



*Handwriting and Hand Printing
Identification
Basic concepts for investigators*

Appendix E

Report Writing and Opinion Terminology

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I. INTRODUCTION:

At the conclusion of the analysis phase of an examination, the Forensic Document Examiner (FDE) writes a report that should be complete and understandable. He uses language to accomplish this purpose, but because language is not always precise, the same words can have different meanings, or slightly different meanings, to different people.

Notwithstanding the problems associated with language, his report should be clearly written, concise, and comprehensive. The purpose of this paper is to assist the reader in understanding the format of a questioned document report and some of the concepts behind the language used to express the stated opinions.

II. REPORT FORMAT:

Every FDE has a report format with which he is comfortable. While there are many report formats, the basic elements of a complete report are:

- A. A complete description of all the document examined.
- B. A clear statement of the examination requested.
- C. The use of clearly written and easily understood language and concepts to convey to the reader the result of the examination.
- D. The disposition of the submitted document and other comments.

III. WRITING A CLEAR REPORT:

In every case the FDE works and the report he writes, he uses language to convey information. Because language is not precise, there is the possibility of confusion in the description of documents, requested examinations, results of the examinations, and disposition of the evidence. Further complicating the use of language is the legal requirements imposed by the burden of proof and presumption concepts that are part of the rules of evidence. Although this topic is too broad for this paper, an overview of it will be covered later.

FDE's frequently use a number of qualifying words and phrases when expressing opinions. When multiple qualifying words or phrases are used in the same statement of a single opinion, the reader does not have a clear understanding of what he is saying. The clearest statement of an opinion is the one that has the fewest qualifying words and phrases in the same statement. These brief statements are more easily understood by the reader, because the writer usually uses words like "...the known writer wrote..." "...it is highly probably that the questioned writing was written by..." "... John Doe (K1) probably wrote..." etc. A reader's understanding of the concepts behind the qualifying words and phrases will better assist him in understanding the opinion.

The following examples are concise, yet comprehensive, statements expressing the degree of belief the FDE has reached, based on the result of his examination and comparison:

- A. It has been concluded that John Doe wrote....
- B. It has been concluded that John Doe in all probability wrote.... The phrase “in all probability” can be substituted with the phrases “very probably wrote,” or “it is highly probable” that John Doe wrote.... It has been concluded that John Doe probably wrote....
- C. There is some evidence to suggest that John Doe wrote.... Occasionally the phrase “...some evidence to indicate... is used.
- D. It could not be determined whether John Doe wrote the questioned material.
- E. With the material available for comparison, no evidence was found to suggest that John Doe wrote....
- F. There is some evidence to suggest that John Doe did not write.... Occasionally the phrase “...some evidence to indicate... is used.
- G. It has been concluded that John Doe probably did not write....
- H. It has been concluded that in all probability John Doe did not write.... The terms, “very probably,” or “it is highly probable” that John Doe did not write... are occasionally used.
- I. It has been concluded that John Doe did not write....

This language conforms to the standard language adopted by the American Society For Testing and Materials (ASTM) in Designation: E 1658-04, now used by a majority of FDE's.

IV. DEFINING TERMS:

What do these statements mean? How should the reader interpret and understand them in the context of a report?

The **first** statement, (It has been concluded that John Doe wrote....) is unequivocal. It has been said, “There is no stronger opinion given by a document examiner in a handwriting case than a positive identification.”ⁱ When used, the examiner has no reservation whatsoever about the certainty of his conclusion. He is so certain about his conclusion that for him it is a fact the writer of the questioned and known writing is the same person. Because he can only express an opinion in court, he cannot testify, “...it is a fact that the questioned and specimen writings are by the same writer.”

What is the standard for such a strong statement of belief? The questioned and known writing must have sufficient class and individual characteristics, qualities, and features in common that when taken collectively, there is no doubt that the questioned and known writing are by the same writer. Another way of saying this is, there must be complete agreement in all features of writing important for identification purposes with no dissimilarities, irreconcilable or significant differences in writing habits. The only permissible differences are those resulting from excepted and observable normal variation in writing.

There are occasions when a difference or dissimilarity is discovered, but its presence in the writing is far outweighed by the agreement in other equally or more significant features. The only allowable differences or dissimilarities are those resulting from normal variation in writing, or that can be explained based on evidence. A complete discussion of normal variation in writing is beyond the scope of this paper. However, normal variation is expected in every person's writing and is the result of the writer's inability to exactly reproduce identical writing movements every time he writes the same letter or letter combinations.

Additionally, writing can be affected by transitory or permanent factors that impacted the writer of the questioned or known writing at that particular moment in time. The possibility of the occurrence of these factors must also be considered.

The **second** statement, (It has been concluded that John Doe in all probability wrote....) is used when the evidence falls just short of the requirement for an identification. At times the phrase "in all probability" may be substituted with "very probably wrote," or "it is highly probable" that John Doe wrote....

Regardless of the words used, the FDE has some slight reservation and cannot reach a less qualified conclusion or make a categorical statement. The slight reservation may be transitory or permanent. The reason for the slight reservation may be due to the presence of a significant difference between the questioned and known writing. Additionally, known writing may or may not be of value to the FDE in resolving this situation. If the reason for the slight qualification is determined to be in the questioned and not the known writing, obtaining additional known would not be of value.

The **third** statement, (It has been concluded that John Doe probably wrote....) is used when the evidence points rather strongly toward the specimen writer, but still falls short of the requirements for a less qualified opinion. The observable evidence in this situation does not rise to the level of that required for a highly probable opinion. Even though there are significant similarities present in the questioned and known writings, there are also irreconcilable differences that are not explainable with the available writing.

These irreconcilable differences may have varying degrees of significance for identification purposes. For example, if the questioned or known writing is a photocopy, and the FDE is not able to accurately determine stroke direction or clearly discern line quality or other characteristics of the original writing, he might express his degree of belief using this statement.

When the word “probable” is used instead of the words “highly probable,” there is, by definition, a greater likelihood of someone other than the known writer writing the questioned material. However, in this situation, the evidence is still pointing rather strongly in the direction of the known writer.

Most people believe that when the word “probable” is used, it means a slightly better than a 50% chance of some event occurring or not occurring. That meaning does not apply here.

The Random House Webster’s Electronic Dictionary & Thesaurus, College Edition, has this definition for probable: “...having more evidence for than against, or evidence that inclines the mind to belief but leaves some room for doubt.”ⁱⁱ The American Heritage® Dictionary of the English Language, Fourth Editionⁱⁱⁱ defines probable as: “Most likely; presumably.”

These definitions most closely define the meaning of this qualifying term as used by the FDE. It is also consistent with the ASTM language which states: “...the evidence contained in the handwriting points rather strongly toward the questioned and known writings having been written by the same individual; however, it falls short of the “virtually certain” degree of confidence.”^{iv}

The **fourth** statement, (There is some evidence to suggest, or to indicate, that John Doe wrote....) is used when there are a few handwriting features in agreement and some may even have more significance than others for identification purposes.

When this opinion is given, the FDE is saying: “Keep this writer in mind.” Although there is not a sufficient amount of evidence to say he probably wrote the questioned material, there are some qualities and features of the writing in agreement which suggest he has the skill and ability to write this way. The significance of those features, though, is limited. Later another writer could be “identified” as the writer of the questioned writing, and this is not inconsistent with this degree of belief.

The **fifth** statement, (It could not be determined whether John Doe wrote the questioned material.) is used when the examiner is not able to determine whether the specimen writer wrote the questioned material.

At the beginning of his analysis, the FDE does not know whether the known writer wrote the questioned writing. He begins his work from a neutral position. The purpose of his analysis is to try to determine whether the known writer wrote the questioned material.

There are some occasions when, after his analysis, he still does not know whether the writer of the known writing wrote the questioned writing. In other words, he has made his analysis and there is insufficient evidence present to make even a qualified statement concerning authorship.

Each situation encountered must be resolved individually based on the evidence available at the time of the analysis. If the FDE has reason to believe additional known writing would be of value, he is obligated to request it. Regardless of the reason for the slight qualification, the FDE selects the language that he uses in his report carefully, because it must reflect his degree of belief based on his analysis of the specific available evidence.

These same general principles apply as well to the degrees of belief expressing negative opinions. In many cases, the evidence present varies in significance **against** common authorship just as it does for common authorship.

An elimination opinion, “the writer of the known did not write...” is harder to reach than an identification opinion. There are technical reasons for this statement that is beyond the scope of this work.

V. DEFINING LEGAL TERMS

There are legal requirements placed on litigants of a suit concerning the “Burden of Truth” standard they have to meet. Over time, the courts have established these standards as they relate to both criminal and civil litigation. One explanation of the standard is: “The duty of a party in a lawsuit is to persuade the judge or the jury that enough facts exist to prove the allegations of the case. Different levels of proof are required depending on the type of case....The burden of proof always lies on the party who takes the affirmative in pleading.”^v

To meet this standard imposed on him, legal council presents evidence to the court establishing his position in an attempt to refute the position of the other party. The evidence submitted falls into two very broad categories relevant to this discussion. They are, “direct” and “opinion” evidence. Direct evidence is: “Direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did.”^{vi} Opinion evidence is: “Testimony from persons (Expert Witnesses) who, because of education or experience, are permitted to state opinions and the reasons for their opinions.”^{vii}

Qualified expert witnesses are permitted by the court to present opinion testimony concerning their examination and analysis of evidence. What qualifies them as an expert is determined by their education, experience, and work in their profession and the judge’s recognition of their expertise based on their qualifications.

The burden of proof requirement legal council must meet has an impact on expert witnesses. Frequently, council expects the expert witness to state his opinion in language that corresponds to the legal standard applicable to the relevant burden of proof. For example, these standards are:

A. Beyond A Reasonable Doubt:

1. The level of proof council must establish in a criminal case, based on all the evidence he presents, must show that beyond a reasonable doubt the things he said happened, happened. “Beyond A Reasonable Doubt” is “The highest level of proof required to win a case.”^{viii} Reasonable doubt is: “The level of certainty a juror must have to find a defendant guilty of a crime. A real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case.
2. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of you affairs. However, it does not mean an absolute certainty.”^{ix}

In a civil case there are two levels of proof council may be required to meet. They are: “clear and convincing evidence” and the “preponderance of the evidence.”

B. The clear and convincing standard:

1. “The level of proof sometimes required in a civil case for the plaintiff to prevail. It means the trier of fact must be persuaded by the evidence that it is highly probable that the claim or affirmative defense is true. The clear and convincing evidence standard is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.”^x

C. The preponderance of the evidence standard:

1. “The level of proof required to prevail in most civil cases. The judge or jury must be persuaded that the facts are more probably one way (the plaintiff's way) than another (the defendant's).”^{xi}

The language the FDE uses in his report does not have to mirror the burden of proof terminology established by the courts. The testimony the FDE gives concerning his analysis is only one part of the whole case. If the whole case, when presented, does satisfy the court standard, the evidence testified to by the expert is not going to help regardless of how strong his opinion. The FDE is not, nor should he be, required to word his report or give testimony using legal terms or language consistent with the burden of proof standards.

Sometimes council tries to persuade the expert witness to express his opinion in percentages, through the use of a scale from 1 to 100, or by some other illustrative means. By doing this, he is trying to show that the testimony of the expert should be given more weight because it conforms to the burden of proof standard he must follow. The expert witness is, and should be, very cautious when using any analogy. The content of his report should stand on its own merit as he provides the judge and/or jury with information they need concerning the results and procedures of his analysis.

VI. SUMMARY

At the conclusion of his analysis, the FDE should write a clear, concise, and comprehensive report concerning the evidence he examined, what examinations he performed, the results of his analysis, and the disposition of that evidence. When called upon to testify in court, he should remember he is presenting opinion testimony concerning his work and not an advocate for either side. His testimony will either support or not support the position of either side or council. Since he is not an advocate for either side, he should not word his report or testify in any manner that makes it appear that he is conforming to the burden of proof standards. Those standards apply only to all of the evidence presented, not just to his testimony. A competent, qualified, and ethical examiner always remembers the roll he has in assisting the court and jury in reaching a verdict, based on all of the evidence presented.

VII. ENDNOTES:

ⁱ McAlexander, Thomas V. "The meaning of Handwriting Opinions," material on the back of many Secret Service QD Report Form No. SSF 3133 (06/88). Over the years Mr. McAlexander has written numerous papers and articles on this topic. Any commonality between wording in portions of this paper and his works is the result of our association over many years of working together. Where those commonalties exist in this paper, credit for them should go to Mr. McAlexander.

ⁱⁱ Random House Webster's Electronic Dictionary & Thesaurus College Edition, Copyright 1992, Reference Software International.

ⁱⁱⁱ The American Heritage® Dictionary of the English Language, Fourth Edition. Copyright © 2002, 2000 by Houghton Mifflin Company. Published by Houghton Mifflin Company. All rights reserved.

^{iv} American Society For Testing and Materials (ASTM) in Designation: E 1658-96, page 2.

^v The Letric Law Library™ Reference Room, at <http://www.lectlaw.com/ref.html> on the INTERNET, date of search 10/22/98, topic, "Burden of Proof,"

^{vi} The Letric Law Library™, "Evidence, Direct."

^{vii} The Letric Law Library™, "Evidence, Opinion."

^{viii} The Letric Law Library™, "Beyond a Reasonable Doubt."

^{ix} The Letric Law Library™, "Reasonable Doubt."

^x The Letric Law Library™, "Evidence, Clear and convincing."

^{xi} The Letric Law Library™, "Preponderance of the evidence."