

## Convincing Testimony: A Document Examiner's Impact on a Jury

by

Ruth Holmes, CDE

In collaboration with Sarah Holmes Tucker, M.A.

**Abstract:** A document examiner plays an unusual role in the courtroom since every juror has a signature, writes or prints in some form, and thus may be naturally inclined to closely follow the testimony of a handwriting witness. In response to questions, testimony is given, whereby the findings from the examination of documents that contain questioned handwriting are explained. This process, to be effective, requires not only the examiner's ability to communicate with attorneys and other courtroom players, but also that the expert present themselves and the exhibits in a way that support their opinions competently and credibly. The witness is ultimately teaching the jury, a group of total strangers to the field, how to compare, contrast and understand the fine details of handwriting examination.

**Keywords:** Document examiner, handwriting, courtroom testimony, courtroom players, jury, judge, attorneys, presentation of exhibits.

Forensic, criminal and judicial programs permeate the airwaves, bringing the spotlight on expert witnesses in all disciplines. Judges and jurors alike are looking for the testimony of experts who are competent, credible and able to communicate verbally and demonstratively with their exhibits. When the jury weighs the evidence, they will remember what they regarded as the most convincing testimony that they had seen and heard.

"The responsibility of the juror in the administration of justice is more clearly understood when he is described by his full title, 'The Juror, the Judge of the Facts.' His responsibility is shown to be still greater when it is also understood, as has been clearly stated by many eminent authorities, that in trials generally the discovery and proof of the facts is the most difficult phase of the proceeding and in many cases the only phase. In most trials this so-called final 'judging the facts' is really deciding the case, and this, it appears, is not a task

for the trained lawyers nor the learned judge but for the humble juror."<sup>1</sup>

Trials can be long, tiresome, technical procedures, but there is something unique about a case involving handwriting to which jurors can relate, whether it be an altered will, a forged check, a bomb threat, an anonymous letter or the scribbling of a jailhouse snitch. Every juror has a personal connection to a case with a handwriting component because each of them has a writing style that is distinctive. Add the intrigue or tragedy of a particularized case that has brought the document examiner into the court and it is a perfect combination of mystery offered by the court, blended with the awakened curiosity of the jury.

"Of all men, lawyers ought to know that proof is often disguised and distorted if not destroyed, simply because it is not presented in the right manner, at the right time, and in the right order. Correct and credible proof may also be greatly weakened because of the personality of the witness giving it or of the lawyer eliciting it."<sup>2</sup>

Unlike a ballistics expert, a document examiner plays an unusual role in the courtroom because their testimony relates to handwriting, something every member of the jury does one way or another. In explaining a letter form, natural variation, spacing or movement, each juror can see and understand the testimony based on the strokes of their own writing, printing or signatures. Their testimony is different from that of a chemist, engineer or pharmacist, who might present and explain components, formulas, physics or mathematics. No matter what the subject, jurors are asked to understand what

1 Osborn, Albert: *The Mind of the Juror as Judge of the Facts or The Layman's View of the Law*. Fred B. Rothman & Co., Littleton, CO, 1937, p. xi.

2 Osborn, op. cit., p. 115.

ever testimony is presented.

Media accounts of cases involving handwriting examination have long held a fascination for the general public. Older jurors might be familiar with such cases as the Lindbergh kidnapping note, the authenticity of the Hitler diaries or the will of Howard Hughes. Many of the younger jurors may only have knowledge of handwriting cases that they have seen in the news such as the ransom note related to the murder of Jon Benét Ramsey, the identity of the writer of the threatening note in the Washington Sniper cases or most recently the handwritten notes of alleged gunman, Jared Loughner, found in his apartment following the shooting in Tucson of Congresswoman Gabrielle Giffords in 2011.

Most forensic cases do not make it into the headlines or onto the evening news, but from the moment he/she becomes involved, the document examiner's preparation for testimony may influence whether a case is settled or actually goes to trial. When the results of document examinations are compelling, many cases are settled out of court. A person might be willing to forge a signature but will stop short of insisting on going to trial where they might then commit perjury about the forgery, especially when the evidence is overwhelmingly against them. Judges will hear testimony at preliminary hearings and determine, based on the evidence available, whether a case will actually move on to trial. At times, often with the examiner sitting outside of the courtroom waiting to testify, the case may be settled because of the excellent preparation of the exhibits allowing the evidence to prevail.

When the document examiner is required to appear in court, whether for a bench or jury trial, their task is to communicate the evidence. Testimony is given to explain the findings following the examination of documents that contain questioned handwriting. This process combines not only the examiner's ability to communicate with attorneys and other courtroom players, but to present exhibits that support their opinions, ultimately teach-

ing the jury, a group of total strangers to forensic document examination, how to compare, contrast and understand the fine details of handwriting examination.

“Experts with teaching experience are often the best testifying experts at trial. Look for that experience on the resumes of experts...consider[ed], and if...[there is a] choice of more than one expert on an important issue for trial, choose the expert who is the better teacher over the one who may be more gifted in the field. Teaching isn't limited to academia; an expert who has been responsible for training on the job may do a good job of teaching jurors too. Again, the witness' connection with jurors, and jurors' ability to understand and remember the testimony, are more important than having the most impressive resume.”<sup>3</sup>

Jurors are essential to the legal system, and consideration of their reactions to the document examiner's demeanor and materials cannot be overestimated. From the preparation of an exhibit book accompanying a letter of opinion to the final presentation of materials for court, serious consideration must be given to how the evidence will be interpreted by the jury. Whether the work product is shown to an opposing attorney, a judge, a grand jury or a jury, the clarity and quality of this part of an examiner's testimony can determine whether a case actually goes to trial and it can have a lasting impact on the final verdict in a case. Handwriting exhibits engage the jurors in the audio and visual understanding of how examiners arrive at their conclusions. The jurors' participation makes them part of the discovery process as they see and hear how the questions are answered. Is it a genuine signature or not? Who wrote the notes?

“A good witness is one who relates facts audibly, briefly, correctly and clearly. To correctly describe a transaction, or clearly relate an incident, is an excellent test of general intelligence.”...  
“Simplicity is not a characteristic of simpletons

<sup>3</sup> Crawford, Richard and Morris, Charlotte: *The Persuasive Edge*. Lawyers & Judges Publishing Company, Inc., Tucson, AZ, 2006, p.172.

but of wise men.”<sup>4</sup>

The greatest impact on a jury comes with the explanation of hands-on materials that are easy to understand and without ambiguity. An opposing attorney may try to stop testimony as being a *narrative*, but the opportunity to point out specific points on composites, photographs, exhibit boards, or by showing overhead projected images or a Power Point demonstration, is a crucial time in a case. Jurors like to be engaged in the problem-solving process of a trial. Good exhibits are tangible, visual, creative and thought-provoking. The document examiner can determine the focus of the jury with well planned exhibits and a clear explanation of how the opinion was reached.

“Educational psychologists also know that most individuals are more efficient learners when information is presented through more than one sensory channel. Thus, a message that you only hear will be less likely to register than a message that you hear, see through a pictorial or written representation, and record through your own act of writing.”<sup>5</sup>

Juries are made up of a cross section of the population in age, race, education and professions. As such, these varied individuals bring to the courtroom their own personal experiences and thought processes to bear on the case at hand. Most of them are not serving on the jury by choice, so the more engaged each juror can be in the legal action taking place, the more attention they will pay to the evidence. Some jurors respond to the facts and figures in verbal testimony while other jurors are impacted by color and visual images. Handwriting examiners do not take sides when taking a case, but their skill in preparing evidence and giving testimony as to their findings can have a significant impact on a jury. As cited in Crawford’s *The Persuasive Edge*:

“Reliance on any single form of visual aid will

<sup>4</sup> Osborn, op. cit., p. 43.

<sup>5</sup> Jones, Susan: *Selecting and Influencing Your Jury*. The Professional Education Group, Inc., Minnetonka, MN, 2004. p. 10.

be tedious...for the jury. Look for ways to maintain jurors’ interest and attention by incorporating different visual aids, each of which is most appropriate for the point...[the witness] want[s] to make.”<sup>6</sup>

In a case involving handwriting, jurors are being asked to learn a forensic language of comparison using space, form, movement, alignment, proportions, pressure, line quality, entry and terminal strokes. The better the diagrams, the more precise the descriptions and more confident the expert, the more credible a juror will find the testimony to be. The evidence is assimilated, evaluated and used to reach a verdict. Court exhibits, that show how a document examiner reached their conclusions, provide a pathway for jurors to discover their own facts, to listen to the expert’s explanations and then to use this combined information in helping reach a verdict.

“There is sound psychological research attesting to the need for clear communication of the case to the jury. The strength of the evidence, as jurors perceive it, is the most important determinant of the jury’s verdict. Although a juror will bring predisposing beliefs and attitudes into the courtroom (he is not, nor can he truly be, a ‘tabula rasa’), these are most likely to be acted upon when the case is incomprehensible.”<sup>7</sup>

The education of a document examiner extends beyond the knowledge of the subject matter, beyond presentation of exhibits and beyond personal appearance. The training should also include learning the impact their communication skills will have on the jury. In his introduction to Albert Osborn’s book *The Mind of the Juror*, John Wigmore wrote:

“Here are the recorded reflections of a wise man who has sat in courtrooms, day after day for the better part of a generation, in nearly every region of our country, before every kind of a judge and every kind of a jury and in all sorts of contested cases, awaiting his turn to testify, and meanwhile

<sup>6</sup> Crawford, op. cit., p. 232.

<sup>7</sup> Jones, op. cit., p. 9.

studying the mental operations of the jurors, in the light of his knowledge of the case.”<sup>8</sup>

Even the most experienced document examiner needs to have jury awareness when testifying. Jurors make their observations, drawing their own conclusions based on everything a document examiner does, says, shows, explains and even wears from the moment he/she enters the courtroom.

“Do not assume that expert witnesses—because they are experts—are also necessarily more effective communicators when on the stand. Many times they are not, and they require the same direction...before trial that...would [be] give[n] to lay witnesses. Experts are great when they exude confidence about their subject matter and the conclusions they’ve drawn about...[the] case. But that confidence easily spills over into arrogance, even before they come under fire from opposing counsel. Once under cross-examination, arrogance can also quickly turn to defensiveness, and neither of these are attractive traits.”<sup>9</sup>

Presentation is paramount to impacting a jury, as illustrated in the following exhibits that were part of two trials in Michigan. Exhibits need not be elaborate, but they need to be easy to understand and follow, using colors or numbers when they are explained to the jurors. After laying a foundation of the principles of forensic document examination in response to the attorney’s questions, the document examiner can then demonstrate to the jurors how to see through the examiner’s eyes and learn how a conclusion is reached.

#### **Color-coded court exhibit: Murder for hire**

Illustration #1 is from testimony in a murder-for-hire trial for the death of a librarian, Martha Gail Fulton, in a rural community outside of Detroit, Michigan. In 1999, her husband, George Fulton, was working as a traveling salesman and he began a personal relationship with his client, Donna Trapani, for whom he did medical billings for her health care business in Florida. Trapani paid friends \$7,500 to travel to Michigan to kill the wife

of her lover. Trapani never left Florida at the time, but gave her friends a detailed note telling them where to find Fulton’s wife. This note became the questioned document because it was found in the get-away car after the shooting which was caught, in its entirety, on the library parking lot’s surveillance camera.

The FBI provided the Oakland County Sheriff’s Office a large quantity of love letters that had been exchanged between Fulton and Trapani. They were in cursive writing and printscript except for a few hand-printed notations observed on one of the letters. Those few compelling handprinted words were presented in the exhibits that the jurors used to form their opinion, finding Donna Trapani, her best friend, and the shooter guilty of first degree murder, resulting in mandatory life sentences of imprisonment without parole. The driver of the car received 25 to 40 years in prison.

The document examiner thoroughly examined extensive pages of documents, prepared an exhibit book with all of the love letters, prepared composites of the documents (See Illustration #1) including a color-coded legend. The jury was shown a sample of the cursive letters, the questioned note with directions to find the librarian (QD-1), the few handprinted words written by Trapani observed on one of the love letters (K-1), an example of Trapani’s printscript (K-4B), and court exhibits marked with colored arrows to show similar letter forms.

#### **Color-coded court exhibit: Bank robbery**

In 2005, an Oakland County, Michigan, jury heard testimony about a bank robbery spree in Birmingham, Michigan. The local police called for a document examiner. Two questions were asked: 1) Were all three threatening notes written by the same person? and 2) If so, were the three notes written by the person who had written a complaint letter to a judge in an unrelated matter?

Several exhibits were used to explain the findings during testimony in the case. Illustrations #2 and #3 demonstrate how the jury was directed to

<sup>8</sup> Osborn, op. cit., p. vii.

<sup>9</sup> Crawford, op. cit., p. 171.



LAKE ORION LIBRARY  
 ANDREW  
 Emily  
 TALON CIRCLE  
 LAKE ORION, MI  
 MONDAY 5pm - 9pm  
 WED OFF  
 T, Th, Sat 9am - 1pm  
 Honda Accord  
 MY LOVE I DO SOLEMNLY SWEAR  
 TO cherish you & always care  
 FOR ALL WE BEEN THROUGH  
 I STILL SEE A WINNER IN YOU  
 In your time of need I be there  
 anytime, any where  
 K-1  
 K-4B  
 my name in your pride word guides  
 partner you wouldn't be so quickly taken

Illustration #1. Composite of the questioned note (QD-1), known Trapani printing (K-1), and a sample of Trapani printscript (K-4B). The questioned and known exemplars were color-coded, compared to each other, and described, during the trial, in detailed testimony by the document examiner.

QD - 1 Charter One Bank 12/7/04

I HAVE  
 A GUN  
 Give Me  
 The Money  
 OR I  
 will Kill  
 You.

QD - 3 Found in Coat Pocket

I HAVE  
 A GUN!  
 Give Me  
 The Money  
 OR I will  
 Kill You!!!

QD - 2 Fidelity Bank 12/8/04

**FIDELITY BANK** WITHDRAWAL TICKET

MMDA  
 19-878 747

Savings  
 149-67967

CUSTOMER NAME \_\_\_\_\_

CUSTOMER SIGNATURE \_\_\_\_\_ Cont.

TRANSACTIONS ARE SUBJECT TO BANK'S ACCOUNT TERMS AND CONDITIONS.

Date \_\_\_\_\_

Amount \$ \_\_\_\_\_

AMOUNT IN WORDS \_\_\_\_\_

I HAVE  
 A GUN!  
 Give Me  
 All of  
 the Money  
 Now!!!

38 072412655

GBF INC. 313-699-4040 FIDELITY F5005 REF. 64827

Illustration #2. Three notes (QD-1, QD-2 & QD-3) shown to tellers in the bank robberies were compared to each other to determine if they were written by the same person.



KNOWN

K-2

trial in order to argue that, but according to [REDACTED] 420 Mich. [REDACTED] 2 N.W. 2d 655 (1984), that could have been argued, but my attorney refused to do so.

Second, I ask him to argue that Ofc. Kate [REDACTED] give false testimony at my preliminary examination, that she photograph and seized a 1992 Mercury Topaz at my home, but according to the testimony given at my evidentiary hearing, there are no photos and no record of the car ever being seized. This issue could have been argued according to People v [REDACTED], 102 Mich. [REDACTED] 302 N.W. 2d 209 (1980), but he refused to argue them stating that I have to wait until my trial.

I've asked him for evidence that's apart of my discovery, but I have not received it yet. These are just some of the things that I've tried to talk to him about, but we are not getting along. So, I ask that the court's please appoint me new counseling in order for me to receive a fair and impartial trial

Thank You.

[REDACTED] (S) [REDACTED]  
Case # [REDACTED]

**Illustration #3.** Page two of the complaint letter (K-2) showing the color-codes used for comparison to the three threatening notes (QD-1, QD-2 & QD-3) that were presented to the bank tellers as seen in Illustration #2.

use their powers of observation in understanding the information they received from the document examiner's testimony. One of the threatening notes (QD-3) was found in the coat pocket of a man when he was being booked into the county jail after he was picked up on a separate charge. This note connected him to the bank robberies. The Prosecutor's Office received permission to have the complaint letter (K-2) examined and compared to all three questioned notes.

Handwriting testimony was given that the three notes were written by the same person and that person also wrote the complaint letter to the judge.

Visual exhibits are remembered by a jury if they are clear, unambiguous and use points of explanation with colors for identification of similarities or dissimilarities. When exhibits are accepted into evidence and actually passed into the jury box, there is an opportunity for the jurors to draw conclusions based on the details they observe, understand and remember from the testimony of the expert witness. The exhibits become central in the decision-making process in deliberations leading to the resulting verdict.

When the testimony of two experts conflicts, they neutralize each other in the minds of the jurors unless one of them has made a sounder, more convincing presentation. Osborn said, "If jurors must decide as to the merits of conflicting testimony they prefer to hear the witnesses instead of reading their testimony or have it read to them."<sup>10</sup> He also said:

"It would be helpful to put up in courtrooms, where lawyers and witnesses could all see them, some conspicuous, plainly lettered placards saying: 'He who speaks and is not understood is dumb'; 'It is a discourtesy to a hearer to speak indistinctly'; or 'He says nothing who is not understood'. Jurors suggest that the judge have these helpful placards made; they should be in every courtroom and within sight of every witness and every lawyer."<sup>11</sup>

<sup>10</sup> Osborn, op. cit., p. 125.

<sup>11</sup> Osborn, op. cit., p. 161.

"It is surprising that many pleaders who seek to persuade juries apparently make so few excursions into this little known field—the juror's mind. Their main interest appears to be in the fact of evidence rather than in the effect of evidence."<sup>12</sup>

In 1937, Albert Osborn knew the importance of understanding the role of jurors in document examination. It is time that those in the field embrace the fact that testimony alone is not enough. They must learn how their convincing testimony, communication styles, exhibits and presentations ultimately impact the jury.

<sup>12</sup> Osborn, op. cit., p. vii.

*Ruth Holmes, CDE* is a professional handwriting and document examiner whose forensic firm, Pentec, Inc., in Bloomfield Hills, Michigan, advises individual, legal and corporate clients in the U.S. and overseas. She is certified by, and a Diplomate and Life Member of, NADE. She is currently acting as NADE vice-president and has served in many positions within the organization since the early 1980s. A member of the Michigan-Ontario Identification Association (MOIA), a division of the International Association of Identification (IAI), she is court qualified as an expert witness in federal, state and local courts.

For almost 20 years, Ruth worked as a document examiner for the Office of the Prosecutor and sheriff's office in numerous criminal trials in Oakland County, Michigan. She is a nationally recognized speaker, media guest, writer, jury and trial consultant and forensic expert.

Her daughter, *Sarah Holmes Tucker*, completed her graduate work at Boston University, is court qualified, joined Pentec, Inc. in 1997 and lives near Boston. She is a Life Member of NADE and is currently president of the Great Lakes Association of Handwriting Examiners.

Ruth Holmes, CDE & Sarah Holmes Tucker  
Bloomfield Hills, MI 48303  
[www.pentec.net](http://www.pentec.net)