



## Questioned Documents - 2017

### J23 A Review of the *Almezciga et al. v. Center for Investigative Reporting, Inc. et al.* Decision

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The goal of this presentation is to acquaint attendees to the criteria used in the exclusion of an expert witness in a case involving handwriting. The need for this knowledge by the legal community of training requirements for forensic document examiners will be discussed.

This presentation will impact the forensic science community by addressing the proper training requirements of forensic document examiners and discussing how document examination meets the *Daubert* criteria.

This presentation is a case study of the judicial decision in *Erica Almezciga* against *Center for Investigative Reporting, Inc.*, *Univision Communications, Inc.*, *Univision Noticias*, *Bruce Livesay*, *Josiah Hooper* issued on May 6, 2016 by the Honorable *Jed S. Rakoff* in the United States District Court Southern District New York. Judge *Rakoff*'s ruling in the *Daubert* Hearing excluded the testimony of the plaintiff's handwriting expert. This presentation will discuss the events that occurred in this case as well as testimony given by plaintiff and defense witnesses.

The *Daubert* Hearing was subsumed with the defendant's Rule 11 motion to determine whether the plaintiff's handwriting expert should be allowed to testify in trial. The purpose of a *Daubert* Hearing is to determine: (1) Whether the technique or theory can be tested (falsification); (2) Whether there are existence and maintenance of standards; (3) Error rate; (4) Peer review; and, (5) General acceptance and other factors determined by the Court.

A *Daubert* Hearing grants the judge flexibility to determine whether the science meets Rule 702 requirements of reliability and relevance ("fit"). To reach a proper decision, testimony is given to explain how the science meets each of the *Daubert* criteria. In this case, testimony evidence was not provided by the plaintiff to establish how forensic document examination satisfies each of the five prongs of *Daubert*. The defense produced opposing expert testimony from a witness who discounted the claims of forensic document examination as a reliable and relevant science. The result of the testimony left a very one-sided view of the science of forensic document examination. Since a judge is to consider the evidence provided in court, Judge *Rakoff* was left to base his decision only on the testimony of the defense witness and a Plaintiff's witness whose qualifications appeared not to be contested by the parties, and, therefore, not scrutinized by the court.

The defense expert is a college professor and an attorney. He states he has conducted a thorough reading of the forensic document expertise and has concluded it is baseless. From his readings, he testified to the shortcomings of forensic document examination and believes it should not be allowed in the courtroom. This presentation will explore the accuracies of the main points proffered by the defense expert.

Forensic document examination (also referred to as Questioned Documents) has been a section of the American Academy of Forensic Sciences since the inception of the organization. Criteria for membership to the Questioned Documents Section are in alignment with educational and training requirements listed in ASTM E2388-11 *Standard*



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*Guide for Minimum Training Requirements for Forensic Document Examiners.* The accepted methodology for the examination of handwriting is also published in ASTM E2290-07a *Standard Guide for Examination of Handwritten Items*. Practitioners who meet the criteria for membership in the Questioned Documents Section conduct examinations using methodologies that meet each of the five *Daubert* criteria. This presentation will also discuss the numerous research projects conducted by members of academia, either separately or in partnership with an examiner, who have established forensic document examination, as well as the practitioners who satisfy AAFS membership requirements meet the *Daubert* standards.

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### ***Daubert* Criteria, Admissibility, Handwriting Evidence**