

President's Message

Paige E. Doherty

I am pleased by the increase in communication the Board has received subsequent to the previous President's Message which encouraged Diplomates to be in contact with the Directors. The Board has heard from a number of Diplomates with questions or comments on several topics including the most recent FSAB meeting, the validation testing project to establish individual error rates, the status of finances in conjunction with the rationale behind the dues increase in 2002, and the election process for Directors. Derek Hammond addresses the events of the FSAB meeting in February in a separate report. In this newsletter, he also discusses the status of the validation testing project and information gleaned from his meeting with Dr. Brian Found in January.

I'd like to address the questions about the ABFDE finances and dues increase, along with the election process for Directors.

ABFDE FINANCES

Some Diplomates had questions about the ABFDE finances and what the 2003 dues increase has yielded for the Diplomates. In July 2003, the ABFDE increased the dues from \$100.00 to \$250.00. Prior to considering this proposal, the Board of Directors reviewed the historical trend of income and expenses to establish a budget for the near future. The primary source of income is from annual dues with secondary sources of application fees, interest, and workshops. The amounts received from secondary sources vary from year to year, thus cannot be relied upon when budgeting for upcoming expenses. Between 1996, when previous dues were raised from \$75.00 to \$100.00, and 2002, everyday expenditures such as printing costs for the directory and newsletter, postage, phone, management fees, legal fees, and the annual Board meeting rose steadily without an increase in income. In addition, the Board undertook new projects or made improvements which incurred further expense. The Board's

(continued on page 13)

Contents

From the Editor	2
New Director	3
New Diplomates	3
Testing Committee Report	4
FSAB Report	5
Letters to the Editor	6
Validation Progress Report	7

From the Editor

Susan Morton
San Francisco, CA

Funny You Should Say That

My last editorial did not pass the ABFDE sniff test. In it I described an encounter I had in court with one of our critics. To be fair, the Board reviewers did not instruct me to delete the piece, but they required so many changes that it was completely de-Susaned. Since it no longer had anything to say, I decided not to run it. Unlike my usual offensive fare, this one did not contain any profanity or references to human anatomy between the collarbone and knees. Either I am getting edgier, or the censors are getting more sensitive.

A few people find my use of humor unprofessional. Well too bad. I am not going to stop using it. Humor is not frivolous; it is a powerful tool for getting a message across. I have opinions and I am going to express them. If I can cause them to be memorable, so much the better. Mark Twain was a very humorous writer, but he probably did more to raise widespread public awareness of the horrors of slavery and oppression of African Americans than all of the high blown rhetoric of the thousands of abolitionist sermons preached in hundreds of churches. The humor sugar coated the message so that it went in and stuck. It also put a human face on the suffering, which moved a lot more people than philosophical concepts did.

The best humor, the kind that lasts, delivers a message. It is true that my editorials are often amusing, but they say something as well. I can and have written serious technical articles. This Newsletter is not where that belongs. It is not a peer-reviewed journal. It is a newsletter, meant to promote the exchange of thoughts and ideas on non-technical topics that concern our profession. I have tried to use humor to facilitate that exchange.

I also strongly believe that Diplomates have the right to express their opinions. I don't always agree with what they

(continued on page 17)

Editor Susan Morton

Board Reports

Past President Paige Doherty
 Testing Committee Joyce A. Lauterbach

Contributors

Derek Hammond
 Larry Olson
 Thomas Riley

Composer

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TEST PREPARATION & VALIDATION Ellen Schuetzner
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WEB MASTER William Leaver
WEBSITE ARTICLE EDITOR Andre Moenssens
WORKSHOP COORDINATOR Jan Seaman Kelly

Mail or fax contributions to:

Susan Morton, Editor
ABFDE News
 San Francisco Police Department
 Crime Laboratory
 850 Bryant Street
 San Francisco, CA 94103
 Tel: (415) 671-3196 / Fax (415) 671-3280
semortonsf@aol.com

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New Director



Jeffrey Taylor was born and raised in Jackson, Michigan. He attended Michigan State University and received a Bachelor of Arts and Bachelor of Science in Criminal Justice and Criminalistics in 1989. Jeff began his career in forensic document examination in 1990, when he accepted a position in the U.S. Secret Service questioned document training program. He completed his training

program and worked for the Secret Service through 1996, when he accepted a position with the Charlotte Mecklenburg Police Department Crime Lab.

Jeff has been a Diplomat of the ABFDE since 1997, a member of the Canadian Society of Forensic Science and is a member of the American Society of Testing and Materials.

Jeff lives in Charlotte, North Carolina, with his wife, Jenny; their daughter, Samantha; and their son Benjamin. Between work and homework, they enjoy camping, running, biking, and a variety of other outdoor activities.

New Diplomates



Kathleen Annunziata Nicolaidis is with Affiliated Forensic Laboratory, Inc. in Phoenix, Arizona. A native New Yorker, Kathy received her Bachelor of arts degree in Literature and the English Language in 1983 from

the State University of New York at Binghamton. After leaving a career in public broadcasting, she was in the right place at the right time and, in 1998, was offered the chance to train

with Bill Flynn, owner of Affiliated Forensic Laboratory. Since completing her training in 2001, she continues to work at AFL on various types of cases, including the examination of instant-winner lottery tickets.

Kathy is a member of SWAFDE and a provisional member of the ASQDE.

Kathy and her husband, Paul, have three dogs, two birds, and a tank of unnamed fish. An avid reader and a lover of folk music, she also teaches and drums for the local morris dance troupe, Bedlam Bells Morris and Sword. Kathy has been a morris dancer for 19 years.



Charlotte Ware first developed an interest in questioned documents while doing genealogical research. A native of western NC, she graduated from NC State University with a B.S. in biology and earned a MSFS from the University

of Alabama at Birmingham. In 2000, Charlotte

completed her two-year QD training at the Texas Department of Public Safety Crime Lab in Austin. In 2003, she became a forensic document examiner at the U.S. Postal Inspection Service Forensic Lab in Memphis. She is a member of the ASQDE and an associate member of the QD section of the AAFS.

Charlotte and her husband enjoy scuba diving and vacationing with their two children, Eric and Lena Beth.

Testing Committee

Joyce A. Lauterbach
Columbia, SC

“Much work has been done by...the testing committee ...so that a Diplomate can be proud of his or her achievement in passing the ABFDE testing process .”

In the past year the number of candidates in the testing process has decreased significantly. This is due primarily to completing the five-year window of opportunity for testing all grandfathered Diplomates. The testing requirement for all Diplomates, including grandfathers, is in keeping with the original intent of the ABFDE as reflected in BOD minutes from as far back as 1979. The original grandfathering of Diplomates was only intended to establish the ABFDE. The testing for grandfathered Diplomates actually began in 2000. Implementation of this program was over a five-year period, with completion expected by 2005. That time period has now elapsed. Four grandfathered Diplomates completed all three phases of testing last year.

Since April 2005, eight candidates completed all three phases of testing. Eleven candidates are still currently enrolled. Based on the performance of candidates who either completed testing or are still active in the testing process, the pass rates during the past two years are as follows:

Test Phase	2005-2006 Pass Rate	2004 -2005 Pass Rate
Written Test	100% (3 of 3)	100%
Practical Exam	71.0% (5 of 7)	87.5%
Oral Boards	89.0% (8 of 9)	
Overall Pass Rate	84.0% (16 of 19)	92.5%

An explanation for the drop in pass rates over the past year is not readily apparent. There has been little turnover in the inventory of practical tests available for assignment. Of the eight Diplomates who passed all three phases of testing in the past year, four were grandfathered Diplomates and four were new applicants. Twelve candidates were at sometime involved in the practical phase of testing during the last year. Four of these candidates are among those who completed the oral testing and two candidates are now awaiting the oral boards.

Much work has been done by members of the testing committee over the past two year to establish minimum criteria for evaluating practical and oral exams and at the same time maintain a level of expected performance so that a Diplomate can be proud of his or her achievement in passing the ABFDE testing process. Criteria for evaluating practical tests have not changed much since one year ago.

(continued on page 8)

FSAB Report

by Derek Hammond

FSAB's recent annual Board of Directors (BOD) meeting was held in Seattle on February 18-19, 2006. The primary items on the agenda for this meeting concerned the Applications for FSAB Accreditation previously submitted by three different certification boards. Of particular interest was the application of the Board of Forensic Document Examiners (BFDE).

As is the case with every application, once FSAB receives an application, the president will form a three-member Application Review Committee (ARC) to review the certification board's application and other submitted documentation. The review is conducted to determine whether or not the applicant board is in compliance with the FSAB Standards. BFDE's application was originally submitted in 2004, and has been under review since then. As a forensic document examiner, I had requested to serve on the ARC for BFDE. However, because I am a member of ABFDE, deemed to be a "competitor" to BFDE, my request was denied. The three-member committee that was formed consisted of Joseph Polski-Chair, Jack Kalin, and Greg Matheson.

Having served as the chair for two different ARCs, I know that the primary function of these committees is to review the application in its entirety, to include all of the supporting documentation that is provided. To put this in relative terms, FSAB accreditation is somewhat analogous to ASCLD/LAB accreditation in that there are written standards that each applicant organization must meet. Not only must the standards be met, but the applicants must have written policies or other official written procedures which demonstrate that the applicable FSAB standards are adhered to. I can state without reservation that every certification board that has submitted an application to FSAB has had deficiencies that required additional action on the part of the certification board. In this respect BFDE's application appears to have

been no different, hence the almost two-year review process leading up to this meeting.

The BFDE's application and several perceived deficiencies noted by the ARC were discussed during this recent meeting. Following a lengthy discussion, the ARC made a verbal recommendation to the BOD that the BFDE be awarded FSAB accreditation. A vote followed and BFDE became the third certification board to be accredited by FSAB. (For information concerning BFDE's certification program, visit www.BFDE.org.)

I had absolutely no idea that the BFDE would be given the ARC's recommendation for accreditation at this meeting, much less that the ARC would even find itself in a position to make such a recommendation. My displeasure was expressed to the other members of the FSAB Executive Committee within minutes after the vote. I notified the EC that I wanted my name removed from the list of nominees for the upcoming election of officers and stated that this would be my last meeting as the FSAB treasurer and as ABFDE's official representative to FSAB.

Regrettably, FSAB's actions on this day place the ABFDE in a catch-22 situation. We have already devoted a considerable amount of time and resources to this project and may be obligated to see it through. On the other hand, if we do proceed forward with the desire to be accredited by FSAB, then are we not by our own actions giving credibility and legitimacy to an accrediting body whose standards may be perceived as being unacceptable by the broader forensic science community?

I have held on to the hope and desire that FSAB had finally come to understand what the standards of the *profession* of forensic document examination are and why they exist. From my point of view, FSAB has made an error in their decision-making process and apparently have chosen to ignore certain standards. FSAB has perhaps now joined a growing list of organizations that at least on the surface appear fearful of making tough decisions without the comfort of liability insurance as a safety blanket. That is unacceptable. Either you have standards that

(continued on page 8)

Letters to the Editor

Personal Error Rate – “Just Say No”

from Larry Olson

I am writing to express my concern after reading Secretary Derek Hammond's article, "ABFDE to Launch Blind Trial Program," in the October 2005 issue.

I am upset and confounded by the supposition on ANYONE'S part that experts need to have "a personal error rate." A personal error rate is not required by my employer, by the statel work in, or by our discipline. Furthermore, it IS NOT REQUIRED by the courts. It is a misinterpretation of the "error rate" Daubert factor, which was begun by the critics and, unfortunately, has seemed to make sense to some judges.

The following is quoted from the Daubert decision:

"Many considerations will bear on the inquiry, including whether THE THEORY OR TECHNIQUE IN QUESTION can be (and has been) tested, whether it has been subjected to peer review and publication, ITS KNOWN OR POTENTIAL ERROR RATE..." (my capitalization)

This says "ITS" rate, not "hers" or "his." And the techniques we use do not have error rates, because no one has, of yet, figured out exactly how to determine them.

Nevertheless, Saks continues to trumpet error rates as an indicator of the reliability (and therefore, the admissibility) of testimony:

- "...in a Bayesian sense, the probability of error in a particular case requires an assessment of the prior probability that the error will occur, and the individuating features of the target case..."
- "...this is why forensic scientists should participate in well-designed proficiency tests on a regular basis..."
- "...as reliable data from these tests accumulate, it should be possible to take advantage

(continued on page 19)



from Thomas Riley

Prologue

In Greek tragedies, a prologue is defined as a "prefatory piece of writing to introduce a drama." A letter I wrote to the Editor in response to ABFDE Director Derek Hammond's article entitled, "ABFDE to Launch Blind Testing," began a drama which continues to unfold. If you haven't read the "Launch" article, you will need to read it to understand the ensuing drama.

The following letter was written tongue-in-cheek, in a dramatic fashion, to attempt to grab your attention and have you consider the potential ramifications of actions being considered by the ABFDE Board of Directors in implementing a blind testing program for Diplomates. These actions not only involve Diplomates, but the entire discipline could be affected.

In the beginning...

My copy of the October issue of the ABFDE News lay on my desk, staple intact, until I returned from my long journey to the SWAFDE Workshop in Salt Lake City, put on by George Throckmorton, Bill Flynn, and the other fine members of the Southwestern Association of Forensic Document Examiners. My chosen mode of travel causes me to resist long periods of sitting after these trips, as many of you know, and I only tonight decided I could withstand removing the staple to peruse the "News."

(continued on page 10)

Validation Progress Report

by Derek Hammond

In mid-January, I was afforded the opportunity to travel to Melbourne, Australia, to spend a week with Dr. Bryan Found and Dr. Doug Rogers of the Forensic Expertise Profiling Laboratory (FEPL) at LaTrobe University. The primary purpose for this trip was to learn the procedures utilized by the FEPL in developing and administering their handwriting and signature validation trials. Given the ABFDE's interest in determining the feasibility of establishing our own validation trials, I was also tasked with beginning discussions that could provide the foundation for future collaborative efforts between these two test development bodies. I am pleased to report that the trip was a resounding success in all regards.

Over the past several months, the Board has been seriously considering these trials for a number of reasons. Many of these issues have already been presented in previous issues of this newsletter. In addition to those reasons previously discussed, it is always in the best interest of this Board to consider and evaluate *all* forms of testing so that we may continue to maintain a certification program that strives to "improve the practice of" and "advances the science of forensic document examination."

The Board's interest in these trials has not gone without some criticism. In response to recent articles in the newsletter, several Diplomates have contacted the Board and asked questions about the trials and the Board's potential future involvement. Regrettably, the Board was not in a position to respond to all of these questions simply due to the fact that we had few answers. The lack of answers should not be construed as a sign that we have rushed into this or that there exists some shadowy conspiracy to be secretive. The simple truth is that this has been and remains an ongoing process. Part of this process involves researching the material thoroughly, asking questions, and obtaining information so that we can be in a position

to make educated and informed decisions. Traveling to Australia was part of this process.

Meeting in person provided us with an opportunity to ask numerous questions and gather a significant amount of information directly relating to the procedures utilized by the FEPL in developing and administering the trials. As a participant in LaTrobe's trials, I was very familiar with the end product produced by Dr. Found. However, neither I nor any of the other members of the Board had any knowledge of the pretest and posttest work and decision-making that take place behind the scenes. That information has been received and understood and gives us the ability to now respond to several of the questions that have been raised. Before I go on, I do need to mention that the information that Dr. Found has provided the Board consists of 10 years' worth of research on his part. For the Board to have attempted to do this on our own would have taken years of trial and error and expended valuable resources. Dr. Found graciously shared his knowledge and experience, thus putting the Board in a position to move forward much sooner than could have ever been done without his assistance. For this, I and the Board are extremely thankful. Having direct access to this information and material more than justifies the travel time and expenses associated with this trip (especially considering test validation for our written test has been estimated between 40-60K).

Let me finish this article by answering some of the questions that were asked of the Board and that were asked and/or of Dr. Found and Dr. Rogers.

Q: How was the trip to Australia funded?

A: The Ames Fund was used to cover the costs associated with this trip. The Ames Fund was set up and is used to fund expenses associated with defending the profession. Because the

(continued on page 14)

FSAB

(continued from page 5)

you uphold or you do not. There is no in-between.

From our initial involvement with FSAB, the ABFDE has worked diligently to educate FSAB on the level of standards that are minimally accepted within our field. Past ABFDE Officers/Directors such as Frank Hicks, Brian Carney, Dave Moore, and Randy Gibson have served as FSAB Directors and can attest to these challenges. Unlike some of the other forensic disciplines which are primarily education based (e.g., drug chemistry, trace evidence, forensic toxicology, etc.) the profession of forensic document examination is primarily an experience-based discipline. Although formal education is a required component (e.g., degree requirements) the core "education" to work in this field is typically gained through a formal apprenticeship-style training program rather than through a foundation based primarily on academics. After lengthy discussions through the years, this distinction was finally recognized and led to the creation of FSAB Standard 5.3 and its subsections 5.3.1 – 5.3.4. (Note: all of the FSAB Standards can be viewed at www.theFSAB.org.)

I realize that everyone probably wants to know the details of the discussions that took place during the most recent FSAB meeting; however due to my previous position on the FSAB Executive Committee, I must bite my tongue and purposefully refrain from sharing all of those details. In general terms, I can state that I was not at all satisfied with the manner in which certain FSAB Standards were applied/not applied during this meeting. In the upcoming weeks I plan on writing a formal letter to the FSAB Executive Committee, and to members of BFDE's ARC Committee, outlining the reasons leading to my decision to resign from this organization. I will also be requesting written clarification regarding the interpretation of certain FSAB standards on the basis that guidance is needed in order to understand how future applications by other FDE certifying boards may be perceived and handled.

I encourage everyone, whether you support FSAB's decision or not, to call and/or write to the various FSAB officers and directors to express your opinions and to seek written answers to your questions. The names and email address of the FSAB directors are located on their website (www.theFSAB.org). Mailing addresses and phone numbers of many of them are also available in the AAFS Directory. 

Testing

(continued from page 4)

Every attempt has been made to remove as much subjectivity as humanly possible in the evaluation of practical exams. Practical exams go out to evaluators with an assigned number, and the tests are screened before being sent to the evaluators for any inadvertent material that could possibly identify a test taker.

The Random Test Generator software package was used to generate random test questions that were used at ASQDE 2005 and AAFS 2006. The program allows the test maker to request 20 questions from a section on handwriting, 10 questions from a section on typewriting, 5 questions from a section on inks, etc. This results in randomly selected questions for the various categories. Each test taker may or may not have a common question on a particular test, although not in the same order. Each test taker will have the same number of questions from each category in the test bank of questions.

Ellen Schuetzner is Chairperson for Test Preparation and Validation. Your practical experience is a valuable asset, and all Diplomates are encouraged to contribute written test questions and practical tests. Your contributions to our test inventories help us cycle out and replace tests that are becoming worn and dated.

If you have questions, comments, or suggestions, I can be reached at (803) 253-3547. 

Support for the ABFDE Proficiency Testing of FDEs

by Jan Seaman Kelly

The purpose of this letter is to voice my unconditional support to ABFDE in its quest to establish a volunteer proficiency-testing program that will be made available to all FDEs. The reasoning for this support is based on my study of the courts and the critics for the past 16 years.

In 1989, the critics published the *Exorcism* treatise. A great deal of their discussion focused on the profession's lack of empirical data to support that it is a science. Data from 1975 through 1987 proficiency tests has been creatively packaged to support the critic's contention that practitioners of forensic document examination perform no better than laypeople.

The critics' criticisms were given new life after the Supreme Court's decision in *Daubert, et al* in 1993. The Supreme Court outlined five criteria to be used by the gatekeeper (the presiding judge) to differentiate between junk and legitimate science. The criteria are as follows: 1) Whether a theory or technique has been tested; 2) Whether the theory or technique has been subjected to peer review and publication; 3) Whether there is a known or potential error rate; 4) Whether there are standards controlling the technique's operation; 5) General acceptance of the theory or technique. The Supreme Court also noted that it was not necessary that all five of the criteria be met. The Court further stated that the expert did not have to be correct in his/her results; emphasis to be placed on the expert using methodologies that can pass some, if not all, of the criteria.

Without question, the *Daubert* criteria clearly refers to the theory or technique used by the expert. However, few courts have interpreted it in this manner. The more common interpretation is to require both the expert and the profession to meet all five of the *Daubert* criteria. An FDE's position is one of advocacy for the

evidence. We must function, and somehow, successfully render objective testimony to the trier of fact in an adversarial system. As a profession, we don't now nor have we ever controlled the courtroom. The courtroom belongs to the judge. It is his/her interpretation of *Daubert* that we must address.

The profession took steps to address legitimate criticisms by establishing and participating in SWGDOC, Kam tests (established FDEs outperform laypersons: group error rate), and guideline publications in ASTM. The Daubert Group was formed to study the transcripts and affidavits of the critics and FDEs as a means to understand what we, as a profession, must include in the FDE's testimony in order to communicate to the court that the profession is a reliable science, and to assist the prosecutor in cross-examination of the critic. These activities provide the much needed documentation addressing the legitimate criticisms.; thus providing information the court desired in order to allow FDEs to testify.

There is a misperception that the QD critics are calling for a personal error rate. It is the courts, not the critics, asking for an individual error rate. I have read most, if not all, of the critic's transcripts and testimonies. The primary basis of their testimony is to distort the information gleaned from the old proficiency tests. Generally speaking, the critics would be hesitant to encourage the courts to demand individual error rates because it is contrary to their agenda. In fact, the critics subpoenaed contemporary CTS tests in an attempt to support their testimony that as a group, we cannot satisfactorily perform specific tasks within an acceptable error rate. Handwriting/handprinting/signature tests proficiency tests dated post 1990 are not used by the critics because they do not support

(continued on page 18)

Riley Letter

(continued from page 6)

As I read the article regarding "ABFDE to Launch Blind Trial Program" by Director Hammond and Dr. Found (oh, did I say that out loud?), I am struck by the amazing similarity to this news and the movie, *The Wizard of Oz*. I have to wonder where we will all land, doubtfully safely "no place like home," in the arms of Auntie Em's warm bed. Yet, I remain steadfast in my hope that it is all due to a strong wind, a bump on the head, and a bad dream filled with witches and swirling houses that fall on other witches.

Earlier, I had carefully read Dr. Found's recent research. Surviving the nausea produced by it, I must say that I find it truly disheartening to hear that the ABFDE Board has chosen to align so closely with this whole idea. One has only to look so far in that particular work as to who was deemed "qualified" to see what I consider a critical flaw in the research. The standard Dr. Found has chosen for test constituents are those who were "qualified and allowed to give evidence in court."

Why do I say that this is the beginning of being flawed research? Do we accept that merely because someone is allowed to testify to their opinion about handwriting that this somehow equates to them being qualified in this field? Absolutely not. We have fought this battle regarding basic training and qualifications from the very beginning. To succumb to such a mindset, buying into such phrases as "our sister organizations" is wrong. This quote is from Director Hammond himself regarding other organizations offering certification of document examiners.

I stand by the statement contained in our literature which states "The ABFDE is the only certifying body that can claim such sponsorship and, as such, is not to be confused with any other organization having a similar sounding name." There remain compelling reasons for this statement being placed in our literature. Lest we forget.

It is for the same reason that the conclusions drawn from the CTS test data about the state of the discipline of forensic document examination cannot be extrapolated from the test data. Collaborative Testing Services puts a disclaimer in every single summary report that states:

... the results in this Summary Report are not intended to be an overview of the **quality of work performed in the profession and cannot be interpreted as such** (emphasis added).

Now ask yourself, if CTS puts this disclaimer on the data, because they are fully aware that they are selling their product to anyone who wants to buy the test, with no requirement for minimum levels of competency, then why would we entertain the idea that somehow we can draw any such conclusion from the resulting data? Director Hammond's statement "We know errors occur because the published results stemming from CTS proficiency tests and Dr. Kam's tests have repeatedly demonstrated that at least some FDE's taking these tests are making errors."¹

I find Director Hammond's logic flawed, and his failure to recognize the disclaimer CTS puts on their published results puzzling. Maybe it's not *The Wizard of Oz* we're watching after all; perhaps it's the Pied Piper (did I say that out loud again, inside voice, Tom, inside voice). If this were a mere oversight, I will stand corrected. However, I don't believe it is mere oversight. I believe it is intentional.

Harkening back to Dr. Found, at the 2004 Annual Meeting of the American Society of Questioned Document Examiners in Memphis, some of you may recall that I asked him directly who validated his research and methodology. Other than an attempt at a glib reply (and brush off), there was no substantive reply at all. Apparently, he is amongst those "wizards who hobnob with other wizards, doing what wizards do" who is beyond review, or validation of any kind. Now, personally I find this particularly distasteful point the most ironic, in light of the vast brush he is willing to use on this field.

(continued on page 11)

Riley Letter

(continued from page 10)

I have said many times, and continue to say, that this game we are engaged in to answer the “critics” is a game of grave consequence. Using my *Wizard of Oz* analogy, this scene can be likened to the search for the broomstick of the Wicked Witch of the West. Remember her? “Bring me the broomstick of the Wicked Witch of the West, and I’ll grant your request.... Now goooo... I SAID GO!”

Now Director Hammond would have us believe that “we are better because of” the search for this broomstick I say that is HOG-WASH! Dorothy and her gang show up with the charred broomstick, having survived everything from those darn wicked flying monkeys (pick one, I’m totally undecided about *who*, in this drama, actually best fits the role of the “flying monkey”) to poison and downright wicked witchiness to the extreme.

This is nonsense. We are not better because of this. We are caught up in a game where the stakes will continue to shift and move. The damn dog was the only one smart enough to pull the curtain from around the “Wizard” and expose his fallacy, and ultimately his wicked, self-seeking goal—which was to remain a “Wizard” in control of all around him.

As we heard in the NPR article, from the latest mouthpiece for exorcism, they—being the critics—are perfectly happy to cite flawed data to support their claims. I find it confounding that those amongst us who serve in leadership positions would not only allow that data to go uncontested but to further the whole idea by purporting it to be the truth. Ridiculous. Utterly ridiculous.

Now, think about this in the context of the history of this battle, which I have, to a greater or lesser extent, been engaged in or witnessed since the beginning of the exorcism. During my beginnings, it was pounded into me that it was incumbent upon us to err on the side of an inconclusive opinion. The absolute principle that, at times, the only correct answer was no answer at all. The scientific endeavor in which

we engage—our lives’ work—absolutely demands it. In part, this is due to the very nature and variation of writing itself. The idea that our conclusions should be as strong as the evidence supported, not one iota weaker or stronger.

I say that if my hero and wisest of all, Toto, hadn’t had the guts to pull back that curtain and expose the Wizard for what he really was, Dorothy and the rest of her gang would still be seeking whatever the Wizard wanted, a demand continuing to shift and change. The real goal is not to make it so that “we are better because of” this process. The real purpose is to disrupt our very existence, to *preclude us from testifying*, thereby succeeding in *excluding our evidence at trial*. It’s old school practice of law; it’s not from some new playbook. Sadly, it appears we’re helping them accomplish that goal!

I ask, what is next? When the claim was we had no published research, we published research. Either it wasn’t enough, or the questions somehow shifted. The next level was testing to “demonstrate that we can do what we claim to be able to do.” With Dr. Kam’s help and work, we did that. Now, the changing focus is toward blind testing. What next, a blind test prior to every case, of exactly the same type of case, to insure that our work will meet with the critics’ approval? Isn’t it interesting that this type of blind testing was proposed by Prof. Denbeaux in his presentation at the American Academy of Forensic Sciences meeting in Nashville, Tennessee, in 1996. His recommendation, at that time, was to make each writing examination like a lineup. Perhaps the critics could develop their own test for us? How about we do it for every court appearance, as well? Or five tests before every court appearance? Oh heck, let’s make it ten!

It remains a search for the charred broomstick... or another witch’s wrinkled red-and-white striped socks—only to find, someday when we wake up, that there was “no place like home” and we were truly there the whole time.

Oh Auntie Em, I need a cold cloth for my forehead!

(continued on page 12)

Riley Letter

(continued from page 11)

Epilogue

In submitting the above letter for publication for the last newsletter, our dear sweet Editor, Susan Morton, advised she would send this letter out to Director Hammond for him to respond. I had several conversations with Director Hammond, whom I much prefer to call Derek. I like Derek a great deal and consider him a friend. He is a man of action. He gets things done. Several years ago when the Board faced tough financial times, Derek stepped up and put together workshops we've all attended. Very successful and hopefully profitable workshops, in fun locations like Las Vegas. However, this drive and "get it done" philosophy may serve as a handicap in the very arena he chooses now to engage us in.

In reading the article title, "ABFDE to Launch Blind Trial Program," I think any reasonable person would conclude that this blind trial program was going to be launched. In conversations in response to my letter with Derek and President Paige Doherty, I was both relieved and perplexed. I have the utmost respect for Paige and appreciated her openness to my concerns. Paige was very kind, open to my thoughts, and she was genuinely concerned about Diplomates' reaction to this idea. Paige graciously included me in being able to provide a list of questions for Derek to pose to Dr. Found on his visit. I was relieved to hear from her that the Board had *not necessarily decided to launch* a blind trial program, but moreover it the Board was considering the possibility of pursuing this avenue.

I was perplexed to discover that the Board hadn't actually decided to launch anything, yet. Why would the article be titled so? I was also perplexed to discover that the Board had agreed to pay up to a fixed amount to fly Derek to Australia to meet with Dr. Found and discuss the whole idea. I found this interesting, pardon the pun, in light of Derek's admission to me that Dr. Found had not been very forthright with his answers to questions he'd already posed to him

regarding such things as who had actually taken the tests. Why then would the Board pay to fly him half way around the world to gather more information? Why couldn't this be done via correspondence? Phone calls? E-mails?

Derek's trip to Australia to visit with Dr. Found occurred as planned in January. I provided a list of 25 questions to Paige for Derek. Today Derek sent me the 11 pages of questions and answers. I would encourage you to request the entire list from him, all 11 pages. Reading over the list of questions and answers, I find the answers wanting for any real substance regarding the testing constituents or their actual qualifications. I also find it interesting that the results of 30 U.S. document examiners of unknown background, training, or experience are being used to justify launching any type of blind testing program.

Derek told me that he would be cutting and pasting portions of them into an article for the upcoming newsletter reporting his trip results and the Board's discussion and/or decision. Derek also advised me that he hoped to have a signature trial developed and ready to show the Board at their April meeting, "ready to go." It would appear that he is getting ready to launch a testing program.

I would like to close this letter by saying that my letter was in no way meant as a personal attack on anyone. I have the utmost respect for the dedication of the members of the Board and those who serve the Board in a variety of capacities. The purpose of my original letter was to provide a stirring wake up call to the idea of the Board pursuing blind testing. The letter was written tongue-in-cheek, in a dramatic fashion, to attempt to grab your attention. In my humble opinion, I believe it is a dangerous and slippery slope, proposed long ago by the very critics we seek to silence. I stand ready to be proven wrong, years from now, should we end up down this seemingly treacherous path better off for it. My criticisms of Dr. Found's work are meant in a strictly professional manner. His work has been extensive and it is clear he has expended much effort.

(continued on page 13)

Riley Letter

(continued from page 12)

One of the things that Derek and Paige expressed to me during our conversations in December was that I was the lone voice from Diplomates against this idea. Perhaps that changed as others picked up on this controversy. I encourage each of you to consider the issue and its ramifications, not only for Diplomates but the entire field. Again, I encourage you to request the entire list of questions and answers from Director Derek Hammond, all 11 pages. Think critically about them. Discuss them with your peers. If you feel strongly, let the Board of Directors know.

As this drama continues to unfold, I pray it doesn't *launch* us into another tragedy.

Tom Riley

¹ ABFDE News, October, 2005



President

(continued from page 1)

involvement with FSAB and its preparation for making application for accreditation had the biggest impact:

- Participation on FSAB required funding for a Director to attend at least two meetings a year as a representative of the ABFDE and to serve on the FSAB Board. The Board also needed to budget for annual FSAB dues in the event the ABFDE becomes accredited.
- In order to comply with FSAB requirements for testing, the Board began offering written and oral testing for certification at a minimum of two meetings per year. The testing is always available in conjunction with the ASQDE and AAFS meetings, and periodically at regional meetings. Due to the volume of grandfathered Diplomates testing over the past five years, the Board needed to ensure that enough Directors were available to serve as proctors or Oral Board members. If there weren't enough Directors, then the Board

needed to cover their travel expenses to get to the testing site. Even though the testing of grandfathers is drawing to a close, there will continue to be travel expenses for Directors who need to oversee testing at the conferences. I should note that the increase in testing candidates also escalated operating costs, such as postage and phone, of the Testing Committee.

- The Board also needed to validate the written test used for certification testing. This was another FSAB requirement. The Board introduced a new 100-question written test beginning in January 2004. Former Director Howie Birnbaum, along with Tom Haladyna from Arizona State University, developed the test and began its validation. However, Howie was promoted into management at his agency, thus limiting his ability to participate on the Board and in this project. Howie's resignation as a Director brought discontinuity to this project, and the question of whether internal validation would satisfy FSAB requirements resulted in setbacks for the Board. However, the Test Validation Committee has persevered and sought quotes from outside sources for validating the written phase of testing. The cost of external validation ranges anywhere between \$40,000 and \$60,000. This is a huge expenditure for which the ABFDE has had to create a reserve. While building this fund, the Board is also researching other options to satisfy this FSAB requirement.

Many of the added expenses directly relate to the Board's involvement with FSAB, but there are other expenditures to consider. The Board budgeted for purchasing transcripts for the growing Daubert group database and for the funding of publications. During the past two years, the Board bought several transcripts from recent trials for the Daubert group files. Many Diplomates have utilized this resource when faced with courtroom challenges.

Several publication projects have been funded as well. Last year, the ABFDE covered

(continued on page 14)

President

(continued from page 13)

the final costs of the revision of Ordway Hilton's book, due to be published this year. While this project may not be financially profitable, the Board believed that it would be invaluable professionally. The original Hilton book has long been used as a resource by Osbornian document examiners. The Board wanted to ensure that the book was revised as accurately as possible by qualified examiners so that it continues to be a valued resource in the profession. The Directors also believe that it is important to maintain a working relationship with CRC Press for future projects. In return, the ABFDE receives PR by publishing its logo in the book.

The Board also makes pamphlets available at no charge to Diplomates making presentations to the legal community and other professions as a means of public relations. For example, in June 2005, Peter Tytell was a speaker at the 2005 Investigative Reporters and Editors, Inc. (IRE) conference. (This organization provides educational services to reporters, editors, and others interested in investigative journalism and works to maintain high professional standards.) Peter did the profession a huge service by participating in this conference and further educating the press on forensic document examination. In support, the Board provided Peter with pamphlets to distribute to the attendees.

Lastly, the Test Preparation Committee is nearly finished with updating the Objectives for Training. This project began last year, and this publication should be ready for distribution later this year.

This just summarizes some of the Board's activities following the 2003 dues increase. As with other committee reports, the Board keeps the Diplomates informed of the finances by publishing Treasurer's Report in the newsletter annually.

ELECTION OF DIRECTORS

Another Diplomate inquired about the election process of Directors. During the initial review of the FSAB requirements for electing

Directors, the Board surmised that elections must be by the general membership of a certifying body when a vacancy occurs. As a result, the Board implemented a process where Directors were elected by the Diplomates. This type of voting was discontinued in 2003 when it proved to be labor intensive and time consuming, especially after two of the three elected Directors resigned office shortly after being voted into office. In these circumstances, the Board elected new Directors in accordance to the bylaws, which state, "A vacancy in the office of a Director shall be filled by vote of the remaining Directors as soon as practicable after the vacancy occurs and for the unexpired term of said office. Such election may conducted by mail ballot."

As a result of this outcome, the Directors sought further clarification on the FSAB requirement which states:

"Certification body shall use formal procedures for nominating members to its Board.

The current Board members shall not nominate a majority of their successors."

This essentially means that the Board of Directors may have a nominating committee that has Directors, however not a majority of current Directors. The vote may be internal by the Board.

Now candidates are nominated by a committee comprised of one Director and two Diplomates, then voted on by the Directors. Any Diplomate may throw his or her name in the hat. He or she simply needs to contact a Director expressing his or her desire to serve. I'd like to note that, in the past, it has been mutually beneficial for both the Diplomate and the Directors if the individual volunteers for a committee prior to seeking a nomination. Since this is a working Board requiring much time and energy from its Directors, serving on committee gives the Diplomate insight into what is expected. It also affords the Directors an opportunity to observe the work ethic of the Diplomate.

I hope this clarifies the questions you had about these topics. If any other concerns arise, please let one of your Directors know. 

Validation

(continued from page 7)

validation trials provide data directly relating to the reliability issues addressed in FRE 702 and *Daubert*, the Board believes that the use of funds from this source is justifiable.

Q: Why was I chosen to go to Australia?

A: I am the only BOD member with direct experience with the trials.

(To Dr. Found & Dr. Rogers)

Q: Regarding LaTrobe's trials, how many U.S. examiners have been participants?

A: Approximately 30.

Q: Is there any way to break down what groups (i.e. ABFDE, ASQDE, AAFS, NADE, BFDE, etc.) the test-takers from the U.S. belong to?

A: Without previous informed consent from the test-takers, this information cannot be provided. To provide this information without previous consent would be an ethical violation.

Q: Explain your approach to test development, including selection of writers, number of exemplars, etc.

A: The tests are designed to be representative, not difficult. We average 10 to 15 known specimens. We have produced trials with more and trials with less (we talk to FDEs about what they want to see in the trials). Writers are drawn from a broad sampling of writers, including university students, academics, relatives, friends, friends of friends, older groups, younger groups, and from both sexes. We try and collect representative samples from the general writing population.

Q: Explain the general difference between methods used to validate a knowledge-based test versus a skill-based test.

A: Knowledge-based tests test examiners on what they know and can verbally articulate compared to what they are taught as assessed by an educator. For example, it is the difference be-

tween understanding and being able to pass a test on the rules and theories of soccer playing versus actually being able to play the game. In our sense, of course, knowledge is important because we need to articulate what it is we do and how we think we do it, but the most important aspect of our task (e.g. rendering correct opinions) is actually doing it and producing reliable results. The courts are interested not in how much we know or how well we think we can perform the task but rather how good we are at actually performing the task. So we should test on knowledge and we should test on skill.

Q: What category would he place his validation testing?

A: Skill-based tests.

Q: How are LaTrobe's tests validated?

A: The trials are validated by piloting and extensive peer review. It is also validated on the basis of logic (it is internally logical when we consider the skill that FDEs claim). This does not mean that this approach does not have limitations. They do. For example, they are not proctored; they may attract FDE fatigued responses because of their size, FDEs may behave differently because they know they are being tested etc. But it is rare to find research approaches that do not have inherent limitations.

Same as a soccer skill test. If you want to test if someone can shoot accurately for the goal, you put them on the field and ask them to perform the task. This validates their ability to shoot at a goal with a measure of their accuracy (under controlled conditions). If you want to get closer to the truth, then you actually get them to play under competition circumstances and monitor their behaviour (this is similar to declared blind tests versus double blind tests). In comparison, written knowledge-based tests need to be assessed or validated as to whether the questions attract the right answer versus determining whether the test itself exhibits features such as poor sentence structure that attract incorrect

(continued on page 16)

Validation

(continued from page 15)

answers in spite of the test-takers actually having the knowledge. Blind skilled-based tests need to be structured, as a testing instrument, to test whether FDEs can accurately express authorship opinions on different types of questioned writing samples. This is the skill that they claim, and this is what needs to be tested. Peer review of our testing instrument has over many years provided support that this is a valid testing instrument.

Q: If the Board develops a test, how would you recommend we determine whether a problem is bad or if the problem is identifying a skill deficiency with test-takers?

A: If you follow the testing format described the test will always be 'good' because these are the normal writing behaviours carried out in the population. If the test-takers make errors, then these have to be assessed in terms of their skills (and these errors cannot be written off to bad test format). This is what we have found over ten years of our testing. You may find "problem" categories of writing as we have. And these are skill problems (and maybe even theoretical problems where FDEs' beliefs in what they can truly do according to theory training may have to be reassessed). You will find that although there are problem trends, these problems will not be shared equally amongst participants (because of differences in skills amongst the FDE participants). For those FDEs exhibiting problems, they will have the opportunity to learn according to known outcomes (which is a perfect way for humans to learn and develop skills. Remember that it is a common characteristic of skill learning that exposure to error is what maximises the opportunity for the skill to develop). Remember also that the different tests will contain different problems of different complexity due to each test having different writers behaving with their own different writing skills (e.g., sometimes the forgers will be skilled, other times they won't be; sometimes the writers will have good disguise strategies, other times they

won't...This is another good reason to routinely do tests like these, as it exposes FDEs to the range of writing behaviour from which their casework is drawn).

Q: How many trials/questions are needed to establish a statistically valid individual error rate?

A: This process is ongoing. Each test presents a new range of behaviour to the FDE from which they can learn (the very same range of behaviour that FDEs are exposed to in casework). The ongoing testing of FDEs should be a cornerstone of their professional development and should be the key to "experience" being a predictor of skill. No amount of testing is the answer. They should be seen as routine (just like attending conferences and other training events). There is not a number of tests that can be stated as being adequate. This is part of the process of being a scientist rather than a task that shows that at any point in time an examiner can be considered to be defined as being proficient.

Q: Generally, who are the writers of the handwriting samples used in the trials? If FDEs created the samples, would the resulting disguised writings be representative of real-world examples?

A: No individuals are used to produce samples who are FDEs or investigators. Providers of writing material are members of the general population.

Q: Does Dr. Found seek and/or discuss results with test-takers in an attempt to determine source(s) of error.....such as FDE just flat out missed it; overextended the conclusion by disregarding limitation of the copies used for examination; etc.?

A: We do not make judgements regarding the relative competencies of FDEs participating in the trials. We produce Revision and Corrective Action Packages that help FDEs do this for themselves. We have not had FDEs blame the nonoriginal nature of the trial material for an

(continued on page 17)

Validation

(continued from page 16)

erroneous opinion. On the contrary, we have had FDEs thank us for giving them the opportunity to make honest mistakes based on perceptions that were not valid.

Q: How is the difficulty level of the trials assessed?

A: Difficulty can only truly be measured by the performance of FDEs on trials. We make no judgements from the outset as to how difficult a task may be. We can view the results and, based on group and individual misleading and inconclusive scores, conclude that the task was a difficult one. This, however, really varies from FDE to FDE. Some FDEs have problems not shared by others. Some FDEs report to us that the task was difficult, and others report that it was easy. This again is really about the different skill sets amongst the FDE population that we test (and there is no reason to believe that if all FDEs were tested that the variation between them would not still exist).

Q: How does he measure relevancy of the test problem?

A: They emulate real cases. The trials deal with real handwriting behaviours. This makes them relevant.

Q: What external sources have been used to validate the construction of the trials?

A: The structure of the tests has been exposed to international peer review by respected scientific experts in this field at conferences, through peer-reviewed publications, and through the assessment of research theses internationally for over ten years.

At the upcoming BOD meeting (April 22-24), the Directors will discuss these issues and many more pertaining to validation testing. Obviously we have many issues to ponder and numerous decisions to make in the coming months. We hope that all Diplomates will continue to ask questions and provide input so that we can continue to make informed decisions now and in the future. 

Editor

(continued from page 2)

have to say, but debate is good. When it looks like everyone is thinking alike, that means that most people aren't. We don't need rancor or personal attacks. But right now our profession is facing some important issues and we need to discuss them and reach a consensus. Besides being a bad idea, stifling debate does not work, at least not on Americans. We have employee rights on our jobs because big business could not shut down the labor movement. Women have the right to vote because the Suffragettes could not be silenced. Minorities have better opportunities because the Civil Rights movement would not go away and be quiet. The courage and determination of those protesters changed the course of our history and made our society stronger and richer in spirit.

In order to survive and grow, a profession must evolve. We would not be here today if our forbears had decided that they could not adapt from nib pens to ballpoints and fiber tips. I am sure there was much debate on the matter, but they figured it out and we are still here. One of the most difficult decisions our profession ever made was when the ASQDE decided to admit government-employed examiners. They took that decision in the late 1960's, even though they knew it was possible that the newly admitted government experts might quickly form a majority and change the character of the organization. There was much debate at the time. When I attended my first ASQDE meeting in 1972, there was still some grizzling about it. However, I don't think anyone would question that decision today; the ASQDE is a much stronger organization because of its wider membership. It might not even have survived without its government-employed members and certainly would not be the influential organization it is today.

We are not the first generation of FDE's to face difficult decisions about our profession. We need to debate, discuss, consider, and listen to each other so we don't wind up the *last* generation to do so. 

Support

(continued from page 9)

their contention that QD and its practitioners are unreliable.

Orders issued in recent court decisions note whether the practitioner participates in proficiency testing and peer review. Proficiency testing and peer review carry a great deal of weight in a judge's determination in allowing the expert to testify. Experts in QD, latent prints, and firearms have all faced scrutiny in the courts regarding proficiency testing and peer review (second examiner reviewing the case). In firearms, the examiner was not allowed to testify as to his conclusion. Part of the judge's decision was based on the lack of information on the examiner's error rate, due to his lack of participation in proficiency testing [US District Court for the District of MA, *US v. Darryl Green, et al*; Crim. No. 02-10301-NG]. A judge presiding over a firearms/toolmarks case also limited the expert's testimony based, again, on the practitioner's failure to participate in proficiency testing. In her decision, Judge Saris wrote, *"To be sure, Sgt. Weddleton apparently has no formal scientific training, is neither certified by, nor is he a member of any professional organizations, and he has not undertaken any proficiency tests at the time he performed the tests at issue. However, he has performed hundreds of such examinations, and is, by the standards in the field, qualified. Furthermore, the government introduced evidence that Sgt. Weddleton took a nationally administered proficiency test in July 2005 and passed"*. [US District Court for the District of MA, *US v. Amando Monteiro, et al*, Crim. No. 03-10329-PBS]. Forensic linguistics was limited in *USA v. Roy Van Wyk*, [Crim. No. 99-217] due to the profession and practitioner's lack of a known error rate. Judge William Bassler wrote, *"....there is no known error rate, no recognized standard, no meaningful peer review, and no system of accrediting an individual as an expert in the field"*.

In the Commonwealth of MA *v. Terry L. Patterson* [SJC-09478], the latent print examiner was excluded regarding testimony on simultaneous prints.....the judge was concerned with the lack of a known error rate for both the

methodology and the examiner. I discussed this with an examiner on SWGFAST. She stated SWGFAST had avoided addressing the use of simultaneous prints because of the complexity of this task and the difficulty in establishing a standard.

Certification in the specific expertise is an important credential and is one means of proving to the court that the expert has demonstrated some level of competency. However, the courts view proficiency testing as one demonstrable method of insuring **continuing competency** of the expert. Below are a few of the more recent decisions commenting on proficiency testing (where applicable, the judge also noted the FDE as a diplomate of ABFDE): *USA v Prime* [CR01-0310L]; *USA v. Thornton* [02-M-9150-01]; *USA v. Crisp* [01-4953]; *USA v Mooney* [01-03-B-S], *Commonwealth of MA vs. James Glyman and Karin Parham* [Crim. Nos. 02-499, 02-500]; *USA v. Pitchesky* [No. 01-608-CR-Seitz]; *Legacy Vision, LLC v. Gary Yeamans* [CIV-04-1320-M]; *District Court Clark County Nevada, State of Nevada v. Tracy Warren* [C187202].

As of this date, the courts have not narrowed their demand to a specific testing method in order to demonstrate an individual error rate, i.e. CTS, Found, internal testing, etc. There is a distinct advantage to having several venues in which to participate in proficiency testing. Having more than one or two outlets for external proficiency testing allows the FDE the freedom to participate in the program he/she is comfortable with and can afford; and, if so desired, to participate in more than one program in order to demonstrate that the examiner's proficiency scores are an accurate representation of his/her examination ability of a particular task. It also neutralizes the critics' charges that current proficiency tests have been "dummied down".

The American Board of Forensic Document Examiners proficiency test program is voluntary, and provides another avenue to participate in proficiency testing. To those concerned that there will be a stigma attached to those who don't participate, past history does not support that fear. I offer as evidence there are many

(continued on page 19)

Support

(continued from page 18)

legitimate FDEs who are not ABFDE certified, yet they are allowed, and rightly so, to testify.

ABFDE has overseen the certification testing for 20-plus years. It has an established track record of maintaining the confidentiality of participants. This organization also has experience in preparing tests by knowledgeable FDEs on the various facets of QD. The dissenting judge in the United States Court of Appeals in *USA v. Patrick Crisp*, No.

01-4953, wrote, "...the government's expert here testified to his success on proficiency tests, the government provides no reason for us to believe that these tests are realistic assessments of an examiner's ability to perform the tasks required in his field".

ABFDE is an independent organization that can prepare and distribute tests that reflect actual casework for specific tasks at hand.

I wholeheartedly grant my support and endorsement for ABFDE to establish a voluntary proficiency testing program. This program not only serves both diplomates and non-diplomates, it serves the courts by providing objective documentation as to the participant's ability to perform specific tasks at hand.

Respectfully Submitted,
Jan Seaman Kelly
Past President-ABFDE



Olson Letter

(continued from page 6)

of increasingly refined error rate estimates."
[Should it?]

(from "Comments on Bruce Budowle's Presentation at the Sackler Colloquium on Forensic Science," by Saks and Koehler, 27 Nov 2005, summarized in their reply to the Letters to the Editor of Science magazine)

As we know from his other writings, Professor Saks is overly concerned with numbers. His is a dream world in which the court will obtain an expert's error rate in a certain examination (i.e., identifying a signature). Then some magical calculation will provide a numerical probability

whether the expert is correct. The numbers reached by experts on opposite sides can be weighed to see who is most correct/believable. Neat and simple, maybe, but do WE believe this will ever occur? Do we really WANT this to occur?

For Professor Saks (and others who wish to buy into his supposition), exactly how are "error rate estimates" supposed to be "refined," much less computed in the first place? Has he or anyone really considered what is involved in establishing and maintaining a personal error rate? Would one not have to have a separate error rate for identifying handwriting? hand printing? numerals? deciphering an ESDA? developing an ESDA? detecting an alteration? Does not each examination performed have to be counted? How many proficiency tests are considered necessary before the sample is statistically significant? Will that number EVER be great enough to satisfy the critics? I doubt it!

Therefore, I think we should, on ALL occasions, politely refuse to get involved in a discussion of the Daubert "error rate" factor. IT DOES NOT APPLY HERE!

A more sensible (and more recent) statement of what should be allowed as testimony (as mentioned by Derek) is the updated Rule 702. This requires that:

- 1) the testimony be based on adequate data and facts (i.e., evidence),
- 2) the testimony is the product of reliable principles and methods (which, for your typical handwriting examinations, have been proven to be reliable through the research of Dr. Kam and Dr. Srihari), and
- 3) the witness applied the principles and methods reliably to the facts of the case..."

The latter item does not say that "the witness has an appropriately low error rate..." nor that "the witness has a good track record for this type of examination." It is not even asking if the witness has demonstrated reliability in the past (as Saks would like to include via the Bayesian theory). It is asking if the witness has applied the methods properly IN THE PRESENT CASE.

(continued on page 20)

Olson Letter

(continued from page 19)

The instruments are already in place to determine the above. The expert's "track record" can be elicited during *voir dire* and cross-examination. The application of principles and methods in the reaching of a conclusion can and should be demonstrated by the examiner during direct testimony and reinforced during cross.

In the meantime, when the error rate question rears its very ugly head, there is a tried and true remedy I learned long ago. When a confusing or potentially loaded question is asked by an attorney, it should be turned back upon him/her for clarification.

If asked, "What is your error rate, " or "Do you have an error rate," one could just say "No," or "One is not required in my field," at which the attorney will undoubtedly make this seem like a shortcoming. One could also simply ask the attorney, "What do you mean by an

error rate?" Nine times out of ten, I'll bet that the attorney (after some fumbling) will say, "Well, have you ever made a mistake?"

Now THAT is a question that, although still vague, everyone (including the jury) can understand. It is one our training and or experience should have prepared us for, and for which we probably have a hatful of answers, depending on how serious/puckish we feel at that moment.

While I laud Derek and the Board's effort to bolster QDE testimony; I fear the reasons behind it may be misguided and reactionary. This additional proficiency testing proposal needs to be VERY carefully considered. Additional assessment of one's skills is one thing, but the development of a personal score card is quite another. The latter is completely unnecessary, and potentially harmful to the discipline, in my humble opinion.

Larry Olson, Diplomat

**Title courtesy of Karen Runyon*



American Board of Forensic Document Examiners, Inc.

Administrative Office
7887 San Felipe, Suite 122
Houston, TX 77063