EVIDENTIAL DOCUMENTS

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EVIDENTIAL DOCUMENTS

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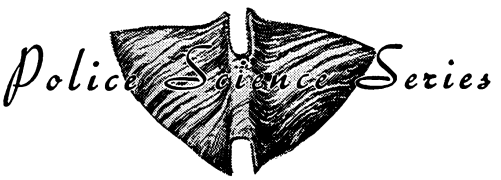

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INTRODUCTION

Society has evolved today into literally a world of documents. Whether one's interests and pursuits be commercial, social, educational, governmental, military, scientific, legal, investigative, or criminal, one needs, prepares, acts upon, is obstructed by, and complains about existent and non-existent documents.

It is the President's signature on the engrossed bill which consummates his official sanction of law of the land. It is one's signature which directs and approves the withdrawal of funds from his bank account. One's signature is intimately identified with virtually his every consequential act. And it is the forger's, the extortioner's, and the confidence man's documentary handiwork which diverts millions annually from the unwary victim to the hand of the document fabricator.

One's birth certificate, baptismal record, high school transcript, college diploma, medical records, automobile operator's permit, draft board notice, marriage certificate, checks, insurance policies, stock certificates, notes, contracts, citizenship certificate, passport, correspondence, even liquor permit, and finally his last will and testament document him through life. Usually man's documents are not put to rest until long after he has been so reposed, accompanied, of course, by a duly executed death certificate. Or was it duly executed?

To this ticker tape world of documents, handwritten and typewritten, important and inconsequential, genuine and spurious, we have arrived in a relatively short span. Fifty years ago, many households in the United States contained no one who could read and write. Twenty-five years ago, the check had not supplanted gold, silver, and greenbacks in most important commercial transactions. Goods formerly were bought and sold sans today's routine invoices and receipts.

Until a few years ago, one could just about prove he had been born without producing a birth certificate. And he might

secure employment without being processed to the cacophony of a seemingly never ending batch of papers in the "personnel department." We only recently reached the dizzy stage when one must "confirm by letter," perhaps addressed to an office across the hall, statements solemnly presented and witnessed by a dozen people, tried and true.

The purpose of "Evidential Documents" is to lead the reader to take some stock of our present state of documentary affairs, as it affects those concerned with the enforcement of our civil and criminal statutes, especially the latter. As does his brother in legitimate pursuits, the criminal leans on a scrap of paper in the commission of many crimes, in fact most of them. He has found that it is more in keeping with the times to "hold up" a bank with a fountain pen or even its little ballpen cousin, than with a .45 caliber automatic.

In this author's view, the criminal and the civil deceiver will be identified and exposed in more and more cases, if his "scrap of paper" is recognized, questioned, and caused to tell truly by whom it was spawned and whence it came. There is no room in efficient law enforcement today for any reluctance to recognize that proof through the proper interpretation of evidential documents is a necessary, potent, and reliable arm of investigation.

It is the endeavor of the following pages (a) to emphasize the necessity for greater document consciousness in the field of law enforcement, (b) to point up the inadequacy of perfunctory, prima facie acceptance of consequential documents, (c) to advance fundamentals which experience has shown to be effective in the investigative approach to and the technical development of typical document issues, with especial emphasis being accorded to questions involving handwriting because they represent the most common problem, (d) to develop some of the considerations and thinking which are relevant to effective and productive cooperation among the investigator, the attorney, and the examiner of questioned documents, and (e) to be of some assistance to administrative officials who must determine whether their organizations are efficiently exploiting the evidentiary possibilities of documents.

Complementary to these objectives is this writer's hope that the hereinafter data will stimulate those now in the novitiate of the questioned document field, and awaken aspirations in even one additional qualified student to follow in the paths of those men of integrity and objectivity who are promoting justice through the application of scientific principles to suspect and disputed documents.

PREFACE

As expressed introductorily, our modern civilization routinely attests by its daily practices to the individuality, the utility, the efficacy, and the indispensability of documents—as legal and commercial media, as personal emissaries, and as the instruments of crime. Concurrently, there has scarcely been developed an adequate awareness of the availability of proof through evidential documents and a determination by every area of law enforcement to embrace unreservedly these treasurehouses of evidence.

In a close and daily association of nearly twenty years with hundreds of law enforcement officials, civil investigators, attorneys, and administrative personnel from a wide variety of agencies, throughout the United States and a number of foreign countries, in public and in private service, the author has too frequently noted a casual, helter-skelter, unsystematic, and occasionally a downright incompetent appraisal of evidential documents. Conversely, one observes that those officers, those prosecutors, those administrators who exhibit an acute comprehension of the evidential possibilities of documents contemporaneously demonstrate proficiency in their companion responsibilities.

Some encouragement and a lesson or two may be derived from the history of our utilization of the fingerprint. Only fifty odd years ago, society and law enforcement had begun to acknowledge that the fingerprint was a vital arm of investigation and identification. Proceeding from such recognition has been the development of trained personnel and facilities for recording, classifying, filing, investigating, developing, analyzing, and testifying in respect to fingerprints.

Society, the legal profession, the law enforcement profession —they are properly proud of their achievements in the field of fingerprint evidence. At the same time, the facts must not remain obscured that while the fingerprint system is supreme for purposes of direct personal identification, for every single civil

and criminal case which is solved via fingerprints, there are thousands wherein the truth lies in documents—documents, those deponents which are not subject to the vagaries of the direct witness' recollection, even when that witness endeavors to bespeak the truth.

It is not in any sense intended to disparage our accomplishments in respect to fingerprint evidence. Neither is it sought to belittle our past and continuing progress in the effective utilization of documents as evidence. These very worthwhile advancements, only part of the broad front on which law enforcement procedures and techniques have progressed within a single generation, light the road ahead. However, it is desired to emphasize that if law enforcement generally will but direct all its *reasoning* powers to evidential documents, the development of greater technical skills respecting them will follow with needful acceleration.

No pretension is embraced that this or any book can or even should try to suggest everything which should be considered in respect to every evidential document case. Rather it is hoped that a discussion of some of the things which should be considered in some cases will help the reader to consider more of the things which should be considered in more cases.

In this brief effort, emphasis seems inexorably drawn to document problems which are intimate to or represent the corpus delecti in general and in cited case situations. It is especially hoped that the reader by acquiring an appreciation of these major document problems may become alert in developing minor and collateral documents to assist in proof of facts, which do not per se hinge on any document.

Finally, it is not intended to suggest that there is a lay substitute for the experienced, qualified examiner of questioned documents who devotes full time to the practice of this new profession, or to relate the what, the how, and the why of every consideration he must explore in his laboratory. It is hoped to stimulate recognition of the existence of rewarding document questions, to expose some of those questions which the law enforcement officer can himself answer, those in which the general criminalist or general identification specialist can be of assistance, and those

which merit the thorough laboratory study by the expert examiner of questioned documents.

The chapter specifically relating to the procurement of handwriting exemplars or standards of comparison, has been intentionally positioned subsequent to earlier chapters on the common basic document problems, namely those involving signatures, handwriting, handprinting, and numerals. It is felt that the psychology and mechanics of exemplar procurement will be much more readily apprehended, if the reader will have previously acquired some familiarity with the problems which exemplars are intended to solve.

References and citations to illustrations have been avoided throughout the text to promote continuity, although illustrations generally are proximate to textual matter which they are designed to demonstrate.

Names, words, and signatures appearing in illustrations have been selected to portray technical data only. Some of the signatures have at some time been forged and some of the names have been used as aliases. Others became available incident to research or were graciously supplied by persons cooperating in experimental studies. No unfavorable inference or reference is intended to any person using any of these names legitimately.

Grateful acknowledgment is extended to Messrs. George G. Swett and Francis X. LaTulipe, Examiners of Questioned Documents, Saint Louis, Missouri, and San Francisco, California, respectively, for their valuable assistance in providing a number of illustrations from their extensive casework experiences for use in this volume.

J. V. P. C.

San Francisco, California

CONTENTS

EVIDENTIAL DOCUMENTS

DOCUMENT CONSCIOUSNESS

Documents depict man, his motives, his words, and his works. Evidential documents encompass all documents, writings, typewritings, printings, and marks intended to prove, or capable of proving, any principal or collateral fact of investigative or legal interest.

Evidential documents are competent witnesses as surely as are their authors. Though silent, they need not remain inarticulate. Because inanimate, they need enjoy no immunity from question. Documents are personal word pictures, intimate brain-children of their authors. Like their authors, they are in turn virtuous and authentic, then evil and spurious. Unless questioned, they sometimes mislead, lie, cheat, and travel incognito. If questioned, they usually will tell the truth of their authorship and history.

Frequently, evidential documents are misapprehended simply because they have remained totally unquestioned. Intermittently, they are ignored when they fairly shriek for a hearing. Too often, they are forced to stand mute when they have much to tell. Occasionally, they are misinterpreted by unskilled and bungling questions. But unswervingly they stand ready to unmask the guilty, to exonerate the falsely accused, and to uphold the truth because their very inanimacy does not permit them partisanship or dishonor.

In this enlightened age, evidential documents can be caused consistently to reveal the truth of their authorship and their genuine import by the intelligent, reasoning intercooperation of investigator, document examiner, attorney, and judge. The revelation of the truth from evidential documents is the logical outgrowth of a practical, realistic, inquiring attitude. Treat documents like people. Accept them for what they are, but be sure they are what they say they are. The right of reasonable interrogation and cross-examination is inherent in our way of life as to verbal evidence. So should it be with documents. Corroboration

is sought in weighty matters even for the testimony of the recognized man of high repute. This too should apply to documents. They should be routinely subjected to inquiry, searching but not unreasonably suspicious, thorough but not unreasonably overdrawn, and subjective but including the objective impact of everything surrounding them.

In considering the proper basic approach to evidential documents, it is appropos to contrast the variety of unrealistic attitudes which one encounters in the law enforcement, legal, and judicial professions. We see the detective or attorney who contends "Why should I be expected to know anything about handwriting or this so-called questioned document business?" He makes his own job difficult and unproductive because his nonrecognition of the realties of the day causes him to attempt conclusions without the important facts documents alone can reveal. Paradoxically, this sort frequently will allow that he is considered somewhat of an authority on "evidence."

Then there is the investigator who cannot shoulder responsibility. He would not presume to look searchingly on a questioned document because he fears he might fail to see or interpret correctly an important evidential fact therein, and his own limitations would be exposed. He protests "I know absolutely nothing about handwriting, about documents," and hopes that by avoiding his document problems, they will solve themselves. When that fails, he stumbles belatedly to the most convenient document examiner to sublet his problem. Even at this point, he would not presume to inquire or evaluate whether he has consulted a good, bad, or indifferent document examiner, or has compiled adequate or inadequate documentary data.

Quite different is the superscientific police chief or special agent perhaps, who indulges a calculated risk that his superiors do not review critically his results. He ambitiously reckons to demonstrate his competency and scientific objectivity by consulting criminalists, document experts, chemists, and all manner of specialists, on the slightest provocation. This boy, and not necessarily in years, is not too sure exactly what he is accomplishing but he stages an impressive show and the line of least

resistance on the part of his superiors seems to be to go along with him rather than to risk criticism for failing to be "modern" and "scientific."

An opposite number whom we occasionally brush against is the independent, negative-minded sort, perhaps a government executive, a trust officer, a "I came up the hard way" police official, or even a jurist. Although not necessarily old in years, he is rather opposed to all things new, unless he originated them himself. This type tends to resent the assistance of specialists as an intrusion into his sphere of responsibility. Even when his arms seem to become too short for the fine printing in the telephone book, he is reluctant to concede that a document examiner with sound photographic illustrations can help him arrive at the truth concerning evidential documents. And he tries to silence his gnawing conscience by insisting that his intuition is superior to any so-called scientific evidence.

The unimaginative, self-satisfied probate lawyer, tax investigator, or personnel officer presents a further variety. True, he has heard about forgeries and that sort of thing, but such incidents are remote, he keeps telling himself, and they certainly could not happen in his organization. He would be shaken to learn how many times his attitude had blinded him to backdated deeds, altered notes, fictitious transfers, fraudulent invoices, and forged references.

The egotist who virtually dares the specialist to develop conclusions from inefficiently assembled and inadequate documents is becoming scarcer but he is not extinct. He is the patient who withholds symptoms and then criticizes the doctor's diagnosis. The demise and burial of an unsolved questioned document problem does not disturb him.

The pushing, partisan advocate is ever present—perhaps the prosecutor who is disposed to ignore documents which do not coincide with the prosecution's theory. He may be the attorney for the defendant forger who is "form blind" to agreements but "sees" differences galore in his client's typewriting as compared with a fabricated document. Or the testy investigator who cannot comprehend why the document examiner cannot identify

the skimpy seven-letter forged endorsement because "After all, the storekeeper who cashed the check has made a personal identification, hasn't he?" Or perhaps the chief of inspectors who always sees similarities, never differences, when he compares embarrassingly unsolved forgeries with the writings of suspects. Or the bureau chief who insists that the document expert certainly ought to be able to determine whether an ink writing is three years, nine months, four days, seven hours, and twelve minutes old.

Whatever one's past attitude, several realities should be faced squarely. Every person who can read and write does know "something" about handwriting, about typewriting, about ink, about pens, about pencils, and about documents in general. Each literate member of society has enjoyed some training in the preparation and execution of documents and experience in their uses. And he who embraces the responsibility to draw inferences and conclusions from evidence must ever seek to learn more about evidential documents, with their fortes and their foibles, because documents hold the inevitable plurality in our evidential media. Whether he approves or not, each officer, each attorney, and each judge must recognize that documents are going to characterize virtually everything he does and encounters in his professional life. Those who assume from the whole of society the obligations of investigating, presenting, accepting, ruling upon, and acting on important documents must be document conscious if they are to discharge properly their respective and collective responsibilities.

Fortunately with every passing day, the objective, orderly, accurate evaluator of men and their documents slowly but surely becomes more in the majority. He is found in our law enforcement agencies and courtrooms in ever increasing numbers. He is characterized first of all by his practical common sense. He understands, forthrightly, that every art and science is his ready ally in the discovery of the truth and the unmasking of error. He is document conscious because he knows well that documents surround our every act and that no law enforcement officer, attorney, or judge can be completely efficient and effective without a thoughtful discerning approach to every evidential document. He comprehends fully that document evidence is intrinsically the

same as other evidence, in that it should be accepted or rejected, it should stand or fall, on its reasonableness and inherent convincingness.

There follow a few general questions pertinent to every document and a number of specific questions relevant to a few documents. It has been observed repeatedly that the most frequently overlooked of these inquiries are those which should be the most obvious. These questions are in no sense all inclusive of considerations which merit study but they provide a basis for the thoughtful, reasoning approach to evidential documents. The applicability of these and other questions will be elaborated in the ensuing pages.

1. When and where did the document, say a check, deed, or note first appear?
2. By whom was it presented? What is his interest? His reputation?
3. Is the document's very existence suspicious? Doth it protest too much the cause it was designed to serve?
4. What did the presentor say about the document at the time he presented it? Later? Why discrepancies, if there be such?
5. Is the document in the same condition now as when it was first presented? Have you so assumed or do you really know?
6. By whom does the document purport to have been drawn or prepared?
7. Have you erroneously assumed that the date, body, and signature were written by the same person?
8. If an endorsement, have you assumed that the signature and address were written by the same person? Can you establish the correctness of your assumption?
9. What do the executors of the document have to say about their participation? Did they indulge complete details or were they glossed over? Did you err by permitting a collaborated story to be given by several interested parties?

10. Is the date of the document logical to its content? If a letter, did the author betray himself by improper tense of verbs or the "forecasting" of events inconsistent with the document's date?
11. Is the date of the document consistent with the movements of the principal? Have you considered hospitalization, injuries, vacations, business trips?
12. Was the document presented timely in the light of its date? If not, where has it been, and why?
13. Are the writing media, pen, pencil, paper, and ink, consistent with the document's date and the representations made for it by its proponents? With the habits of its purported author at the time in question? With his physical and mental condition at that time?
14. Have you identified the author and signer through his or their handwriting or have you merely assumed writing authenticity? Have you acquired technically adequate, provable, and legally admissible exemplars?
15. Have you examined companion documents of proper vintage to ascertain their agreement or otherwise with the habits reflected in the evidential documents?
16. Do you recognize that authentic companion documents provide a much more reliable mode of proof than self-serving, accusatory, or otherwise partisan statements by interested principles?
17. Have you reconciled disagreements between the evidential document and companion documents? Is your reconciliation reasonable in itself and consistent with the representations made by the proponents of the document?
18. Are there witnesses to the preparation, execution, or presentation of the document? What is his or their interest? Reputation?
19. Have the witnesses supplied complete details as to time, place, and circumstances? If not, why not? Do they remember not wisely but too well all the self-serving details?