

Bias Among Forensic Document Examiners: A Need for Procedural Changes

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INTRODUCTION

Questioned document examination, particularly handwriting/handprinting identification, lends itself readily to unintended bias on the part of the examiner. Questioned document examination is one of the few forensic science areas that depends primarily on a subjective analysis by the examiner. Most questioned document examiners attempt to render analyses as objectively as possible by using sophisticated measuring techniques. However, complete objectivity cannot be achieved because of (1) the situation in which the document examiner is summoned for analyses, and (2) the fact that most of the identification process involves a subjective opinion of the examiner.

There are few formalized academic and training courses of study designed for forensic document examiners. Academic degrees in the behavioral and natural sciences may assist an unskilled or apprentice document examiner in developing a base for the profession. However, the actual training itself usually rests with independent study and apprenticeship under a skilled document examiner. Relatively few "points of comparison" exist to identify the author of a particular handwritten document. Most experts tend to rely on comparison of measurements, degrees of slant, proportional spacings, and so on (Miller 1983). Since handwriting is a dynamic function it varies from other forms of forensic human identification (for example, fingerprints, voiceprints, hair, blood, and so on). Because of this, there are no specific tests for identification which yield positive or negative results in hand-

writing identification and limit the amount of subjectivity in an analysis.

QUESTIONED DOCUMENT EXAMINATION PROCEDURES

In the examination of questioned handwritten documents, the usual procedure involves obtaining handwriting exemplars from a suspect for comparison purposes (known vs. questioned). Most document examiners prefer to examine true exemplars of a suspect's handwriting. True exemplars are those handwriting samples written in the course of everyday activities (for example, application forms, letters, motel registrations, and so on). Most frequently, document examiners receive only request exemplars from a law enforcement agency or attorney with which to examine and compare. Request exemplars are those in which a suspect is requested to submit samples of his handwriting for comparison purposes. Most law enforcement agencies utilize a standard form to obtain handwriting samples to submit for analysis and comparison. It is not unusual for forgery suspects (guilty or not) to attempt to disguise their handwriting on request exemplar forms. The emotional tension of being accused of committing a criminal offense may cause an individual to disguise his handwriting for fear of prosecution. Once the samples are procured, they are submitted to a document examiner for analysis.

In criminal cases, police investigators usually submit the questioned documents and known samples along with a synopsis of the facts surrounding the

investigation. It is important in prosecution cases that the police have other forms of corroborating evidence to support a conviction. Rarely will a prosecution and/or conviction stand solely on the basis of an expert opinion on handwriting. For example, a forgery investigation of check passing usually requires a witness who could testify to the identity of a suspect as the person who passed the check. The document examiner could corroborate the witness by testifying that the handwriting on the check was identified as the suspect's.

In civil and defense cases, corroborating testimony is not as important. A preponderance of the evidence is required in civil cases and the establishment of a reasonable doubt is only required in defense cases. Attorneys usually attempt to attack the document examiner's credibility and emphasize common dissimilarities of the questioned and known writings. It is quite common for attorneys (defense and civil) to use opposing experts to damage or neutralize the other expert's opinion. It is common knowledge among attorneys that an "expert" can be procured to testify to what "their side wants" for the right amount of money. Such instances not only damage the reputation of the profession, but also damage the search for truth in court. It is a common question for attorneys to ask in cross-examining a document examiner how much he is being paid for his testimony. Such questioning elicits an implied bias on the part of the examiner in forming his opinion.

REVIEW OF APPLICABLE CASE LAW

Most court decisions regarding the admissibility of human identification evidence have been challenged based on the due process clause of the Fifth and Fourteenth Amendments. The courts have generally held that a suspect has no right to refuse to submit himself for purposes of identification. The taking of fingerprints, blood samples, handwriting samples, hair samples, to appear in line-ups, and so on, have all been held not to violate a suspect's due process guarantees. Due process does command that identification procedures be conducted fairly. The courts have held that: (1) line-up participants should be of similar physical appearance; (2) individual confrontations between the victim and the suspect should be as nonsuggestive as possible; and (3) the police should refrain from indicating their own beliefs as to the guilt or innocence of a particular person (*U.S. v. Wade* 1967; *Kirby v.*

Illinois 1972). The due process clause of the Fifth and Fourteenth Amendments forbids a line-up that is unnecessarily suggestive and conducive to irreparable mistaken identification. The rationale of these "line-up cases" is that an accused is entitled to counsel at any "critical stage of the prosecution," and that a post-indictment line-up is considered a critical stage. Secondly, the right of a suspect to be protected from prejudicial procedures in a line-up must be guaranteed (*Stovall v. Denno* 1967).

The leading case decision on obtaining handwriting exemplars is found in *Gilbert v. California* (1967). The court held that the taking of handwriting exemplars was not a "critical stage" of the criminal proceedings and did not entitle a suspect the assistance of counsel. The court further held that, if for some reason an unrepresentative sample is taken, it could be brought out and corrected through the adversary process at trial since the suspect could make an unlimited number of additional samples for analyses and comparison by experts. Thus, "the accused has the opportunity for a meaningful confrontation of the [State's] case at trial through the ordinary process of cross-examination of the [State's] expert witness and the presentation of the evidence of his own [defense] experts" (*Gilbert v. California* 1967).

The courts have failed to make a clear definition of what constitutes a "critical stage" of criminal proceedings. The difference between the "line-up cases" and *Gilbert* (1967) appear to be: (1) unlimited handwriting samples could be prepared by a suspect at any stage of the criminal proceedings; (2) cross-examination may reveal bias on the part of the document examiner's methods; and (3) document examiners, unlike lay witnesses, are experts emotionally detached from the prosecution and who may be provided by the defense as well as by the prosecution.

Several questions arise concerning the court's rationale with regard to handwriting identification. First, a majority of defendants in criminal prosecutions do not have the ability or the opportunity to procure a document examination expert to testify on their behalf. Generally, most cases are plea-bargained and are never heard before a jury. Second, a document examiner, even in error, may effectively testify that a handwritten document was written by a defendant because of the subjectivity involved in the opinion. Third, the adequacy and circumstances surrounding the taking of request handwriting exemplars from a suspect are rarely challenged in court by defense attorneys.

REVIEW OF PSYCHOLOGICAL BIAS THEORIES

Many individuals are often mistaken about the actual determinants of their behavior that do not necessarily influence the experience or its explanations (Nisbett and Wilson 1977). Subtle control has been identified as one of those factors where individuals find it difficult to understand or identify controlling features operating in a particular situation (Jones 1977). Nisbett and Wilson (1977) found there were unconscious factors at work on human behavior that could account for bias, prejudice, fear, stereotypes, and so on.

Cognitive generalizations about people and situations that one brings into a social interaction with another may shape that interaction (Jones 1977; Rosenthal 1974; Snyder and Swann 1978; Snyder et al. 1977). Social norms for behavior in a particular situation may further enhance an individual's behavior in a social interaction (Bandura 1977; Mischel 1968, 1973; Rotter 1954). Social behavior is determined largely by an interaction between the cognitive and dispositional characteristics of the individual and the social and situational characteristics of the environment (Magnusson and Endler 1977).

These positions emphasize the dynamic character of personality; people adapt their behavior to fit their own expectations about a social situation and the expectations of others in the social interaction. Cognitive generalizations about the self (Kelley 1955; Mankus 1977; Rogers, Kuiper, and Kirker 1977), about different types of people whom one encounters in a social situation (Cantor and Mischel 1979; Cohen 1977; Hamilton 1979), and about the nature of social situations (Magnusson 1974; Pervin 1977; Price 1974; Schank and Abelson 1977) all play a considerable role in influencing social behavior. A person's response to another may be determined by their "set" (to expect a certain pattern of behavior to occur in a specific situation by relating the person's behavior and the situation to past experiences and similar circumstances) (Cantor 1981).

Applying these social-psychological schools of thought to bias among document examiners, one finds that a subjective conclusion by an examiner may have been influenced by social interaction, situation, and past experience. In a criminal investigation of forgery, the police have little or no doubt that their suspect has committed the offense. Their preoccupation is with the problem of obtaining sufficient proof for a conviction (Williams and Hammelmann 1963). Such police

behavior may involve communicating their belief to the document examiner in a social interaction. Whether or not there is an actual physical social interaction between the examiner and the police is not necessarily important. The fact that the police suspect an individual, obtain handwriting exemplars from the suspect, and submit the case to the document examiner provides sufficient factors for a social interaction and situation. The examiner may unconsciously believe that the suspect must be guilty or the police would not have made an arrest. The examiner may also assume the existence of corroborating evidence to support the guilt of the suspect. Such unconscious beliefs have the potential to create bias on the examiner's part regarding conclusions about the handwriting comparison. This bias may be supported if the handwriting exemplars submitted are pictorially similar to the questioned documents and/or that the known handwriting request standards bear characteristic disguised handwriting patterns (influence by past experiences).

The same may hold true for defense and civil forgery cases. An attorney may provide the same amount of bias influence on a document examiner by indicating that his client "did not write the questioned document." This influence, supported by the examiner's expectation of financial reward for a "correct" opinion, may create an unintentional biased conclusion.

TESTING THE HYPOTHESIS

In lieu of the social-psychological theories on bias influences, it was hypothesized that forensic document examiners are influenced by the social interaction between themselves and the police or attorney requesting their services and the situation in which they were requested to do an analysis. In order to test the hypothesis, it was necessary to design an experiment with document examiners and to provide them with a forensic situation in which the true outcomes were known.

Twelve college students, trained in the forensic examination of questioned documents, were utilized in the experiment. Each of the 12 examiners were independently advised they were to examine and compare handwriting samples in a criminal investigation. The 12 examiners were divided into 2 groups (6 in each). Both groups were provided with fictitious evidence normally associated in a forgery of checking instruments' investigation. The "cases" were constructed from previous cleared investigations in which the outcomes were known. The first group was provided with

the standard articles of evidence normally provided by a police agency and included: (1) a synopsis of facts concerning the investigation; (2) the suspect's name and his handwriting samples on a request exemplar form; and (3) three checks allegedly written by the suspect. The 3 checks provided to all 12 of the examiners were not written by the true suspect(s) but did resemble the handwriting pictorially on the request handwriting forms provided to the examiners for comparison. Both groups received the same amount of evidence to examine except that group two received two additional "suspects" on request forms for comparison. Group one received only one suspect request form with which to compare. Group one was advised that the known request form was from the police suspect and that the police had two witnesses that would testify they saw the suspect write out and pass the checks. Group two was requested to examine all three "suspects" to determine if any of the three wrote any of the questioned checks.

The conclusions and opinions reported by the examiners supported the bias hypothesis. Four examiners in group one concluded that the suspect's exemplars and the writing on the checks were the same. One of the examiners in group one reported inconclusive results based on his findings that "the known samples bore disguised handwriting characteristics." The last examiner in group one correctly reported that the suspect did not write the questioned checks. All six in the second group reported accurate and correct findings: none of the "suspects" wrote the questioned checks.

DISCUSSION

Although the experiment was a superficial research design and examination of the hypothesis, it did elicit some concern over the amount of unintended bias among document examiners. In any handwriting comparison, one can point out both similarities and dissimilarities of the writing habits. If the samples are pictorially similar, it becomes easier to point out similarities. As in the experiment, pictorially similar samples may enhance the amount of bias already implanted unconsciously in the examiner's mind. A preconceived conclusion that "the suspect wrote or did not write the document" based on the situation and social interaction finds an easier outlet when the samples are pictorially similar or dissimilar.

Such bias is difficult to control but certain procedures can limit the amount of bias in a document examiner's conclusions. First, the police agency or attorney should not make a statement, verbally or

written, regarding an individual's participation in writing a questioned document to the examiner (for example, "this is the guy we believe wrote the checks," or "I don't believe my client wrote this"). Second, there should be more than one sample of handwriting exemplars submitted for analysis. As in the case of line-ups, more than one "suspect" handwriting sample should be included for examination, pictorially similar to the true "suspect's" handwriting. Third, when possible, true exemplars as well as request exemplars should be submitted to control for possible disguising of handwriting.

By following these suggestions, a document examiner and submitting agency (police or attorney) can inhibit the amount of bias that may lead to erroneous conclusions by the examiner. Testifying that such procedures were followed would also neutralize an attorney's insinuations to a jury that a bias existed in the examination. Such procedures would serve to demonstrate that a conscientious effort was made by the examiner and the submitting agency to control extraneous variables which could bias the results of the examination.

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