J8 The Impact of *Daubert* on Forensic Document Examinations — The Paradigm Shift

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

After attending this presentation, attendees will have a better understanding of the impact of the Supreme Court's *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 1993 decision on all of the sciences, including forensic document examination, and how this impact set in motion a paradigm shift in testimony, testing, and academic research.

This presentation will impact the forensic science community by educating forensic document examiners as to the steps taken between 1993 and 2015 to document the reliability of forensic document examination and how the field satisfies *Daubert*.

Prior to the *Daubert* decision in 1993, the courts relied on Rule 702 in the Federal Rules of Evidence and on Frye's general acceptance standard to determine whether an expert would be allowed to testify. In *Daubert*, the Supreme Court established new guidelines for the admissibility of scientific evidence using five general guidelines: (1) whether a theory or technique was tested (falsification); (2) whether there are standards controlling the technique's operation; (3) whether there is a "known or potential error rate of the technique"; (4) whether the theory or technique has been subjected to peer review and publication; and, (5) whether or not the technique or theory has general acceptance in the scientific community.[1] These criteria created a paradigm shift in the content of testimony as they now required the scientist to testify to the reliability of the methodology.

Efforts to prove the reliability of forensic document examination to the courts included the Forensic Document Examiner (FDE) community participating in a series of blind proficiency tests administered by Dr. Moshe Kam, a Professor at Drexel University, School of Engineering and Applied Sciences. FDEs participated in five tests between 1994 and 2003. The results of the Kam tests verified that forensic document examiners reliably and significantly outperform laypersons in tasks involving handwriting comparisons. American Standards Testing and Materials (ASTM) was chosen as the publisher of FDE standards that control a technique's operation. The standards published by ASTM provide objective documentation that the profession has standards in place that have been reviewed by both the FDE and other scientific communities. The FDE community partnered with academia to conduct several research projects funded through the National Institute of Justice (NIJ) to further establish the reliability of forensic document methodologies.

This presentation will enable the attendee to understand the progress made by FDEs following the promulgation of *Daubert* in providing and documenting the reliability of the examiners and their methodologies in order to assure the courts that forensic document examination meets every one of the five *Daubert* factors.

Reference(s):

1. *Daubert v. Merrell Dow Pharmaceuticals Inc.* (92-102), 509 U.S. 579 (1993)

Daubert, **Paradigm Shift, Reliability**

*Presenting Author