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A National Survey of Laboratory Questioned Document Reexaminations—Are They Being Done?

In order to better understand why this survey was conducted, a brief review of some of the current thoughts on the subject of reexamination of questioned document cases may be helpful.

For the past year this subject has been discussed with various people at all levels of laboratory work: supervisors, training personnel, and working and retired questioned document examiners. After many pages of notes were reviewed it was obvious that there are two major viewpoints. The first group includes those who believe that once a case has been worked by a questioned document examiner in a laboratory it should not be examined again by another examiner in another laboratory. The laboratories that have written policy on this subject belong to this group. The second large group (as will be seen by the percentage further in the paper) are those document examiners and supervisors who believe that there are no "sacred cows" in the profession and that any case should be examined again by any other examiner, when requested by the submitter. A more detailed discussion will outline some of the thinking of both groups.

Within certain laboratories, because of jurisdictional changes and court-requested examinations, it becomes necessary to examine cases that have been previously examined by another laboratory. When this type of situation arises, there is little that can be done. There are many laboratories, however, that are given documents previously examined elsewhere for which no additional evidence has been developed and are requested to conduct another examination. Cases such as these divide the profession and bring out some rather strong statements both for and against such action.

Those who support a reexamination at any time feel that if the examination was correctly done by a qualified examiner there should be no reason to fear a reexamination of that case by another person. If the first examination was not done by a qualified examiner and there is a possibility of error present, then it is up to each of us to right the wrong. Other reasons cited include a comparison with private practice; any and all cases presented to a private examiner will be reexamined. Document analysts who support reexamination say that some of our oldest and most experienced examiners are in private practice, and if these private examiners can "live with it, we should be able to." There are those who believe that since we work using different levels of experience, depending on our exposure factor or the number of cases of a like type that are examined, some people have greater experience with certain types of cases than others and therefore would perhaps reach a conclusion different in strength from another. One examiner who felt strongly about this subject compared questioned document examination to the medical community. "If you

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feel bad, you go to one doctor who tells you you need an operation right away. You go to the second doctor, he says the situation is not that serious and you can wait before an operation has to be performed. You go to the third doctor and he confirms what the second doctor said. What would have happened if you had acted on the findings of the first doctor?"

Those opposed to reexaminations lean heavily on the belief that it will create more problems than it will solve. Two examiners can study a case and reach different conclusions, neither one being wrong, but since one is unlike the other, misunderstanding can distort the written word and can be used to advantage by a sharp-tongued attorney. Since this profession is still sadly lacking in universal terminology, and since no two laboratories use the same terms to mean the same thing, reports can appear different when in fact they are the same.

There are some examiners who will not render a qualified conclusion on a case. There are some laboratories that do not give qualified conclusions in written form. There are others who run the whole spectrum of qualifications from "did," to "probably did," to "strong indications," to "could have." If you have two such different examiners involved in the same case, each rendering his own type of conclusions, it is possible to see how different they may appear to a layman.

If reexaminations were an everyday occurrence, one could see how much "shopping around" there would be for the conclusion that best satisfied the contributor. Those opposed to reexaminations feel the entire profession, as it is today, would fall apart; the misunderstanding and confusion would destroy the qualified along with the unqualified questioned document examiners.

The Survey

It was decided that an attempt would be made to determine the thinking on the subject of reexaminations by contacting various laboratories throughout the United States. The only workable way was through the questionnaire method. Sixty laboratories were selected throughout all 50 states. These laboratories ranged in size from just one full-time document examiner to the size of the FBI laboratory. The laboratories were broken down into three categories: federal, state, and municipal laboratories. The municipal laboratories consisted of both county and city laboratories and included various sheriff departments around the country. The reason for this breakdown was to identify certain opinions that might be consistent with certain jurisdictional requirements. It was also thought that the size of the laboratory or the type of work might correlate with a particular group.

Of the 60 laboratories that were contacted, 53 returned the questionnaire. Of the 53 laboratories that responded, 7 stated that they did not have a questioned document examiner. Those 7 were removed, leaving 46 laboratories. Of this total 25 were municipal, 17 were state, and 5 were federal laboratories.

Each laboratory received a letter explaining the purpose of the survey. The letter also included the following illustrative hypothetical case: "If your laboratory were to receive a questioned document case that had been previously examined by another laboratory and where no additional evidence had been obtained, would your laboratory conduct another examination based solely on the suspicions of the contributor that the initial conclusions could not be correct?"

The hypothetical case clearly stated three factors: "by another laboratory"; "no additional evidence"; "and solely on the suspicions of the contributor."

As in any survey conducted by the use of a questionnaire, it is most important that the people surveyed read carefully the situation presented and comment based on that situation. From some replies it was obvious that certain important areas were overlooked.

Attached to each letter were additional questions that were to be answered by the addressee:

1. What would be the policy of your laboratory if you were to receive a document case previously examined by another laboratory and where no additional evidence was developed?
2. Does your laboratory have written policy to deal with such an occurrence?
3. Would you reexamine such a case?
4. If such a request involved a previous examination by one of your own laboratories, would you allow the case to be reexamined by another examiner or would you return it to the person who conducted the initial examination?

The questionnaire ended with this note: “[T]hese questions do not deal with a case where additional evidence has been developed. But rather a case that is submitted with exactly the same evidence as before and where, for some reason, the contributor doubts the correctness of the previous conclusion.”

For the purpose of this paper, the answers to Questions 2 and 3 were compared in an attempt to correlate the facility with the type of answer. After careful study it was determined that the answers did not, by themselves, identify what type of laboratory prepared the answers to the questionnaire. Laboratories within the same state (and system) differed on whether a case should or should not be reexamined. The following breakdown was made with respect to Questions 2 and 3:

Municipal: Of the 29 municipal laboratories that replied, 4 had no questioned document examiner. Of the remaining 25 laboratories, 4 had written policy and 8 (32%) would examine the case if it were submitted to them.

State: Of the 20 state laboratories that replied, 3 had no questioned document examiner. Of the remaining 17, 2 had written policy and 11 (65%) would reexamine such a case if it were submitted to them.

Federal: Of the 5 federal laboratories surveyed, 2 had written policy and 3 (60%) said they would reexamine such a case if it were submitted to them.

Some of those replying that they would reexamine a case placed certain restricting factors on the examination. The most frequently mentioned “if” pertained to obtaining prior permission from the initial examiner or laboratory. Of the eight municipal laboratories that would reexamine the case, three said that they would do so only after obtaining permission from the original examiner. Some state laboratories made the same qualification; of the eleven that would reexamine, two required permission from the original examiner. The five federal laboratories did not qualify their answers. One federal laboratory did say they would reexamine a case if the courts required it or in the interest of justice.

Other laboratories responded with other qualifications to their answers and said that they would reexamine the case if it had been examined by a private examiner, a part-time examiner, or a graphologist, but they would not reexamine it if it had been examined by another laboratory. The thinking here was that (outside of the laboratories) there are many people practicing who do not have the necessary qualifications. Some laboratories felt that if absolutely no cases were reexamined then unqualified examiners would never be known and, therefore, would be allowed to operate under an umbrella of protection. For this reason some laboratories have a reexamination policy of “each case on an individual basis.” If a case has been examined before but carries with it some type of danger signal such as poorly worded and highly unprofessional terminology, incorrect definitions (even within our broad range of professional usage), or an examiner that no one has heard of before, then some laboratories will reexamine the case if it is submitted.

One laboratory replied that the first examiner must be physically present in their laboratory at the time of the second examination.

One municipal laboratory replied that they would reexamine the case but their conclusion would be limited to "verifying the original findings or, failing to verify the original findings."

In order to completely understand and appreciate the diversity of thought as it pertains to this subject some answers are listed below. Those who believe that reexaminations should be conducted made these statements:

"It would be reexamined only with the consent and knowledge of the laboratory that originally examined it."

"It is my opinion that the needs of the Justice System are such that the personal vanity of the examiner becomes a matter of secondary interest. If the original examiner has committed an error it should be corrected."

"We would reexamine the case, without regard to the prior report, and would report our findings independently."

"An examination would be made after consulting the first examiner."

"Make cursory examination of the merits of the request. We feel there should be no sacred cows amongst labs."

"Probably yes, if the original examination was conducted by a private examiner, directed to do so by order of the court, or proper superior authority."

"Yes, this examination would be made as if no previous examination had been made. It would be examined in an objective, unbiased manner."

"Dependent entirely on circumstances, jurisdiction and the initial examiner."

Those who believe that reexaminations should not be conducted made these statements:

"Unless we were under court order, we would not receive the evidence."

"We wouldn't touch it."

"Our laboratory would not examine evidence previously examined by another crime laboratory unless that laboratory specifically requested the examination to be conducted."

"Return it without examination."

"We refuse the case."

"We would return the evidence to the contributor without examination with an explanation that it is against our policy."

"Would *NOT* conduct examination."

"We would make no further examination if examined by bona fide law enforcement laboratory."

"We would refuse to consider it."

"It is our established policy to refuse for examination any evidence that has, or will be, examined by any other facility."

"In the event we were to receive a documents case previously examined by another laboratory and where no additional evidence was developed, the case would be returned over to the person submitting it without any examination or opinion."

Conclusion

The results of this survey are surprising to members of both groups because each assumed that everybody else was doing it the way they were.

Those who believe that reexamination under any circumstances is not only justified but quite normal were surprised to learn how strongly many of their colleagues objected to any type of reexamination based on the circumstances described.

Those opposed to reexamination were equally surprised to learn that so many examiners would conduct reexaminations without any consideration of the circumstances that brought it about.

It was found that very little written policy exists as it involves reexamination procedures and that each man confronted with such a situation relies on his personal beliefs and past experiences to carry him to a decision of "to examine or not to examine."

As we read the varied responses, we cannot help but feel the strength with which members of the group opposed to reexaminations expressed themselves. It was clearly evident that those opposed to reexaminations had few qualifications to their replies. Their answers were short and without reservations. They would not reexamine such a case and could not understand those who would.

Lengthier answers, with various qualifications and reservations, came from the group that would conduct reexaminations.

This survey has clearly shown that the policy, as it involves reexaminations, rests with each individual laboratory director or document examiner. In most cases laboratories within the same system (for example, all state laboratories of the same state) do not have the same policies. This inconsistency was observed at all levels of government.

It appears obvious that if one is searching for a reexamination by another laboratory, one need only push his "shopping cart" around until he finds what he is looking for.

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