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FORENSIC DOCUMENT EXAMINATION

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A FOUR GENERATION FAMILY PRACTICE

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AMERICAN BOARD OF FORENSIC DOCUMENT EXAMINERS EXAMINERS

October 25, 2010

RE: **HASSAN DIAB EXTRADITION HEARING**
Our File: J-2120

TECHNICAL REVIEW OF REPORT
(Anne Bisotti)

Donald B. Bayne
Bayne Sellar Boxall
200 Elgin Street, Suite 500
Ottawa, Ontario, CANADA, K2P 1L5

Dear Mr. Bayne:

Attached to this technical review, please find reproductions of a French language report submitted as that prepared by Anne Bisotti (attached at Appendix 1) and the English translation of that report (attached at Appendix 2). The undersigned has completed a technical review of this report.

The purpose of the review was to evaluate the material submitted, to opine whether or not the process of submission, examination methodology, reporting of conclusions or other elements of the material are appropriate and meet accepted standards in the field of forensic document examination. Should it be the determination of this review that elements of the submission, examination and reporting process are flawed, the further purpose of this review was to evaluate whether or not those flaws are so critical as to render the determinations wholly unreliable.

It is the opinion of the undersigned that the instructions to the examiner (the "mandate") included within the report, the basis for the conclusions rendered in the report and the terminology employed to express those conclusion was grossly inadequate and the methodology employed was both clearly inappropriate and utterly biased towards a specific conclusion. Furthermore, the undersigned is of the opinion that the report itself was created in a manner intended to confuse the lay reader as a means by which to mask the egregious flaws in methodology and the conclusions rendered..

The following are, in the opinion of the undersigned, the major flaws which contaminate

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the process of examination, as set forth in the report, and which cause the undersigned to dispute the reliability of the conclusions noted within that report:

1. The "Mandate" which precedes the reporting of conclusions and which may be reasonably characterized as the purpose of the examinations as set forth by the submitting party provides specific instructions regarding the conclusions that are expected. Specifically, the Mandate instructs the examiner to, "State whether the writer of the exemplars is or may be the writer of the notes 'PANADRIYU,' 'ALEXANDER,' 'LARNACA,' 'CYPRUS' and 'technician' found in sealed record no. SIXTEEN and attributed categorically by the hotel receptionist to the person who introduced himself as Alexander PANADRIYU, and considering, if required, the differences in the dates of the exemplars made between 1987 and 1997, and the date of the questioned document, i.e. September 22, 1980." This instruction clearly limits the examiner to two possible conclusions ("is or may be the writer"). Direction by a government official to subordinate laboratory personnel in this fashion clearly sets forth the expectation of some form of identification and creates a clear bias in support of one conclusion over its opposite, or even an inconclusive determination.

Limiting any forensic scientist to specific conclusions, as these instructions clearly do, defeats the purpose of the objective observation and analysis; to render conclusions based strictly on physical evidence. The reasonable scientist would readily reject these instructions, but by actually placing this "mandate" at the beginning of her report, Bisotti clearly accepts the instruction and thereby sets a fatal tone of subjectivity and bias.

2. The failures in methodology exposed in the report are most graphically illustrated with Bisotti's statement (page 12 of the translated version), "Moreover, only when many personal characteristics are identified in both the questioned writing and the exemplar, and especially when the number of these graphic similarities is much greater than the number of dissimilarities found there, will it be possible to identify the writer of the exemplar as the author of a questioned document." In fact, a single significant or fundamental dissimilarity between questioned and known writing may prohibit an identification from being reported. To suppose that the process of handwriting identification is a game of numbers is incorrect and illogical. The presence of significant or fundamental differences between questioned and known writings must be the determining factor, regardless of the number of similarities present between those two writings. This is as much a common and accepted method of handwriting identification as it is in many other forms of identification. Its logic can be described with a simple and practical example:

Driving to the shopping center in her red Ford Mustang, Anne exits her car and enters the store. Anne's Mustang has a damaged right fender, chrome American

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Racing wheels and Firestone tires. In addition to a black leather interior, Anne's Mustang is a convertible. Anne leaves the store through a different door and has some difficulty finding her car. She finds a Mustang with most of the different features exhibited by her own car, but she knows this particular Mustang is not hers because it is a hard top, rather than a convertible. Anne knows this because, despite all of the many similarities between her car and the one she located, the one significant difference is the controlling factor.

Osborn writes "Some of the old discussions of this subject contain utterly fallacious arguments to the effect that similarities and differences have equal weight, which would amount to saying that an individual is proved to be a certain person if certain *similarities* could be shown without regard to certain existing fundamental differences. Such an argument is, of course, absurd."¹

In fact, Bisotti reports the presence of seven differences between the questioned writing and the known specimens (page 24 of the translated version), but dismisses them as the product of natural variation. While it can be clearly established that the number of differences present between the two groups of writing far exceed the seven she has identified, the presence of just the small group of differences she did find undoubtedly should cause the objective and unbiased forensic document examiner to conclude the writings are the product of different individuals. Rather than consider this clear and unmistakable evidence, Bisotti arbitrarily reports them to be natural variation of the same writer, doing so without a scintilla of supporting evidence or graphic examples establishing this as a legitimate finding.

Hilton writes, "Rather, if two writings have been produced by one individual, there must always be a combination of a sufficient number of points of agreement without any fundamental dissimilarities that all chance of accidental coincidence is excluded. Identification rests therefore not alone on a similar combination of identifying attributes – a condition that always must be fulfilled – but also on a coexistent lack of basic divergencies between the questioned and standard writings."²

In addition, the most basic of protocol to be followed in the comparative analysis of writing is ignored; that of like to like comparisons. The same individual letter forms and, in the event of continuously written letters, the same combination of letter forms must be utilized in order to appropriately conduct a proper writing comparison of known and unknown writings. Clearly when considering the hand printed name and other information appearing on the hotel registration form there was a failure in this regard.

¹ Osborn, Albert S.; *Questioned Documents*; New York; Lawyers Cooperative Publishing; 1910, p259.

² Hilton, Ordway; *Scientific Examination of Questioned Documents*, Revised Edition; New York; Elsevier Science Publishing; 1982; p154

Hilton writes, "These specimens certainly must contain enough appropriately prepared material to indicate not only the individual writing habits of the author but also the unusual variation in these habits from one writing to the next. They need not necessarily contain all the innumerable identifying characteristics of the person's writing, only those that should be found in material *exactly like that in dispute*."3 (emphasis by the undersigned).

Published standards for the examination of handwritten items state:

- "7.11 Evaluate the comparability of the bodies of writing (questioned writing to known writing or exclusively questioned writing).
 - 7.11.1 If the bodies of writing are not comparable, discontinue comparison and request comparable known writing, if appropriate.
 - 7.11.1.1 If comparable known writing is made available, return to 7.10. If comparable known writing is not made available, discontinue these procedures and report accordingly"4
3. The reporting of conclusions and the terminology employed, while extremely confusing, does have a particularly troublesome term at its heart; "presumption." This term appears throughout the conclusions and, once again, establishes a clear bias.

Webster defines presumption as:

- "presumptuous attitude or conduct : AUDACITY
- an attitude or belief dictated by probability : ASSUMPTION
- the ground, reason, or evidence LENDING probability to a belief
- a legal inference as to the existence or truth of a fact not certainly known that is drawn from the known or proved existence of some other fact"5

The reporting of scientifically based conclusions which are rendered based on the objective observation and analysis of physical evidence cannot reasonably make presumptions and at the same time be unbiased. The undersigned has been a practicing document examiner for more than 28 years and the Bisotti report is the first the undersigned has read which utilizes this term. In fact, this year at the sixty-eighth annual meeting of the American Society of Questioned Document Examiners in Victoria, BC, the undersigned was moderator of the August 31st technical session during which an informal poll was taken of the 81 attendees of that session. That poll requested a showing of hands for any examiners who had ever heard the term "presumption" used to

3 Hilton, Ordway; Scientific Examination of Questioned Documents, Revised Edition; New York; Elsevier Science Publishing; 1982; p299.

4 American Society for Testing and Materials; Standard Guide for Examination of Handwritten Items; Designation E-2290-07; 2007.

5 Merriam Webster On-Line, www.merriam-webster.com, 2010.

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express a conclusion regarding writing by a reputable examiner or as protocol in a reputable laboratory. Of the assembled group of forensic document examiners, including six who indicated that they regularly prepare written reports in the French language, not a single hand was raised.

Osborn writes, "The scientific examiner starts with no presumption, and looks, not for facts to bolster up a preconceived theory, but for facts upon which to base a final conclusion."⁶

4. Finally, and regarded as being of significant concern by the undersigned, is the highly confusing and convoluted nature of the report. Forensic document examination and, in particular, the examination of handwriting is an area of forensic science which can be easily understood by the typical literate layperson. Lay jurists, whether judicial officers with expanded knowledge and expertise in law or empanelled citizens who sit upon a jury must be literate. That literacy affords these fact finders basic knowledge about the act of handwriting to the extent that a qualified expert can easily, readily and CLEARLY explain both a conclusion and the basis for that conclusion. Failure of an expert to make the basis for a determination clear and convincing should, quite correctly, result in a rejection of that conclusion by those fact finders.

Among the most compelling and striking methods for making the basis for a given conclusion clear to a layperson is the typical graphic composite of comparable questioned and known examples commonly referred to as a writing comparison chart. Side by side illustrations not only demonstrate the clear use of appropriate like character forms and combinations of character forms with one another, but more importantly provide the layperson with the ability to compare characteristics him or herself; an extremely valuable means to establish support for an expert's conclusion.

Particularly in a matter, such as the one presented to Bisotti, wherein such a limited quantity of questioned writing was submitted, the lack of any graphic comparison charts of questioned and known writing is curious and striking, indeed. Rather than offer this very common means to the report's readers which would allow them to see the consistencies Bisotti relies upon, the report directs the reader back and forth between and among a series of illustrations and documents which make side by side comparisons very difficult.

Unlike many areas of forensic science, forensic document examination and the forensic analysis of handwriting result in conclusions that can be understandably and clearly explained to any literate layperson. A report which is produced regarding the

⁶ Osborn, Albert S.; Questioned Documents, New York; Lawyers Cooperative Publishing; 1910, p. 255.

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identification of handwriting, if it is intended to be an effective tool in transmitting the methodology, conclusions and basis for conclusions to a lay reader, cannot be confusing. The Bisotti report is extremely confusing and the undersigned can surmise only one thing from the manner in which it was prepared and its lack of appropriate graphic illustrations in support of the conclusions rendered therein; that the writer fully intended it to be confusing and difficult to understand in an effort to mask the absence of accepted methods for comparative analysis, bias in the development of conclusions and a total lack of support for those conclusions.

Harrison writes, "This detailed report should be supplemented by suitable photographs, a fair proportion of which will consist of enlargements of selected portions of the documents examined. The comparison of handwriting or of typescript is involved, there will probably be, in addition, one or more comparison charts made up of enlarged extracts from the handwriting or typescript placed in juxtaposition so as to facilitate comparison. Comparison charts of this nature are indispensable when the witness wishes to illustrate the grounds upon which his opinion is based."⁷

In the opinion of the undersigned, a flagrant and manifest deviation from established methodology for the examination of writing and the reporting of findings is evident from the undersigned's reading of this report. This report clearly sets forth bias and lack of objectivity in both the mandate to conduct examinations and the rendered conclusions. It reports the use of methods for comparative analysis of handwriting which fly directly in the face of logic and established protocol within the field. The report is prepared and illustrated in such a way to cause confusion, rather than shed light on the basis for the conclusions. In the opinion of the undersigned the conclusions expressed are wholly unreliable as a product of these serious flaws.

In addition to reproductions of the reviewed report and translation provided to the undersigned, please find both narrative and detailed information regarding the qualification of the undersigned attached hereto.

Respectfully submitted,

JPO/ms

⁷ Harrison, Wilson R.; Suspect Documents; New York; Frederick A. Praeger, Publishers; 1958; page 499