

**THE BILL BLACKWOOD
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**Examination of Question Documents and Procedures used in
Handwriting Comparison**

**A Policy Research Project
Submitted in Partial Fulfillment
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ABSTRACT

It is said that Everyone is entitled to their own opinion. While this is true, it is also true that a person's opinion may be accepted or rejected based upon the qualifications the individual has to give such an opinion. Since the field of handwriting comparison is based upon a subjective analysis of the document in question to that of known writings, the results of a comparison is expressed by the examiner in the form of an opinion. During the course of a trial a document examiner may be called upon to give expert testimony as to the authorship of a particular writing. Unlike other areas of specialized training wherein upon completion there is a certification or licensing process, within the field of handwriting comparison there is not. The title of "Expert" is often given to the examiner by the trial Judge based upon the amount of training and years of experience within the field of handwriting comparison, thus allowing the examiner to testify to his or her opinion. This research is being conducted in an effort to determine what amount and type of training an examiner should receive in order to achieve the title of "Expert". Research of training programs currently in use by other law enforcement agencies will be conducted, as well as research of current case law that effects handwriting examiners. Because handwriting comparison is subjective in nature it is imperative that the methods used in comparison protect the integrity of the examiner and the profession.

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Introduction

Modern technology has brought us into the computer age where many times a keyboard has taken the place of the pen and paper. However, handwriting is still a very important and personal way to communicate. Handwriting contains characteristics and personal habits that makes that writing unique to the individual. Miller writes,

Question document examination, particularly handwriting/handprinting identification, lends itself readily to unintended bias on the part of the examiner. Question document examination is one of the few forensic science areas that depends primarily on a subjective analysis by the examiner.

The purpose of this research paper is to establish a procedure in the examination of handwriting comparison that would protect the integrity of the examiner.

In many instances a structured training program must be completed wherein a license or certification is obtained within a specific area, such as a Polygraph examiner or Hypnotist, before that individual is considered to be qualified to perform those duties. However, the State of Texas has no certification of handwriting examiners. Therefore, one of the issues addressed in this research paper is the amount and type of training that is needed for a Handwriting Examiner to be considered a expert.

The intended audience of this research includes, but is not limited to, law enforcement officers assigned to the identification division and those officers charged with the investigation of forgery and other crimes involving questioned documents.

The research for this project is conducted through the use of journals, books, instructional publications from training courses and published articles. Surveys of other law enforcement entities were conducted to determine if a Handwriting Examiner is employed with that agency and what if any policies the agencies have in regards to handwriting examiners.

It is the intent of this research paper to provide a foundation to establish procedures in the examination of handwritten documents. Since the comparison of handwriting is subjective in nature it is imperative that the methods used for comparison protect the integrity of the examiner as well as the profession. When the Handwriting Examiner find himself in a courtroom setting proper procedures and training will assist the Examiner in meeting the qualifications of an Expert that they represent.

Historical, Legal or Theoretical Context

Since the beginning of time society has used a written language in some form to communicate with others within their communities. The authorship of these written documents whether personal or of a legal nature would often times come into question.

John 1. Thornton and Edward F. Rhodes, were quoted as saying "By the third century A.D., Roman Jurist had found it necessary to set forth protocols for the detection and proof of forgeries, and during the sixth century the emperor Justinian established additional guidelines" (Nickell 1). Persons who were especially skilled in writing could give testimony as to whether or not a disputed text was authentic, largely based on the concept of "resemblance or similitude of hands" The Roman approach prevailed in western Europe for the following millennium. (Nickell 21). This is also true today, take for example if you reside in a home with several other family members, and when you arrived home you find a note that reads " I will be home at 9:00 see you later". The note is not signed, but it does not have to be, because you recognize the handwriting and know who the author is.

Inbau, Moenssens, and Vitullo, said "The theory upon which the document expert proceeds

is that every time a person writes he automatically and subconsciously stamps his individuality in his writing," and therefore "Through a careful analysis and interpretation of the individual and class characteristics, it is usually possible to determine whether the questioned document and the standards were written by the same person." (Nickell 43-44). Each person has a range of natural variation. But even with this range of variation, each person grows in his or her writing from the classic forms taught in childhood into an individual and identifiable form of written expression (Will p2).

The concept of handwriting comparison is based largely on the theory that a person's handwriting is unique to that individual and that no two individuals' handwriting can be the same because of the personal characteristics found in an individual's writings. According to the Identification of Handwriting forensic instruction manual for course in Scientific Crime Detection "The mature writing is of course modified by other factors, such as education, training, personal taste, artistic ability, musculature, nerve tone, and the like; but once the form of the letters and their manual execution have been crystallized by long usage, the identifying characteristics will undergo but slight if any change as time goes on".(Nickell 26).

Every person has a range of handwriting variation determined by his or her physical writing ability, training in "penmanship" , and other factors. To the experienced expert, a study of known samples of writings reveals personal writing characteristics which can allow the expert to identify or exclude an individual as the author of some questioned writing (Will 2).

A. S. Osborn stated "The profession of examiners of questioned documents grew out of the needs of the courts for assistance in interpreting evidence relating to the preparation and subsequent treatment of the documents" . (Hilton 4). Over many years the "Expert" Document

Examiner has been developing their skills and testifying in criminal and civil court in regards to handwriting comparison, and the examiners training and knowledge within the field has been generally accepted. However there has been some debate in recent years as to whether or not handwriting comparison is a Forensic Science or a Technical Art.

In the case Frye vs. US., 293 F. 1013 (1913) the issue of scientific expert testimony was cast into the spot light. While this case did not deal with handwriting comparison directly, it is cited many times when there is an effort to determine if the scientific expert's testimony is based on a "general accepted method" , and this case is often referred to as the "Frye Test".

This was an issued that was dealt with in the case of U S. vs. Ruth, (42, M. 1. 730, 95), wherein the United States Army Court of Criminal Appeals decided that handwriting evidence is "technical, or other specialized knowledge" rather than "scientific" knowledge, within the meaning of expert testimony rule and, thus, admissibility of expert testimony on handwriting analysis does not depend on factors governing admissibility of expert "scientific" testimony.

The rule which governed this decision is Rule 702. Testimony of Experts, which states that, "If scientific, technical, or other specialized knowledge will assist the trier of facts to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise" (28, U S. C. A).

One of the most recent court cases is that of U S. vs. Jones, decided on March 3, 1997, in this. case the court ruled that handwriting analysis is a field of expertise by stating" We agree with the district court that the proposed testimony with respect to handwriting analysis concerned scientific, technical or other specialized knowledge, and was sufficiently reliable to be admissible.

The court therefore finds sufficient indicia of reliability to sustain the admissibility of forensic document examiner expertise as non-scientific expert testimony". With the recent court decisions recognizing handwriting as a field of expertise, whether an examiner's training, experience, and knowledge is sufficient to classify the examiner's testimony as expert still lies at the discretion of the trial judge.

Review of Literature or Practice

A principal belief of document examiners is that there are no two people who have the same handwriting, and based on tests that have been conducted that theory is believed to be true. E. Patrick McGuire stated, "To test just such assertions of the uniqueness of handwriting, the United States Postal Laboratory launched a project in which five hundred sets of handwriting of both fraternal and identical twins were studied. The study ranged over several years, as six experienced document examiners carefully examined the sets of handwriting in order to test the theory that twins-who otherwise show many physical and mental similarities would also exhibit similarities in their handwriting. However, "a complete examination of all these twins signatures revealed that the differences in handwriting between the 500 sets of twins were as individualistic and as unique as might be expected between any other non-related individuals in the general population". (Nickell 27-28).

Although there has been very little testing done in regards to document examiners proficiency using control groups, one such test was published in the Journal of Forensic Science by Moshe Kam, Gabriel Fielding and Robert Conn. The proficiency test was administered to over 100 questioned document examiner's, 41 non-experts, and 8 individuals who were in training program

to become document examiners. It was reported that each group resembled each other in terms of formal education. The test consisted of each participant receiving two packages. The first package contained six-original handwritten documents, labeled unknown. The second package contained 24 original handwritten documents and it was labeled data base. The test was for the participants to find all the documents in the data base package that matched those documents in the package marked unknown. The results of the test showed that" The group of professionals incorrectly matched 6.5% of the documents in the unknown packages with documents in the data base packages. The group of non-professionals made this mistake for 38.3% of the documents in the unknown packages" (Kam 779). The results of this test showed that trained professional document examiners were capable of doing very well on the proficiency test as opposed to individuals with out training in the field of handwriting comparison. It is the documentation of test such as this that is needed for future to validate the procedures used in handwriting comparison.

Charles E. O'Hara, stated "In comparing two specimens of handwriting the expert searches for characteristics which are common to both the questioned and standard writing. If the characteristics are sufficient in kind and number and there are no significant unexplainable differences, he may conclude that the writings were made by the same person". (Nickell 43).

The method of making a scientific comparison stroke by stroke, of questioned writing with genuine, places handwriting identification on the same basis as fingerprint identification (Bates 6). Gideon Epstein said, The document examiner is occasionally asked how many points of identification are necessary to establish that two writings are by the same person. Such criteria have not been established, and probably could not be, because of the nature of handwriting identification. It involves not only factors of form that are subject to relatively easy count, but also

the qualities of execution, freedom, movement, skill, emphasis, spacing, and the like that influence the entire writing and are not susceptible to tabulation. As a consequence, the combination of a unique set of similarities coupled with the lack of significant basic writing differences must be used as the true basis for positive identification (Nickell 44).

Because of the lack of training schools offering classes to examiners in the field of handwriting comparison, many agencies rely on apprenticeship training. By using this procedure a future examiner is able to receive hands on training while being supervised and instructed by a professional examiner. It is recommended that this training period be of at least two years, and during this period have extensive experience in handwriting comparison. This is the training procedure most commonly used in very large agencies that have their own forensic laboratories with questioned document examiners...employed in the laboratories that are readily available to instruct examiners in training. The Federal Bureau of Investigation, Texas Department of Public Safety, United States Secret Service, are a few of the larger agencies that use this technique to train their own document examiners. While this is the preferred method of training, it is not always possible for police agencies to train their own examiners. A lot of departments find it difficult to locate a professional document examiner in their area, or one that is willing to take on such a task. The Houston Police Dept. is in the process of developing a question document section, and at this time there is no professional handwriting examiner within the department. There are two officers currently undergoing apprenticeship training with a professional examiner located in Colorado requiring constant out of state travel.

Discussion of Relevant Issues

"One of the virtues of science is its self-correcting aspect, a willingness on the part of the scientist to change their opinion when faced with new, contrary evidence". (Nickell 21). In recent times the reliability of handwriting comparison, and the accuracy at which an examiner can identify handwriting to a particular individual has come into question. It is for this reason that one of the key issues of this research has been the qualifications a professional document examiner must possess to meet the qualification of an expert in the court room.

Following specific guidelines in the procedure of handwriting comparison and the documentation of the procedures used, would enable the examiner to show he or she had no preconceived opinions in regards to the comparison.

"Question document examination, particularly handwriting / handprinting identification, lends itself readily to unintended bias on the part of the examiner. Question document examination is one of the forensic science areas that depends primarily on a subjective analysis by the examiner." (Miller 407). C. A. Mitchell stated, "The evidence he or she provides "should be concerned solely with the truth of certain facts without any reference to how they may effect any person" Mitchell adds" It is essential that an expert witness should not go beyond the scope of the facts which he is in a position to prove, or of an impartial opinion based upon them. In criminal cases the innocence or guilt of an accused person has nothing to do with him in the capacity as witness, and any bias shown in either direction will weaken the force of his evidence". (Nickell 23).

Another key issue that needs to be addressed within the field of handwriting comparison is the fact that handwriting comparison is based on a subjective analysis and is not an exact science.

Concentrated efforts on the part of all document examiners must be made to document the cases. By documenting the results of handwriting comparisons as well as any test that the examiner may have conducted would demonstrate the validity of the process. As Kenneth L. Feder stated "Through individual scientist may be swayed by personal biases, wishful thinking, or peer pressure, data cannot be explained away for very long". (Nickell 21). There are many professional organizations that document examiners can become a member of One of the most well respected organizations is the American Board Of Forensic Document Examiners, Inc. Qualifications for membership require the applicant to have a Baccalaureate Degree, and be able to show documentation of a two year training period in a forensic document lab recognized by the board. After meeting the requirements and passing an examination the board will issue a Certificate of Qualification in Forensic Document Examination after all fees are paid. There are many other similar organizations that have the same or lesser requirements for membership. Membership in these organizations will not make the examiner an expert, but can be an indication of some of the training and education that the examiner possess in order to maintain membership.

As a result of such a limited opportunity to attend any formal academic training in the profession of handwriting comparison the cost for the training is very high. At the present time the University of Houston Downtown, located in Houston, Texas offers a week long, Basic Forgery and Question Document course and a 2 day Advanced Forgery and Question Document Course. The United States Secret Service instructs a 72 hour course on Questioned Documents located at the Federal Law Enforcement Center in Glynco, Ga. With the exception of short courses offered in the form of a seminars through some of the professional organizations, there is no other formal training available. Because of this a individual wishing to become a document examiner must be

very self motivated, and the department with whom he or she is employed must be willing to share the high cost of training that often results in a great deal of traveling and additional expenses.

With the current trends of the courts and it's recent rulings it is becoming increasingly important for the professional document examiner to standardize the process used in the comparison of documents. By establishing a standard in the profession of question document examination, it would create the documentation that is required under the case law of Daubert vs. Merrell Dow Pharmaceuticals, wherein the admissibility of scientific expert testimony must meet the standard of "General Acceptance". It is well known in the profession that there are some unqualified examiners who area willing to testify to the shortfalls in the field of handwriting comparison. This issue was brought to the forefront by Farrell C. Shiver in an article prepared for presentation at the Fifty-fifth annual conference of the American Society of Questioned Document Examiners, 1997 wherein he stated "The role of the critic is to attempt to keep the document examiner testimony out of court. If that is not successful, the critic ridicules document examination and methodology used during the trial" (Shiver abstract).

Conclusion/ Recommendations

The purpose of this research paper is to determine at what point in a document examiner's profession is he looked upon as an expert. It is clear by the recent court rulings that the document examiner still has a very important role to play. The document examiner's expert testimony whether it is scientific in nature or of technical expertise is accepted and carries a great weight within the court system.

The experience, education and training necessary for an examiner to perform his duties is for the most part unregulated in the United States. However these are the qualifications that a trial judge considers before the opinion of a document examiner is allowed to be heard in open court.

It is clear from the research that document examiner's agree on the basic principal of handwriting comparison and the methodology used in comparing handwriting. What is also clear is that there is no required standard of education or training associated with the profession.

In order for the questioned document examiner to gain the status as an expert in the profession as well as in the courtroom, I feel it is necessary that a regulating agency be established so that standardized training can be assured among all questioned document examiners. With an agency such as the Texas Commission on Law Enforcement Officers Standards and Education monitoring the training and overseeing the licensing and or certification of the document examiners in Texas, then the trial judges and juries who are charges with the duty of assessing the examiner's credentials can be assured that the examiner has met the qualifications set by the state.

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