



# Questioned Documents - 2017

## J4 Forensic Document Examiner Testimony of Inconclusive Examination Results

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

After attending this presentation, attendees will better understand the occurrence of forensic document examiners providing testimony regarding inconclusive examination results during a legal proceeding.

This presentation will impact the forensic science community by educating attendees that expert testimony has occurred regarding inconclusive results in a variety of legal proceedings.

Kelly and Lindblom explain the standards used by forensic document examiners when providing testimony regarding examination results in legal proceedings.<sup>1</sup> Conclusions follow the American Standards for Testing and Materials® (ASTM) E1658 *Standard Terminology for Expressing Conclusions of Forensic Document Examiners*. This standard, passed in 1995, was based on the 1991 *Journal of Forensic Sciences* letter written by Thomas McAlexander, Jan Beck, and Ronald Dick. The nine-level opinion terminology scale provides a balance between positive and negative opinions that reflect various levels of certainty based on potential limiting factors. The two sides are separated by the “no conclusion” point. The application of the opinion scale is flexible in that it applies to the five-level and seven-level scales. The no-conclusion level is present in all three of the scales.

The term inconclusive is synonymous with no conclusion. Inconclusive is defined by the Cambridge dictionary as “not giving or having a result or decision; uncertain”.<sup>2</sup> Inconclusive opinions are issued in a variety of forensic document examinations and occur when the evidence contains at least one limiting factor. An inconclusive result will be based on a limitation that may be based on but not limited to the following factors in handwriting cases: lack of contemporaneous or comparable known standards; brevity of writing in the questioned or known; distortion due to intentional disguise; health, or low writing skill ability; and, lack of significant agreement or differences between the two sets of writings. Even though attorneys desire definitive conclusions, an inconclusive opinion is based on information that may prove beneficial to the trier-of-fact. The issuance of an inconclusive opinion lets the jury and the judge know the evidence was examined and a definitive conclusion could not be issued due to the potential limitations of the evidence.

Testimonies offered by defense witnesses from academia discuss the performance of forensic document examiners on proficiency tests provided by Collaborative Testing Services (CTS). In assessing the error rates in each CTS test, the academic critics stated they did not count inconclusive results because no one offers testimony in court regarding an inconclusive result. This claim has been stated by Risinger, Denbeaux, and Saks in their University of Pennsylvania Law Review article.<sup>3</sup> To determine whether or not this statement was valid, a survey was distributed to forensic document examiners asking the following questions: (1) during the examiner’s career, the number of times testimony of an inconclusive result was provided in a legal proceeding; (2) the type of examination; (3) the type of court hearing; and, (4) inconclusive result testimony provided for prosecutor (plaintiff) or defense. The result of this survey revealed examiners provide testimony regarding inconclusive examination results. The presentation will discuss how often this occurs, and the responses to the survey questions.

### Reference(s):

1. Kelly, JS and Lindblom, B. *Scientific Examination of Questioned Documents*, Second Edition, Taylor and Francis Publishing, 2006.



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2. Cambridge Dictionary, Cambridge University Press, 2016. Retrieved on 7-31-2016 from [www.dictionary.cambridge.org](http://www.dictionary.cambridge.org).
  3. Risinger, D, Denbeaux, M, Saks, M. Exorcism of ignorance as a proxy for rational knowledge: the lessons of handwriting identification “expertise”. *University of Pennsylvania Law Review* 1989: Vol. 137:731-92.
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**Inconclusive, No Conclusion, Survey**