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Do Experts Frequently Disagree?

Most document examiners have probably had the above question or variations of it over the years. There is no doubt that they have handled the question with aplomb and need no further advice about how to respond should it ever arise again. Nevertheless, it is felt that the examiner may have been handicapped because he had no real statistics to buttress his self-serving answer to the question. In addition, the question merits some detailed discussion because of certain matters that recently gained nationwide publicity, as a result of which document examiners and their work have come into the limelight perhaps more than at any time since the Lindbergh case in the early 1930's.² Owing to conflicts in the sensational cases alluded to, it is likely that attorneys will be asking the question more often than before. Indeed, within ten days of the culmination of one of those affairs, the writer and at least two other document examiners were cross-examined about disagreement among experts.

The aims of this paper, therefore, will be to explore the question in some depth and to provide statistical support for an answer that the ethical, competent document examiner might give in court or in other formal proceedings.

As most often heard, the question goes "Isn't it true that experts frequently disagree?" As phrased, it is impossible for the witness to answer yes or no. This discussion will be addressed to that difficulty and will be handled solely from the standpoint of the document examiner.

Let us consider two important elements of the question as asked. The word "experts" is too general because no class of specialists is designated, and the witness does not know if he is supposed to consider all experts in all fields or just those in his line of work. Naturally, the question as asked could include psychiatrists, real estate appraisers, automobile mechanics, accountants, jewelers, ad infinitum. There must be a definition of terms before the witness can make a responsive answer.

Another relevant consideration for the witness is whether the question refers to all those who might be permitted to give opinions in court, without regard to the competence and experience of those witnesses. Under the authority of some cases, a witness can testify about the identity of handwriting if he has merely seen the person write [1]. Does such a witness have the same stature as a specialist who has spent 20 years in examining questioned documents, on a daily basis, to determine the identity of handwriting? More importantly, should the truly expert witness who is trying to answer the focal question in court be forced to think of such a person as an expert?

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² Featured articles about document examiners appeared in "Potomac," a Sunday supplement of the *Washington Post* dated August 13, 1972 and in *Life* magazine on September 15, 1972. The reader may know of other stories at other places during or since those dates.

Suppose the attorney re-phrases the question so that it now reads "Isn't it true that handwriting experts frequently disagree?"

The question now implies that the witness is chargeable with the knowledge of all those who hold themselves out to be experts on handwriting. Although there are a limited number of practitioners in this field, it is unreasonable to expect the witness to know all those in this work in the world, or in the United States for that matter. More to the point, the expert cannot possibly know the incidence of conflicting testimony, if any, in Des Moines, Boston, Seattle, London, or Bucharest.

Before giving what is considered to be the most practicable answer to the question, let us take a look at its other significant element, namely, the word "frequently." Just how often is that? Does it mean 50 percent of the time, 75 percent of the time, or what? Also, the witness must know whether this means disagreements in court alone, or whether it includes disagreements in court, in written reports from laboratories, or in what might be termed "curbstone" opinions.

Consider the following answer that an eminent document examiner says he would like to give in court. He concedes that it is much too long but it is offered as a relatively complete discussion of the implications of the question [2]:

The answer must be qualified because of the indefinite nature of the question. The answer is "No," but that is at such variance with popular belief that I must state the basis for the answer. First, I take it that the question includes all document experts of whom I have first-hand knowledge; second, I take it that the question includes men who are truly expert, that is, those especially qualified by training and experience so that we shall not compare a mere pretender to the designation "expert" with a man who is truly qualified; and third, and most important, I take it that the question includes all problems referred to two or more experts in the office, laboratory, or court room. Upon that basis, the answer is "No." Now to reconcile that answer with popular belief. . . . As to the reason for court room disagreements, I have a belief, but it is not founded upon direct knowledge, and I, therefore, do not feel free to express that belief here. I can say, however, that I know of a number of court-room disagreements that were preceded by several perfect agreements in opinion outside the court room.

The short version of the above and the appropriate, brief answer that this writer feels is the one to be given in court would be this: "Among document examiners who I know or believe to be competent and ethical, disagreement is rare."

A thought implied in the long answer above, but not fully developed, is that, as in all fields of endeavor, there may be practitioners who lack integrity. This is a revolting idea, but one that must be faced. The bare statement about that possibility does not suggest that there are many such persons or that there is clear proof to substantiate deceit or a twisting of the truth. Examine the following give-and-take and see how that idea was cleverly conveyed in an answer by a document examiner some years ago [3].

Attorney: Mr. Witness, it is possible that I could get enough money together to find an expert who would disagree with you?

Witness: I think it is unlikely that you could find a document examiner of integrity (underlining supplied) who would reach a conclusion different from mine in this case.

But, suppose we discount incompetence and lack of integrity and consider what might produce different conclusions by two well qualified document examiners with the highest ethics. One or more of the following situations may obtain:

1. They may have examined different standards (known documents).
2. One examiner may have dealt with copies whereas the other examined the original documents.

3. One person may have examined the material hurriedly, out of necessity, whereas the other had ample time for an exhaustive study.

4. One examiner may have had the full range of equipment and procedures available but the other may have not.

5. One examiner may have had in-depth experience on the specific problem under consideration whereas the other may have had limited contact with that type of problem, even over a long career.

Even the disagreements that might occur between competent document examiners usually are not differences upon the main conclusion but reflect differences in the degree of belief warranted by the evidence. For example, an examiner might state that "It is probable that John Smith wrote the questioned signature." Another examiner may report his summary of the same evidence in categorical language: "In my opinion John Smith wrote the questioned signature."

To get away from generalities, and from the possible charge that the discussion thus far consists of self-serving statements, let us examine some statistics and see what conclusion they support. The respondents to the survey that was made will not be identified by name or specific places of employment. However, the examiners listed in the tables work in four different Federal agencies, three different police departments, and two have been in private practice for a long number of years. It is felt that they represent a fair cross-section of ethical, qualified document examiners in the country.

All figures in the tables are approximate.

TABLE 1—*Court record.*

Document Examiner	Years Experience	Times Testified	Times Opposed
U.S. Government			
Examiner A	21	200	3
Examiner B	41	1 250	7
Examiner C	23	200	2
Examiner D	26	500	7
Police Departments			
Examiner E	14	200	1
Examiner F	18	380	0
Examiner G	28	500	0
Private Practice			
Examiner H	35	850	25
Examiner I	31	350	10

It can be seen that the record of government examiners differs somewhat from that of those in private practice. Usually the cases handled by these workers differ: the public service examiners are mostly involved in criminal cases, the private experts in civil matters. Since there is a different amount of proof required in these classes of work—at least as far as trials are concerned—the possibility is suggested that this could produce some variation in the experience of the two types of examiners. Also, we cannot ignore the possibility that there may be more "shopping" for opinions in civil cases. A study of the above record indicates that government and police examiners have had virtually no opposition in court and it would be unrealistic to say that the opposition encountered by those in private practice was "frequent."

The examiners were also asked to give totals of all reports written and to provide a record of differing conclusion, if known. The figures in the column headed "Opposing

Reports" would naturally include the figures in the column headed "Times Opposed" from Table 1. In addition, the figure includes other written findings that differed from those of the respondents to the survey.

TABLE 2—*Reports written.*

Document Examiner	Years Experience	No. of Reports	Opposing Reports
U.S. Government			
Examiner A	21	25 000	3
Examiner B	41	25 000	15
Examiner C	23	6 500	2
Examiner D	26	15 000	10
Police Departments			
Examiner E	14	3 500	1
Examiner F	18	11 000	2
Examiner G	28	30 000	2
Private Practice			
Examiner H	35	3 500	35
Examiner I	31	3 000	23

To translate the figures into percentages might give a better idea of their meaning. The incidence of opposition runs from a low of 0.006 percent to a "high" of one percent, with the frequency of disagreement usually being in the hundredths of one percent range.

To say, then, that disagreement among document examiners is frequent is to do violence to the generally understood meaning of that word, or give it a specious meaning.

In the survey the document examiners were also asked to evaluate the quality or type of "expert" who might have opposed them. In no report did a respondent show a figure higher than four as being the times that he was opposed by a *qualified* document examiner. Usually the opposing witnesses were stated to have poor qualifications or were graphologist types.

A final statement is offered for thought. In a moot court trial, one of the same document examiners previously quoted suggested this as an answer to the question "Don't document examiners frequently disagree?" [4]

Answer: No, because if they did, at least one would have to forfeit his claim to expertness.

In other words, the basic concept of expertness is associated with accuracy, not inaccuracy. Hence, if there is frequent disagreement between two witnesses, at least one of them is not expert, although it is conceivable that he may possess the minimum experience for qualifying.

Summary

Attempts were made to give some documentation upon the question whether experts, specifically document examiners, frequently disagree. Examiners in the Federal government, in police departments, and in private practice were sent a questionnaire on the subject. Efforts were made to obtain information not only about conflicts in court but also in written reports. Inquiry was also made about the quality of the expert who might have provided opposition. Tables were produced to show the records of nine document examiners in court and in written reports, together with figures about disagreement or opposition in those areas. On the basis of the figures obtained, it appears safe to answer

a categorical “No” to the lead question of this paper, at least as far as competent and ethical document examiners are concerned.

References

- [1] *State v. Eubanks*, 383 P. 2nd 342 (Idaho 1963) following *Spencer v. State* 147 N. E. 2nd 581 (Ind. 1958). *Criner v. State*, 236 Ark. 200, 365 S. W. 2nd 252 (1963).
- [2] Cole, Alwyn, “Cross-Examination.” Unpublished paper delivered at a conference in Washington, D.C., 22 June 1944.
- [3] Shulenberg, W. A., U.S. Department of the Treasury, Washington, D.C.
- [4] Shulenberg, W. A., *Identification News*, International Association for Identification, March 1966.

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