BACKGROUND ON DOCUMENT AUTHENTICATION[1]

A.　　Means to Establish the Authenticity of Documents

An "authentic" document has "an origin that cannot be questioned," meaning it proceeds "from a given source" and is "not spurious."[2] In other words, an authentic document is one prepared by the identified author, at the time specified in the document and is not a forgery. Although distinctive language that is particular to the identified author of the document or the subject may help authenticate a document, authenticity does not depend on whether the content of a document is accurate. Authenticity is simply a determination that a document is what it claims to be. This is consistent with CBS News Standard II-15, which specifies that when CBS News obtains a document from non-CBS News sources, CBS News personnel "must be satisfied that the material is what it purports to be."

The authenticity of a document may be established in a number of ways. The use of a witness with personal knowledge about the document's creation is the most common approach. The author has personal knowledge of all aspects of the document, including the terms used, the format, and the equipment involved in preparing the document. However, as in the case of the documents that were allegedly authored by Lieutenant Colonel Killian, this approach is sometimes not feasible because the author is deceased or otherwise not available.

The author may not be the only one with personal knowledge about a document. Thus, others who assisted in preparing the document also may have knowledge relevant to its authenticity, including editors, reviewers, co-authors and secretaries. Depending on their roles in preparing the document, these individuals also may have personal knowledge of the format used, the terms selected, the equipment employed in production and other aspects of the document's preparation. However, this approach to authentication also may not be feasible in a particular situation, either because no one assisted in the preparation of the document or because individuals who did assist are not available.

Another approach to establishing authenticity is to identify individuals who have personal knowledge about the source of the document and who can establish an unbroken "chain of custody" from the original file to the present. The goal of this approach is to develop

---

[1] This Appendix is intended to provide background data on document authentication. The Panel has dispensed with most citations and has instead prepared a general narrative that may be of interest to those who wish to gain general information in this area.

[2] Webster's Third New International Dictionary (1976).

information establishing that since its creation, the document has been continuously maintained at one or more known locations and has not been subject to alteration. Although chain of custody information provides no certainty about document preparation, favorable inferences of authenticity can be drawn if an uninterrupted chain of custody is established.

A further approach to authentication involves the use of "experts" in the field of forensic document examination. Such expert assistance is most often used if no one is available with personal knowledge about the document's creation or its chain of custody.

60 Minutes Wednesday could not turn to Lieutenant Colonel Killian, and before airing the September 8 Segment, *60 Minutes Wednesday* had no information from others with personal knowledge about the creation of the Killian documents, and had not established a chain of custody. Document examiners therefore became critical to the effort by *60 Minutes Wednesday* to authenticate the Killian documents.

B.   Forensic Document Examination

Forensic document examiners may use several different techniques to evaluate the authenticity of a particular document. Ink and paper can be analyzed to determine their chemical properties, and such information can be used to validate the alleged date or method of creation of the document. Typestyle can be analyzed to determine if it is consistent with the typestyle available in a particular era. With the word processing capabilities of computers replacing typewriters in recent times, document examiners often must consider what conclusions, if any, can be drawn from computer-generated documents, or whether computers are mimicking older typestyles. In addition, handwriting can be analyzed to determine if it matches samples of the alleged author's handwriting that are known to be authentic ("exemplars"). In fact, the authenticity of the alleged Killian signature was one of the key inquiries made by the examiners engaged by *60 Minutes Wednesday*.

Some document examiners focus only on handwriting analysis, others claim skills in typography, and others claim a broader range of proficiency, although their focus may be on a particular aspect of document analysis such as handwriting. If handwriting is an issue relevant to the authenticity of a particular document and one decides to select and use examiners experienced in handwriting, one should be aware that some commentators recently have criticized handwriting analysis as being unreliable. In addition, as reflected in the comments of the examiners retained by *60 Minutes Wednesday*, the field of forensic document examination is

fractured by disagreements over the appropriate qualifications of examiners, the appropriate certifying body, and other divisions.

1. The Critique of Handwriting Analysis

Several authors have criticized the field of handwriting analysis as lacking verifiability, arguing that such analysis is unreliable and should not be accepted in court.[3] These authors contend that scientific knowledge is sound only if valid, meaning that the accuracy of conclusions can be verified and the methodology used to obtain those conclusions can be assessed as valid. Working from these premises, the authors contend that handwriting analysis has not been shown to be reliable (and should be inadmissible in court) because no body of studies validates the accuracy of handwriting identification. In response, other authors have argued that qualified practitioners in the field have a sound basis for handwriting analysis,[4] and new academic studies claim to demonstrate the scientific validity of handwriting analysis.[5]

The courts have also addressed the debate over the validity of handwriting analysis, with most courts continuing to admit the testimony of handwriting experts, so long as the experts have sufficient qualifications. Some courts have admitted handwriting analysis as a non-scientific field of expertise because of the alleged lack of empirical evidence in the field of handwriting analysis. Other courts have limited expert testimony on handwriting to the identification of points of similarity between a disputed handwriting and an exemplar, while a few other courts exclude any opinions by handwriting experts due to a perceived lack of reliability in the field.

2. Divisions Among Document Examiners

Document examiners often train by apprenticeship, and their allegiances are divided among competing certifying organizations. At its core, the document examination field is divided over the significance of training in "graphology," a field that claims to be able to determine personality characteristics through the analysis of handwriting. Some document examiners believe those trained in graphology are not able to perform competently as document examiners. The contrary argument is that graphology training does not prohibit an examiner

---

[3] *E.g.,* D. Michael Risinger, et al., *Exorcism of Ignorance As A Proxy for Rational Knowledge: The Lessons of Handwriting Identification 'Expertise'*, 137 U. PA. L. REV. 731 (1989).

[4] *E.g.,* Andre A. Moenssens, *Handwriting Identification in the Post-Daubert World*, 66 UMKC L. REV. 251 (1997).

[5] *E.g.,* Moshe Kam, et al., *Proficiency of Professional Document Examiners in Writing Identification*, 395 J. FORENSIC SCI 5 (1994).

from being an accurate observer of handwriting and may provide excellent training for observing handwriting and its nuances.

This fracture over the significance of graphology training has given rise to competing professional organizations, which, in turn, offer competing certifications for document examiners, as well as antagonistic views towards each other. One certifying organization is the American Board of Forensic Document Examiners ("ABFDE"). This group rejects graphology training. The ABFDE must be distinguished from organizations that are more accepting of graphology training, such as the American Board of Forensic Examiners ("ABFE"), also identified as the American College of Forensic Examiners ("ACFE"). In addition, the National Association of Document Examiners ("NADE") is a competing organization that purportedly has links to the ABFE, and accepts those with graphology training.

The split between these various certifying bodies was reflected in the comments of the document examiners interviewed by the Panel. Emily Will, Linda James and Marcel Matley are members of NADE, and are not certified by the ABFDE. Will and James recognized the split between the organizations, but did not comment on the ABFDE. Matley, however, was hostile towards the ABFDE, stating that he was "painfully familiar" with the ABFDE, and believes that the organization is biased against those with backgrounds in graphology.[6] In contrast, Peter Tytell, affiliated with the ABFDE, expressed a certain amount of skepticism about the abilities of examiners such as Matley who come from the graphology "side of the chasm."

The divisions within the document examination field are not limited to the split over graphology training, and the "chasm" between different certifying organizations. For example, some document examiners trained outside government agencies express hostility towards those trained in the government context. Matley made reference to the "government ghetto," expressing the view that government examiners believe they are "God's gift to the universe," and are biased against those document examiners (such as himself) that have not been trained by the government. Similarly, James believed that some government examiners do not have sufficient training to enter private practice.

---

[6] Matley explained that graphology, or "graphonomics," is the study of the physical and physiological characteristics of handwriting. He further explained that "forensic graphologists" analyze handwriting characteristics to determine who wrote something and "behavioral graphologists" analyze handwriting characteristics to determine character traits about the writer. Matley stated that he studied "behavioral graphology" years ago and believes it is supported by the medical and scientific literature on health and handwriting.

In addition, there is a disagreement as to whether there are legitimate subspecialties within the field. For example, on the issue of whether typography is a specialty, there are those such as Matley who believe that typestyle analysis is simply a matter of diligence, and one need only to "doggedly search" the known typestyle libraries to reach a conclusion. Others believe a particular expertise can be developed on subspecialties, such as the identification of typestyles. Two of the document examination experts retained by *60 Minutes Wednesday*, Will and James, both said they had basic qualifications in typestyle analysis, but identified Tytell as an expert on typewriter typestyles.

From the perspective of *60 Minutes Wednesday*, knowledge about these divisions should have led *60 Minutes Wednesday* to select examiners from different backgrounds. Courts generally do accept expert testimony on document authenticity, and if a consensus can be developed among document examiners of differing backgrounds, then conclusions about authenticity may be appropriate. Further, an understanding of the divisions in the field suggests a need for: careful selection of a cross section of examiners to ensure that all significant points of view are represented; the continued pursuit of those with personal knowledge of the documents; the development of a clear chain of custody; and a careful understanding of the accepted principles in the field of document examination.

3.   Generally Accepted Principles

Although there are obvious divisions in the field, certain principles are acknowledged by most document examiners. The first principle is that it is best to have originals available for study, both for what originals can show and for what copies cannot show. Originals allow for the chemical analysis of the ink and paper, a more detailed review of handwriting and better review of the typography. In contrast, copies allow alterations to be grafted onto the original, prevent the analysis of ink and paper and prevent the close analysis of certain aspects of handwriting and typography.[7] In sum, if only copies are available, it necessarily imposes limitations on the document authentication process.

The second principle is that document examiners may reach conclusions with varying degrees of certainty. For example, Will stated that it was very rare for a document examiner to make a finding of authenticity and that it was more likely that an examiner would state that a

---

[7] For example, Matley stated he could not draw a conclusion about alignment in the typography and perform other standard procedures on the Killian documents because they were poor copies. Will stated that it would be rare for a document examiner to render an unqualified opinion on authenticity based on copies.

document does not have any indication that it is not authentic. Thus, document examiners may express the strength of their conclusions in terms of a "strong probability," a "probability" or "indications" of authenticity.[8] For some document examiners, these terms have specific meanings as to the certainty in their findings, so that for example a "strong probability" reflects the view of the examiner that the "evidence is very persuasive yet some critical feature is missing, so that an identification is not in order."

C.   Identifying Examiners

60 Minutes Wednesday chose to focus on document examiners as the means to authenticate the Killian documents. In such a situation, the best approach is to identify four or five well-qualified document examiners, making sure to include examiners from different schools of thought, as well as examiners with different specialties, such as typography. Care must also be taken in articulating to the examiners the question(s) that they are to consider, and, once the examiners complete the analysis, their conclusions must be clearly understood to determine if there is a consensus as to authenticity.

There are many approaches to selecting those who should be in the pool of examiners. One source is to contact document examiners employed by the government. Although these examiners may be prevented from doing the work, they can recommend "civilian" examiners they consider to be skilled. A second approach is to use the resources of outside counsel or in-house counsel to learn whom they have used in trial and found fully qualified, reliable and persuasive. In many circumstances, examiners can provide a good source of referrals to other examiners, although in this field, NADE examiners are unlikely to recommend ABFDE examiners and vice versa. As a result, it is necessary to ensure that the group of examiners that is retained includes individuals from different schools of thought. If one is selecting five examiners and uses two document examiners from the same organization, this is not necessarily wrong, but within the group of examiners, there should be some cross-fertilization between examiners from the different certifying organizations. Similarly, if one must address typography, then at least one recognized typographic specialist should be selected.

Once any examiner has been identified, the examiner's resume must be thoroughly reviewed. What exactly is their training: course work; apprenticeship; government labs;

---

[8] A document identifying these degrees of confidence was provided to *60 Minutes Wednesday* personnel by Linda James.

6

graphology; typography? Do they have publications, and if so, are they self-published? Are the publications in reputable journals and are they in peer-reviewed journals?[9] What organization, if any, is certifying the examiner, and has it been the subject of criticism? A personal interview should also be conducted to judge the individual's capabilities. Was the examiner able to discuss both the fundamentals of the field and the limitations of the field, and what were the examiner's responses to probing questions about background and skills, or questions about competing schools of thought? In addition, does this examiner receive high marks from government examiners, from counsel, from academics? In all cases, references should be obtained and thoroughly reviewed.

Once a number of examiners are selected, the initial analysis should be conducted "blind." That is to say, one examiner should not know what another examiner is doing. When the examiner analysis is done, the results of the examination should be compared. If all examiners reach the same conclusion, based on a similar analysis, and express their conclusions to the same level of certainty, then one can have a higher level of confidence as to authenticity. Matters that should cause concern include examiners reaching different conclusions, an examiner believing there is insufficient information to reach a conclusion or examiners reaching similar results but expressing different levels of certainty. Plainly, when one examiner expresses a different conclusion, or believes he cannot reach a conclusion, this may indicate a concern about the authenticity of a document. In addition, if there is a difference as to the level of certainty, then this should raise a concern because something has diminished the confidence of one of the examiners.

Faced with any one of these "red flags," one approach is to bring the examiners together to discuss their differences. Perhaps a consensus on authenticity can be reached after a discussion, and, if so, then there should be some confidence in authenticity. If no consensus can be reached, then that should preclude identifying a document as authentic.

---

[9] Publication in and of itself is not a sure guide to an examiner's ability or prominence. Some books and monographs are self-published, and articles may appear in publications that have no standard of editorial review, let alone peer review. There is no substitute for an independent review of the publications authored by an examiner.