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Good Standards in Document Examination Cases

by Emily Will

This article is based upon the text of the article by the same name which was printed in the Trial Briefs, the quarterly publication of the North Carolina Academy of Trial Lawyers, in the 3rd Quarter of 1988. Twenty years later, these concepts and practices remain valid. Some modifications to the text and format have been made.

In cases involving questioned documents, lawyers can take certain steps to ensure that the document examiner has the necessary materials to perform a thorough and conclusive examination. A questioned document examiner examines documents in cases where foul play is suspected. Cases frequently involve handwriting comparisons, typewriting comparisons, physical alterations to a document, and many variations on these themes. Some document examiners are involved with chemical testing of documents, while others concentrate on physical and mechanical testing. The document examiner is often a qualified expert witness, accepted in court by a judge after being examined and cross-examined by counsel.

The most important factor in any document examination is the quality of the standards (the documents of known origin that are compared with the questioned documents). The questioned document is important too, but it is a "given". It defines the outer limits of the examination, but how far the examiner can go within those limits depends on the standards.

Important Facts about Standard Documents

There must be no doubt about the authenticity of the standards. The document examiner needs to be able to rely on the standards, and the standards may need to be accepted as evidence in court.

Within the bounds of reason, there cannot be too many standards. Every handwriting shows natural variation. In cases where varying letter forms is an issue, if the examiner doesn't see enough standard writing, he or she will not have the information needed to form a good opinion. Typewriting cases often depend on identification of some individualizing defect of a machine. Defects can be sporadic, especially in their developmental stages. A few lines of typing or a quick run through the alphabet will not yield enough material to reveal the real character of the typing element.

The question arises, how much is enough? There is not an "across the board" answer. There are unusual cases where one or two signatures or a few typewritten lines will suffice. It all depends on the nature of

the question. Be aware that in many cases the amount of standard material is an issue, and begin to amass samples early in the investigation. At the same time, realize that quantity is no substitute for quality, which will be discussed next.

Two Types of Standards

There are two types of standards: collected and requested. Collected standards are those already in existence that the attorney or investigator collects. They may be bank records, letters, legal forms, and the like. Requested standards are those that the subject is requested to give to facilitate the document examination.

The best standards are those that most closely emulate the timeframe, circumstances, materials and content of the questioned document. Therefore, look for collected standards executed close in time to the questioned document. This is especially critical in cases involving illness, death, accident, mental imbalance, substance abuse, or anything likely to cause a dramatic change in the subject's behavior.

Find out everything possible about the circumstances under which the questioned document was allegedly prepared. Was the subject lying sick in bed, standing at a counter, holding a clipboard in his or her lap? Try to obtain standards written under similar conditions.

Is the questioned document a check, letter, legal form, passport? Is it written on blank paper, lined paper, graph paper, cardboard? Was pencil, ballpoint, felt tip or fountain pen used? If there was anything unusual about the materials of the questioned document, try to duplicate that uniqueness in the standards.

Content can be important in a document examination. Look for collected standards that share letter combinations, words, phrases or numbers with the questioned document. When requesting standards prepare a text that will include such similar content.

There is a Method

There is a method for obtaining good requested standards. In a handwriting case the material to be written should be dictated to the subject, rather than copied by the subject. Prepare the text and assemble the proper materials. Have on hand blank paper and any necessary forms and a selection of writing instruments. The subject may provide a pen or pencil and should be allowed to use it for the first writing sample.

Have the subject do some free writing to loosen up. Then dictate the material at a reasonable speed. Do not give any help with spelling or punctuation. Have the subject sign and date the sample. Take the sample and set it aside out of view. After some general conversation, ask the subject to repeat the task. This is a good time to request that the subject use a different paper or writing instrument if appropriate. Dictate a bit faster the second time. More repetitions may or may not be needed.

If you are especially interested in standard signatures, prepare several forms or blanks with the same layout as the questioned document for the subject to sign. Have the subject sign these forms one at a time. A column of signatures on a single sheet of paper may be useful if it appears in conjunction with several other types of standards, but by itself is not the best standard for examination. A column of ten signatures written this way tends to become ten copies of one signature rather than ten distinct signatures.

Depending on the questioned document, it may be important to request that the subject write in printed or cursive form. Also, it may be necessary to request samples written with the unaccustomed ("wrong") hand.

Number the samples so that the document examiner will be aware of the order of things, and keep a separate anecdotal record of anything unusual that happens during the session.

Handle all documents carefully. Do not fold documents - even those already folded. Repeated folding and unfolding of documents can cause damage and obscure that which needs to be examined. The best way to handle, transport and store documents is unfolded and in archivally safe covers away from strong light and moisture. If any change is made to a document (staples removed, an accidental tear, etc) a note should be made (but not on the document).

Document examinations often begin with, and even end with, photocopies. When possible, keep track of the generation of any copy made. With each successive copy some loss of detail and addition of superfluous markings can occur. Sometimes a good opinion can be formed based on photocopies and sometimes it cannot. Of course, originals are always preferred.

Unless attorneys have been involved in a questioned document case they often have no reason to think of the necessary precautions. Each point made here can be expanded and taken in several directions. The best way to assure good results is to contact the document examiner early in the investigation and work with the examiner to plan an approach to the specific case.

Bibliography

This article is based upon the author's experience and borrows heavily from the following works:

1. Hilton, Ordway, *Scientific Examination of Questioned Documents*, revised edition, Elsevier Series in Forensic Science, N.Y., 1984
2. Osborn, Albert S., *Questioned Documents*, Second Edition, Patterson Smith, Montclair, NJ, 1929