

# Using and Cross-Examining Handwriting Experts

Marcel B. Matley

*Handwriting analysis is a very specialized field.  
But there is no mystery in finding, using, or cross-examining the expert.*

**BEFORE THE EXPLOSIVE GROWTH** in the number of experts called in civil litigation, one type of expert was no stranger to the courtroom: The handwriting expert. For decades, handwriting experts were fixed in the popular mind as the only kind of experts (except for possibly psychiatrists) who testified in court on a more

or less regular basis. Obviously, this is no longer the case. But a certain mystique still surrounds handwriting analysis. In part, this article aims to dispel some of that mystique and explain what handwriting experts do, how they do it, how to select a handwriting expert, and how to challenge one.

---

Marcel B. Matley is a principal with the firm of A&M Matley, Examiners of Documents and Handwriting, in San Francisco.

**WHAT DOES THE HANDWRITING EXPERT DO?** • Falsification of documents can be of handwriting, typing, printing, kind of paper, or any other material or feature of documents. This discussion will focus on handwriting. However, the principles involved are applicable to other kinds of falsifications in documents and partly to other kinds of experts. At the most basic level, the handwriting expert's job is answer six questions, each of which is discussed below.

**1. Was this document made by the person(s) whom the document purports did so?**

**2. If the answer to the first question is no, who did make it?** This question is more difficult to answer than the first for several reasons. The most important reason is that there is an unknown and potentially unlimited number of possible false writers as opposed to usually only one authentic writer. The amount of material for study and comparison may be extremely limited. A false handwriting is usually not in the maker's natural style of writing and thus difficult to match to that style. Hilton Ordway, *Can the Forger be Identified from His Handwriting?* 43 J. Crim. L., Criminology & Police Sci., 547 (1952).

**3. Is the document, as it is now, exactly as it was when made by the author(s), without alteration, deletion or addition?** Document examiners can never answer this with a definitive affirmative, because methods of falsification and methods for their detection are continually being developed. However, a definitive negative is possible. Also, it is most difficult to find the proverbial needle in the haystack when you do not even know whether or not there is a needle.

**4. If there is any alteration, deletion or addition, what is it?**

**5. If there is any alteration, deletion or addition, what was the original state of the docu-**

**ment or writing?** Since the intent of anyone making an alteration, deletion or addition is to destroy the original message, restoring that original is obviously a difficult task which may require sophisticated laboratory equipment.

**6. Lastly, who made the alteration, deletion or addition?** In criminal cases, the defense attorney is most concerned with the second and sixth questions. In many cases all of the opposing attorney's answers to the other four questions could be conceded and it would do no harm to an accused, if the vital question of who did it is successfully fended off.

### **Get the Original!**

You want to obtain the original document if at all possible. The examiner you consult needs to see the original for best results. Adequate results can often be obtained from copies, but one would want to go for the best results possible in the situation. As one commentator put it, "Dogged determination to study the original document has caused a rumor to arise and persist to the effect that if an original document is destroyed, the document expert is thwarted. While nothing could be further from fact, this has created an interesting situation. Cases are being received in increasing numbers where the original document, at the very outset of the inquiry, is stated to have been 'lost' or 'misplaced.' Once committed to this course, a client (who may be deceiving his own attorney) cannot later produce it." See George G. Swett *Importance of Copies in Document Inquiries*, 11 J. Forensic Sci. 485 (Oct. 1966). Since then, at least some of us have gotten better at it. So do not surrender just because the opposing side has "inadvertently" lost all originals but fortunately saved the copies.

### **The Problem with Copies**

Do not passively accept a copy as the sole basis of a case. Every copy, intentionally or unintentionally, is in some way false to the original.

In fact, modern copiers and computer printers are so good that they permit easy fabrication of quality forgeries. From a copy, the document examiner cannot authenticate the unseen original but may well be able to determine that the unseen original is false. Further, a definite finding of authenticity for a signature is not possible from a photocopy, while a definite finding of falsity is possible. See Susan E. Morton, *A Look at Newer Photocopiers*, 34 J. Forensic Sci. 461 (March 1989). This report of original research on the quality of photocopies for use in the identification of handwriting concludes: "As always, original evidence is the best evidence. However, ideal situations do not always exist and the document examiner must sometimes make do with what is available. Evaluation of the work of some modern office copiers indicates that, under certain circumstances, it is possible to reach definite findings based on photocopy-evidence."

### Damaged Documents

Further, if the original was damaged or altered by the opposing expert's tests, your expert cannot possibly know what evidence has been lost. In criminal cases, prosecutorial experts will even bathe a document in ninhydrin to test for fingerprints. Then you may be allowed to try to prove that the substantially damaged handwriting is not by your client. Some possibility remains, but on the other side much critical evidence has been destroyed, making it impossible for any expert to prove authorship beyond a reasonable doubt. An identification of your client from an examination made after the ninhydrin treatment is technically and scientifically flawed, yet such procedures send people to jail.

### FINDING AND QUALIFYING THE EXPERT

- As with any other instance of expert testimony you want to accomplish two things at trial: bolster the credibility of your own expert, and diminish the credibility of the opponent's.

### Where To Find Handwriting Experts

This is in no way an exhaustive list. Rather, it aims to guide you to the most fruitful sources first:

- The quickest and safest way to find an expert is to ask an associate for a referral. It is a good idea to take note of any service which a colleague mentions was effective. Keep it against the moment when you need the same but do not have the luxury of shopping around. My major sources of clients are repeat calls and referrals. An expert lacking that after several years in the profession may be leaving a trail of mistakes behind;
- You may have seen a presentation, article, or book by an expert. You may even have seen someone give effective testimony for your opponent. It would be a waste of a good experience not to keep the name on file against the day of your own need;
- Legal and professional directories are published for the country as well as for specific areas. An excellent sample of a local directory is the *San Francisco Bay Area Register of Experts and Consultants*, published by the Bar Association of San Francisco;
- Phone book yellow pages list document examiners under "Handwriting Analysts" and "Handwriting Experts." Both headings generally list other kinds of services, so be cautious. A less fruitful classification might be the heading "Attorneys' Service Bureaus";
- Legal newspapers often carry ads. If something sounds convincing, ask for verification. An enticing quality may be more enticing than it is quality;
- Web pages overflow with ads for all kinds of things. It is suggested they are generally to be distrusted because their claims are often unverifiable and their information may be twisted to their own designs. I have read serious technical mistakes in Web pages of some document ex-