LETTERS TO THE EDITOR

Discussion of "Ethics and the Document Examiner Under the Adversary System"

Sir:

In an article in the October 1976 *Journal of Forensic Sciences*, entitled "Ethics and the Document Examiner Under the Adversary System," by Mr. Ordway Hilton, there is an implication that personnel in public laboratories where there is a high work volume somehow tend to consider such work unimportant and only conduct "cursory" examinations. The purpose of my letter is to dispel such an erroneous implication. As a member of a "high work volume" laboratory for over 24 years and as one who is quite familar with the vast majority of other such public laboratories, I wish to assure those interested that all cases under examination are given meticulous and careful study and a complete and thorough examination. This is due to the fact that the vast majority of such cases in public laboratories are criminal in nature and may be the subject of testimony at a criminal trial involving the freedom or incarceration of the defendant, even his life or death. May I point out that "high work volume" does not mean or even imply carelessness or a lack of thoroughness, but rather it insures a wealth of exposure to and experience in the handling of a plethora of examinations over the full range of the questioned document field which may not be found in "low volume" offices.

Mr. Hilton's article also states, "There are various law enforcement examiners who almost never exonerate a suspect..." and further implies that this is due to the fact that it may take a little longer to ensure an individual did not write something (again intimating that the law enforcement or public examiner doesn't spend enough time on a case). This implication is totally unfounded. It is generally acknowledged that it is easier to identify the author of a writing than to say that a person did not nor could not, by any stretch of the imagination, prepare a writing. The law enforcement examiner is fully cognizant of these facts when examining writings. Even when positive "non-identifications" cannot be made factors such as distortion in the questioned or known material, intentional disguise, practicing of handwriting by a suspect, coaching by others, or exclusion of pertinent known exemplars, may preclude this; the law enforcement examiner in many instances tries to give guidance to the investigator by telling him whether the handwriting appears to be different or similar. This is done to aid the investigator in the utilization of his time in developing other potential suspects or concentrating on the suspect at hand. Further, it should be noted that usually only the suspect's writing which is identified, and not the writing of those exonerated (excluding of course, some types of forgery cases), becomes the focal point of a trial and subsequent testimony of the law enforcement examiner.

Finally, I would like to emphasize that the law enforcement examiner is cognizant that he is involved very intimately in the criminal justice system; usually his testimony has direct bearing on whether a person will gain his freedom or go to prison. It is for this reason that he is thorough in his work, conservative in his findings, and conscientious in his service.

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Discussion of "Ethics and the Document Examiner Under the Adversary System"

Sir:

I am writing to you with reference to the article by Ordway Hilton entitled "Ethics and the Document Examiner Under the Adversary System" published in the October 1976 *Journal of Forensic Sciences*. I do not think that Mr. Hilton's article should go unanswered or unchallenged. He and the American Academy have done the questioned document examiners' profession a great disservice by publication of this article.

Mr. Hilton's indictment of the "public expert" is a most serious matter. With 35 years' experience as a document examiner, all as a "public examiner," (33 years in federal service and two years in the Virginia system) I certainly take exception to this indictment. The many examiners I know who are working or have worked in the public field certainly do not give any credence to Mr. Hilton's allegations that their examinations are carelessly done, lack thoroughness, or are considered unimportant and therefore studied only in a cursory manner. As a matter of fact, the public examiner has no monetary or related incentives to arrive at specific results. His work can be, and usually is, done in a totally objective atmosphere. The public examiner who worked in such a slip-shod manner as described by Mr. Hilton would not long survive in the public law enforcement field since his work is subject to frequent court challenges supervised by experienced and highly qualified judges. In most instances, in the public field, every case must be considered as a potential court case so that the public examiner does not dare make examinations in a cursory manner.

It is true that the public examiner will usually have a much greater volume of work than the private examiner. This has, over the years, provided him with a great deal of experience for the approach to his work which is not available to the private examiner. Time spent considering a case does not necessarily lead to more accurate results. On the other hand, experience and continuous application in the field will make it possible for an examiner to work more efficiently, arriving at results where additional time would add nothing. Of course, it is understandable that additional time spent will call for a higher fee on the part of the private examiner.

Mr. Hilton is completely wrong and exhibits limited and shallow experience when he categorizes law enforcement examiners as almost never exonerating a suspect. This just simply is not true. However, these cases do not usually come to public attention since investigations or prosecutions usually cease at this point. My experience has been that just as much effort is put forth to eliminate suspects as to identify them and that, as a matter of fact, the personal rewards are even greater when it is possible to eliminate through a document examination an innocent suspect. Of course, if the evidence does not justify it, the suspect should not be exonerated any more than he should be identified on the basis of such evidence.

Mr. Hilton will be hard-pressed to establish a roster of qualified experts in the questioned document field by adopting a code of ethics, particularly when he uses a serious indictment of a large segment of those working in that field as a reason for the need for such a code. I am adamant in the contention that Mr. Hilton has done the profession of the questioned document examiner a tremendous disservice in the allegations he has made concerning the public examiners in this field. He has managed to move the profession backward!

I am sure my views are also the views of many others working in this field. As a member of the American Academy of Forensic Sciences I am very interested in seeing to it that Mr. Hilton's allegations do not go unchallenged.

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Author's Closure to the Devine and Webb Letters

Sir:

As indicated at the outset of my paper, "Ethics and the Document Examiner Under the Adversary System," the purpose was to see where we stood ethically in the turmoil of the American adversary system. The aim was to examine the possible weakening of ethics on the part of some workers in this environment.

That some examiners in "high work volume" laboratories have stated in my presence that they consider their cases less important than those handled by examiners in other types of employment and have also commented on the limited time available for study of a problem does not imply that all high volume laboratories have the same problems and attitudes. In considering personal attitudes or work situations as a source of conflicts of opinions in court and in relationship to a Code of Ethics, I was very careful to refer only to certain workers. I did not expect readers to infer that all high work volume laboratories and their staffs have such attitudes. Undoubtedly, some laboratories have become high volume establishments without the planning and administrative organization of the bureau in which Mr. Devine is employed. Unfortunately, once the attitude creeps in that "Our cases are not as important as yours," there is danger of erosion in the quality of work and the ethical considerations discussed come into play.

Furthermore, I was present during open discussion at a professional meeting in which some workers in public service laboratories maintained that they do not clear suspects while other law enforcement examiners argued, as Mr. Devine does, that this is a definite function of their laboratory work as well as identifying the guilty. Mr. Devine points out the difficulty in eliminating a suspect and the technical problems cited could be expanded. Often it is a much more complex problem to be sure that the suspect did not prepare the writing than to reach an opinion, based upon the material at hand, that "he cannot be identified as the writer." However, when a certain examiner works on the premise that he does not try to exonerate a suspect—that you cannot do it—there may be a question of ethics involved.

Mr. Webb in his letter raises an ethical question not covered in the original paper. It concerns consultant's fees. The problem is dealt with in paragraph seven of the Application of the Code of Ethics (see the Appendix in the original article). If a consultant only puts in time to increase his fees, and this may occur with some individuals, he is acting as unethically as others discussed in the basic paper. This aspect of ethics was not treated since it applies to only one segment of document examiners, those in consulting practice. Furthermore, it may not be so much the effect of the adversary system as it is of other aspects of current American life.

Mr. Webb's fellow workers are certainly typical of the majority of examiners in government laboratories, but not everyone in this branch of the profession maintains these standards. There are a few in all types of employment and with varying years of experience and volume of case load whose ethical actions become somewhat eroded. My paper was analyzing the influence of the adversary system and its erosion of personal ethics rather than attempting to condemn only a particular major segment of the profession.

As mentioned before, the statements of the paper apply to certain or some examiners within either the public or private sectors of our work. It is strange that neither writer objects to stated criticism of the private examiner. Dictionaries do not indicate that "certain" or "some" should or can be understood as "all." It is only hoped that Mr. Webb's examination of documents is more accurate than his apparent reading of this paper.

Unfortunately, most of what appears in both letters deals with matters which were

not a part of the scope of my paper. The pioneers in the field of document examination were all private consultants. Ethical and professional ability was their cornerstone. Government document examination laboratories had not yet been established. But if we analyze present-day document practice according to the pioneers' scale of ethics and find any evidence of weaknesses in the public or private examiners, are we casting doubt on that entire segment of the profession?

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Formal Statement of Committee on Alcohol and Drugs, National Safety Council, Chicago, Ill., Oct. 2, 1975

"Some issues have been raised in the California Supreme Court's decision in *People v. Hitch* and allied cases in which the court held that chemicals and ampoules used in breath test cases must be preserved for possible pre-trial examination and analysis by defendants should they so demand it. A review of the scientific merits of this position has been made. It is concluded that at the present time, a scientifically valid procedure is not known to be available for the re-examination of a Breathalyzer ampoule that has been used in the breath test for ethanol, in order to confirm the accuracy and reliability of the original breath analysis."

Passed unanimously by the Executive Board Oct. 2, 1975, and later by the full Committee on a mail ballot without a dissenting vote.

J. D. Chastain, Chairman
National Safety Council
Committee on Alcohol and Drugs