic stating, "They can't prove it."

Transcripts of critic testimony revealed numerous inaccurate statements made by FDE critics. This presentation will discuss the inaccuracies of critic testimony as revealed in various transcripts. The presentation will also discuss how FDEs revised the content of their testimony as a way to address the criticisms offered by the defense critic. The journey in learning how to communicate the reliability of forensic document examination to the courts was a lengthy process, but necessary because critics say the darndest things!

#### Reference(s):

1. Federal Rules of Evidence. Accessed on July 31, 2015 from [https://www.law.cornell.edu/rules/fre/rule\\_702](https://www.law.cornell.edu/rules/fre/rule_702)

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**Forensic Document Examiner, Critic, FRE 702ts**