



Questioned Documents - 2017

J22 The Admissibility of Forensic Expert Testimony: 25 Years of Milestones and Impacts

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After attending this presentation, attendees will understand the relationship between impactful events over the past two decades and the admissibility of forensic expert testimony in several areas of forensic practice. These events include judicial decisions in cases such as *Daubert*, *Joiner*, and *Kumho*; revisions in the Federal Rules of Evidence (FRE) 702; the 2009 National Academy of Sciences (NAS) Report, *Strengthening Forensic Science in the United States: A Path Forward*; and, other events that are changing the legal landscape for judges and attorneys and the practices of forensic scientists.

This presentation will impact the forensic science community by highlighting important influences on the future direction of forensic sciences, including training, methods, conclusions, certification, and other factors that members of the field are confronting as the requirements for standardization in training, terminology, and other areas of forensic practice continue to evolve.

Scientific facts do not directly represent nature. They contain a social component consisting of human agency, institutions and their norms and values, and the processes of science. The movement of expert testimony from the status of “proffer” to that of “admissible evidence” is a social process in which experts, attorneys, judges, and other entities all participate. It is a negotiated movement from “science,” which is itself a social construction, to “legal science,” which is mediated by the constructions and deconstructions of attorneys and judges.^{1,2}

Judges' interpretations of their gatekeeping responsibilities under the *Daubert* trilogy have imposed more objective and stringent requirements (relevancy, legal sufficiency, and reliability) for the admissibility of some kinds of evidence. Policymakers have also responded to calls from forensic practitioners, academicians, and government agencies by conducting research, increasing funding for studies to establish the reliability and validity of forensic science methods and conclusions, as well as establishing working groups and training to facilitate improvements in the field.

This presentation presents a summary of findings from an empirical content analysis of published judicial decisions concerning cases in which forensic evidence was challenged following the 1993 *Daubert* decision. The purpose of this study of case law is to empirically examine patterns of cases and the variety of factors that judges discuss when describing the reasons for their admissibility decisions, and to investigate how these challenges have occurred in their social, legal, and political context.

Results of a content analysis of published federal district court cases in which the admissibility of expert testimony is at issue will be reported. Prior to coding, the identified cases were evaluated for their coding suitability using guidelines adapted from those developed by Dixon and Gill.³ Codable cases contained a substantive discussion of the admissibility of proffered testimony that included the rule(s) of evidence relevant to the analysis, and a substantive discussion of how the evidence met or failed to meet the criteria for admissibility. Admissibility will be examined in the context of *Daubert*, *Kumho*, *Joiner*, revision of FRE 702, and the 2009 NAS Report. The unit of analysis is an element of evidence within the opinion. Coding guidelines (e.g., mutually exclusive and exhaustive categories) established by Holsti are employed.⁴ All cases were coded, check-coded, and check-verified to increase coder reliability.

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