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Policing Anonymity

By Donald W. Foster

Foreword

Ideas in American Policing is a medium for the Police Foundation to communicate innovations and thoughts about policing to a large audience. Leading criminologists share their ideas and insights on how we may improve the important social function we call policing. The lectures in this series began in 1997 with David Bayley's "Policing in America: Assessment and Prospects." He was followed by noted scholars Lawrence Sherman, "Evidence-Based Policing"; Stephen Mastrofski, "Policing For People"; Jerome Skolnick, "On Democratic Policing"; and Mark Moore, "Recognizing and Realizing Public Value in Policing: The Challenge of Measuring Police Performance."

Donald Foster is not a police scholar. He is an English professor who studies written language and communication. But both crime and policing are interactive processes and it should be no surprise that Professor Foster's discipline can assist police in the criminal investigative process. One of the most intriguing aspects of criminology is its multidisciplinary nature. *Ideas in American Policing* is a forum of diverse topics, from theoretical to practical, from general to specific, for an audience that includes academics, practitioners, policymakers, and the general public—anyone who is interested in or affected by policing.

When Donald Foster speaks of all the clues a single letter can provide—postmarks, addresses, fingerprints, handwriting, typewriter evidence, DNA from stamps and envelope seals, and the very communication itself—he illustrates the range of information types innovative techniques can extract. In doing

Ideas in American Policing presents commentary and insight from leading criminologists on issues of interest to scholars, practitioners, and policymakers. The papers published in this series are from the Police Foundation lecture series of the same name. Points of view in this document are those of the author and do not necessarily represent the official position of the Police Foundation.

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so, he demonstrates the diverse repertoire of modern investigative tools that have resulted from developments in the forensic and behavioral sciences.

The Police Foundation's research division is interested in the functions of the criminal investigative process. This is an under-researched area in criminal justice, but one with significant implications. Unsolved crimes, unsuccessful prosecutions, and wrongful convictions violate our notions of right and wrong and undermine our confidence in the criminal justice system. More than once we have seen a single, unsolved murder demonstrate the capacity to reverberate across the country. While powerful advances have been made in recent years in DNA profiling and the capabilities of the crime laboratory, we have learned little in the last quarter century about the very nature of the investigative function.

Dragnet's "Just the facts, ma'am" symbolized the 1950s professional policing model. But what do those facts mean? How can, or should, they be interpreted and analyzed? What is the relationship between community-based policing and criminal investigation? How can the forensic and behavioral sciences work together? Ultimately the investigative process is based on information management—its collection, analysis, and sharing. Behavioral science, information theory, and technological capability provide a foundation for the future development of the criminal investigative process. That development, if it is to be effective and efficient, and produce just and fair results, needs to be guided by research and informed dialogue.

Stuart Kind (1987, p. 9) has said that all good investigators are good detectives, but not all good detectives are good investigators. Policing is a conservative institution. Yet its responsibility to manage the borders of social order require it to constantly change and evolve. That change should be reflective, not reactive. Creativity, research, and innovation can help the change process, while dogma and parochialism will only frustrate it. Donald Foster has demonstrated how methods of criminal investigation may benefit from new perspectives and interdisciplinary knowledge. The improvement of policing is a constant challenge, but this is one example of how the prospects can be interesting and exciting.

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Anonymous communication is a right worth protecting. Some citizens may wish to express unpopular political or religious opinions without being challenged. Others may wish to provide a crucial tip to police or simply participate in an online discussion group without being identified. Whistle blowers may wish to expose racial discrimination or safety hazards in the workplace without fear of recrimination.

As with any constitutionally guaranteed privilege, the right to anonymity may be abused. Though difficult to investigate and sometimes impossible to prosecute, anonymous communication for unlawful purposes can be a problem for law enforcement agencies. Private persons, as well as celebrities and politicians, may be libeled, harassed, or threatened by anonymous mail. A disgruntled worker may circulate unsigned attacks on his colleagues. The owner of a small business may contact trade unions, clients, newspapers, or government agencies and convey allegations damaging to a competitor. Stock prices can be manipulated by postings to online bulletin boards or by anonymous tips to major stock funds. Wills and historical documents may be forged. In short, the malicious and criminal uses of anonymity are boundless—and many persons who engage in such activity are habitual offenders.

The prevention, solution, or prosecution of violent crimes may likewise entail anonymous writings. When confronted with an unsigned threat to attack an organization, school, or private citizen, law enforcement must assess the danger and, if possible, identify the author before it's too late. Following an actual assault, homicide, or bombing, unsigned writings found at the crime scene (even something as simple as a shopping list) may subsequently emerge as critical documents in establishing the identity of the perpetrator. Police may also receive unsigned post-offense communications from a credible witness or from the actual offender—or from a mischief-maker or well-intentioned psychic. Those documents, too, must be investigated, even if misleading or fraudulent.

The questioned documents in a criminal case may prompt questions that are difficult to answer without expert assistance. If a teen is found dead with a typed suicide note in his hand, can we know that the note is authentic? If police receive an unsigned confession after a suspect is already in custody, should the investigation be reopened? If a convict on death row claims that the police forced him to sign a confession that he did not write, should his appeal be heard?

Questions like these raise procedural issues: If a critical document in a police investigation is unsigned and there are no credible suspects, how is its authorship to be investigated at all? If an author is subsequently identified on the basis of handwriting, typography, and/or textual and linguistic analysis, can that evidence supply probable cause for a search warrant? What steps must be taken to ensure that such evidence is both fully dependable and admissible in court?

"Attribution" . . . and "textual transmission" . . . have been well-established fields of scholarly research for at least 200 years. . . .

Without known writings by an identified suspect, it may be impossible to connect the voice of an anonymous document (the internal "I" or "we" of the text) with the actual author of the document (the "I" that did the writing). But with most anonymous texts, from books of the Bible to the latest Internet libels, textual and linguistic evidence can take us a lot further than many scholars and detectives have realized towards answering the questions, "Who's speaking?" and "In whose supposed voice?" New York City's Mad Bomber signed himself "FP." Ted Kaczynski signed his Unabom messages "FC." The Ramsey ransom note was ostensibly written by the representatives of "a small foreign faction" signing itself "S.B.T.C." Letters from the Atlanta-Birmingham bomber were signed "ARMY OF GOD." In each instance, the pseudonyms, alone, when properly understood and contextualized, help limit the pool of suspects, while such matters as spelling, punctuation, document formatting, grammar, syntax, and borrowed source material may establish beyond reasonable doubt the particular author of the anonymous document.

"Attribution" (the scientific investigation of authorship) and "textual transmission" (the study of sources and influences on a piece of writing) have been well-established fields of scholarly research for at least 200 years, with steady advances in methodology. I first took up attributional and textual scholarship in the early 1980s as a

Ph.D. candidate at the University of California. In 1996, I received some unlooked-for notoriety by establishing Shakespeare's authorship of a previously unattributed funeral poem and by correctly identifying Joe Klein as the "Anonymous" who wrote the best selling novel, *Primary Colors*. In the interim, it never occurred to me that my field of expertise as a professor of English might have some application in the real world, that is, not until November 1996, when I was asked to examine the writings of a former university professor, Theodore Kaczynski.

Since working with prosecutors in the Unabom case, I have become fairly active in assisting police agencies with questioned documents ("QDs") and have learned how the work of attribution experts and police detectives can be mutually productive. My purpose in these pages is not to describe how to conduct the linguistic analysis of a QD, since such information is readily available elsewhere, in publications by myself and various other scholars. It is, instead, to propose some guidelines for the proper handling of an anonymous QD from the moment police become involved to the closing arguments at trial, and to suggest a few reforms for the gathering of writing samples by identified suspects.

Lawrence Sherman has written in this series of "Evidence-Based Policing" (1998). Sherman notes, in particular, that there is often a lag between available research and actual police procedures, as in the field of medicine where the practice of physicians may be years behind current knowledge. That is certainly true when it comes to the investigation of anonymous writing. Some of the past century's most high-profile cases—the Lindbergh baby kidnapping by Bruno Hauptmann, the Bobby Franks homicide by Leopold and Loeb, the Unabom crusade of Theodore Kaczynski—partly depended for their solution on the correct attribution of critical documents. But those were exceptional cases. Too often, police detectives and district attorneys are unsure how to take advantage of the evidence contained in a QD. And even when a good-faith effort is made to establish the authorship of a critical document, procedural mistakes may limit the value or admissibility of the evidence thus obtained, as in the JonBenét Ramsey homicide investigation.

Nonlinguistic methods for investigating the authorship of a QD are few and sometimes (as in the Unabom case) misleading. Postmarks, addresses, and fingerprints on the document, as well as handwriting or typewriter evidence, are among the clues routinely examined by police. More recently, the analysis of trace DNA on stamps and

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envelope seals has been added to the repertoire of investigative tools. DNA, when available, may be our single most reliable kind of evidence for determining who *mailed* a QD. Linguistic and textual analysis is often our best bet for determining who *wrote* it.

In my books, *Author Unknown* (2000) and *Elegy by W.S.: A Study in Attribution* (1989), I have drawn on a variety of QDs, literary and criminal, to illustrate the kinds of information that can be gleaned from an anonymous text. The language used by an unknown author may help investigators to establish the writer's age, gender, ethnicity, level of education, professional training, and ideology. Often, there is enough linguistic and textual evidence in a QD to establish the author's identity. Not infrequently, the QDs gathered by police can supply enough evidence to solve the crime—but only if those writings are thoroughly and competently investigated.

Expert Assistance

When calling for scholarly assistance with a QD, police detectives should be prepared to provide the expert with an exact facsimile of critical documents (the anonymous QD and known writings by identified suspects), along with such additional materials as may be available and pertinent (such as transcribed interviews with the suspect, library borrowing records, or photographs of books and a checklist of writings that are known to have been in the possession of the suspect). If the known documents thus submitted do not provide useful or adequate grounds for establishing authorship of the QD, the responsible expert will say so. Police contacts should scrupulously avoid saying anything that could influence the expert's opinion. For instance, there is ordinarily no reason to divulge forensic evidence to a linguist, nor cause to share a police theory of the crime with an attributional expert.

In cases involving critical documents of unknown authorship, a qualified expert can assist police with every step of the investigative process. Take, for example, the matter of writing exemplars. Police may ask suspects to complete a supervised writing exemplar so that handwriting analysts can compare the penmanship of various suspects with that exhibited in the QD. But writing exemplars are of limited value unless systematically administered. Comparable handwriting exemplars should be obtained, if possible, from all suspects. Dictated as well as "free" writing should be solicited. And if the critical document being investigated was typed, then police should obtain typed as well as handwritten exemplars. Most important is that the exemplar be designed so as to provide police with a foundation for a systematic comparison, not just of handwriting, but also of linguistic and textual evidence.

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The copy text from which suspects are asked to take dictation should be thoughtfully designed for pertinence to the case at hand. Generic writing exemplars typically afford subjects an opportunity to write every alphanumeric character, both upper and lower case, but fail to supply critical information about the suspect's other writing skills, such as spelling or punctuation. The most useful exemplars are those that provide suspects with the opportunity to exhibit distinctive textual and linguistic features identical or analogous to those found in the QD.

Once the QD and all known writings, including police exemplars, have been duly examined by handwriting, linguistic, and attribution experts, further document gathering may yet be necessary. Suppose that a scholar supplies the police with compelling evidence that a critical QD, though written in English, exhibits mistakes or linguistic patterns usually associated with native speakers of the Russian language. If the victim and identified suspects in the case belong to a community of Russian immigrants, such observations may not bring investigators any closer to the actual offender. In such a case, police should gather a broad sample of writing by nonsuspects from the same community, so their retained expert can determine whether the QD exhibits features found in the entire ethnic community or in the known writings of just one individual.

I am often asked whether transcribed language—recorded interviews, dictated confessions, and the like—can be productively compared with original writing. The answer is yes, but only to a limited degree. A suspect's original spelling, punctuation, and habits of document formatting are of course unavailable for inspection in a police transcription of an orally delivered text. Nevertheless, the interviews that a suspect grants to police or the media may exhibit unusual slang, grammatical errors, habits of syntax, or regionalisms matching those exhibited in one or more critical documents. Even a polygraph interview, though inadmissible in court, may illustrate speech patterns or ideology and source material that help establish the authorship of the QD. Similarly, documents that received secretarial intervention, or writings that have been electronically spell-checked, may be of limited usefulness to the attributional expert. But in the interests of objectivity and accuracy, all language samples by all identified suspects should be carefully scrutinized by a qualified expert.

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Document Gathering

In current practice, police often fail to investigate unsigned critical documents except for the purpose of comparing handwriting or typeface with that of known documents by key suspects. But any original writing sample, whether handwritten, typed, or electronic, can help establish authorship of the QD. For that reason, in a case that involves anonymous writing, search warrants should expressly include all reading material in the suspect's possession and all original writings in any form whatsoever. In the FBI's Southeast Bomb investigation—covering the Atlanta Olympic Centennial Park explosion and subsequent attacks on two abortion clinics and a gay nightclub—critical documents included letters sent from the perpetrator to various news agencies. The identification of Eric Robert Rudolph as the probable author of those letters depended on known writings by Rudolph as diverse as a shopping list, jotted travel directions, a typewritten book report, handwritten notations in a Bible, and a rhapsody on the pleasures of marijuana and German prostitutes—most of which were obtained by search warrant, a few of which were obtained from cooperative citizens. The FBI also compiled a photographic and bibliographic record of the books and other literature found in Rudolph's possession. In all respects, it was an exemplary investigation.

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It can be nearly as important to document a suspect's reading material as to gather known writings. No one, not even the most clever offender, can speak or write without borrowing ideas and language from familiar sources. When an unidentified offender and an identified suspect make mutual reference to identical texts, such information may lead to an arrest. Ted Kaczynski and the Unabom subject, expressly or by undocumented paraphrase, referenced many of the same texts, including *Brave New World Revisited* (1958), by Aldous Huxley; *The Ancient Engineers* (1963), by L. Sprague DeCamp; *The Technological Society* (1964), by Jacques Ellul; *Violence in America: Historical and Comparative Perspectives. A Report to the National Commission on the Causes and Prevention of Violence* (1969), by Hugh D. Graham and Ted R. Gurr; *Chinese Political Thought in the Twentieth Century* (1971), by Chester D. Tan; and various issues of *Scientific American* magazine.

Attributional work for police or the FBI necessarily entails a search for literary, political, religious, cinematic, and television influences on the QD. Unfortunately, even after processing a crime scene or completing a search warrant, police detectives often have no clue what a suspect or victim may have been reading or viewing prior to the offense. In domestic homicide cases, it is routine for police to photograph and videotape the entire residence, inside and out. The camera generally dwells on anything that looks out of the ordinary, including open drawers, overturned objects, and possible weapons. But the family bookshelves, often overlooked by the camcorder, may likewise contain important evidence that could prove invaluable, if not as trial evidence, then at least as a line of inquiry.

In October 1995, fire swept through the elegant Tudor-style brick home of Dr. Debora Green in the Kansas City suburb of Prairie Village. Two of Green's three children, ages 6 and 13, perished in the flames. A third child, age 10, awoke in time to escape from a second-floor window. Inside the burned-out home, on the doctor's bed, police detectives found a smoky copy of Janice Daugharty's *Necessary Lies*, a novel about a woman falsely accused of burning three children to death in an arson fire. Daugharty's gruesome description of children trapped and perishing in the flames had helped Green to brace herself for the deed. A subsequent subpoena of the family's library records indicated that Dr. Green had studied other methods of homicide before choosing arson. When police provided Green's estranged husband Mike Farrar with this information, he discovered the cause of his lingering illness. Green had poisoned him with cantor beans, an idea she had gleaned from an Agatha Christie novel.

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Movies and television may have an influence on the writer of a QD no less directly than other kinds of media. One of the most likely direct influences on the Ramsey ransom note and attendant staging was the film *Dirty Harry*. The Boulder police, however, were unable to establish which of the various suspects saw it, or when, because few video rental stores keep such records longer than 90 days.

What these examples indicate is that investigative priorities should include the careful documentation and expert analysis of a suspect's writing and reading, whereby to compare the reading and writing of the unidentified offender. The success of that endeavor often depends on the success of police document gathering. When securing a crime scene or conducting a search warrant, police should have a photographer on hand to document the books, writings, and videotapes, none of which ought to be touched or moved prior to photographing. Their very placement, order, and proximity may be of importance. In addition to whatever documents are seized under an authorized warrant, investigators can augment their collection of known documents by vigorously soliciting signed correspondence from a suspect's circle of acquaintances or by means of supervised writing exemplars. Police may wish to supply their retained expert not only with known writings by key suspects, but also with known writings by friends or associates of the victim who are not themselves under suspicion, thereby providing a broader-based cross sample.

Generations of literary scholarship have demonstrated a consensus is possible in the attribution of anonymous texts. Hundreds of literary texts have been correctly assigned using trusted methodologies. That does not mean a consensus will always be possible, whether among scholars in professional literary studies or among jurors in a criminal trial. Every scientific methodology has limitations. In many cases, the available linguistic and textual evidence may be inconclusive. But in any case involving anonymous writing (whether by the offender, an anonymous tipster, or from some other unknown source), it is usually true that a qualified attribution expert can help police limit the pool of possible authors. And often the evidence will point beyond reasonable doubt to a particular suspect.

Admissible Evidence

The Unabom case was a legal benchmark regarding the admissibility of linguistic evidence in a criminal prosecution. In pretrial hearings, Ted Kaczynski's defense alleged the FBI's text analysis by Supervisory Special Agent James Fitzgerald (as set forth in the Turchie affidavit) was inadequate grounds for the search of Kaczynski's residence. Documents by the Unabomber (who identified himself in the Unabom QDs as "FC") and by the Montana resident, Theodore Kaczynski (who was not known to have ever broken a law), were written as much as a quarter-century apart. Weighing testimony from experts for the defense and prosecution, the court determined that Fitzgerald's attributional evidence was both relevant and sound.

Not everything that comes under the rubric of "forensic linguistics" can satisfy courtroom standards for the admissibility of scientific evidence. Expert opinion that is speculative or inferential may be useful at the investigative level but not in trial. Since 1975, Federal Rule of Evidence 702 has stipulated an expert's testimony must rest on a reliable scientific foundation and be relevant to the task at hand. The longstanding approach of *Frye v. United States* (1923), which limited admission of expert testimony to that based on techniques "generally accepted" within the scientific community, was subsequently refined by the Supreme Court's dual decisions in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993) and *Kumho Tire Company, Ltd. v. Carmichael* (1999). Under the Court's new, more flexible approach, trial judges are now assigned the responsibilities of gatekeepers. District judges must determine whether expert testimony is both relevant and reliable to assist the triers of fact, thereby keeping dubious evidence out of the courtroom.

In December 2000, amendments to the Federal Rules of Evidence introduced a three-part test that codifies the new rules established under *Daubert* and *Kumho Tire*. The new test stipulated that expert testimony must be "based upon sufficient facts or data;" it must be the "product of reliable principles and methods;" and it must be shown that the witness has "applied the principles and methods reliably to the facts of the case." These instructions, though consistent with the *Daubert* ruling, oblige judges to

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consider additional factors that should also be considered from the outset by police when soliciting expert assistance. There are many scholars capable of performing attributional or textual analysis, but it is essential police seek out those experts who can demonstrate their field of expertise and particular methodologies to be relevant, dependable, and reliable. Furthermore, the police must supply the retained expert with an adequate text sample for all identified suspects, or the subsequent testimony, however valuable, may be disallowed at trial.

Conclusion

From my point of view, and I speak from some 18 years of professional experience, linguistic and textual evidence is highly dependable, more so than eyewitness testimony. An eyewitness can misconstrue evidence (two different guns or faces or books may look alike). Another witness might forget or misinterpret what he or she saw and heard, or tell first one story, then another; or come to the witness stand looking strong and then do poorly under cross-examination. A third witness may lie outright or equivocate. A fourth could drop dead or flee the country. Linguistic and textual evidence is not subject to such vagaries. So long as the written document is properly maintained, the evidence will remain stable and available for examination, as with forensic evidence.

The development of reliable methods for fingerprint identification and, more recently, for the analysis of DNA, has had a profound effect on the criminal justice system, being adopted first by police, then by the courts. If linguistic and textual scholars have had a less obvious or less universal impact on the investigation and prosecution of criminal activity, poor communication may be to blame. For many generations, literary scholars and linguists have employed the methodologies of authorial attribution and textual scholarship without thinking to assist police with QDs. Police have long investigated crimes involving QDs without thinking to consult attribution experts. Scholars and police have a mutual obligation to preserve the right to privacy and the right to free speech, but they also have a mutual responsibility to investigate the abuse of those rights. Only by working together can police agencies and attribution scholars hope to exploit the evidence of the written word.

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ABOUT THE POLICE FOUNDATION

The Police Foundation is a private, independent, not-for-profit organization dedicated to supporting innovation and improvement in policing through its research, technical assistance, and communication programs. Established in 1970, the foundation has conducted seminal research in police behavior, policy, and procedure, and works to transfer to local agencies the best new information about practices for dealing effectively with a range of important police operational and administrative concerns. Motivating all of the foundation's efforts is the goal of efficient, humane policing that operates within the framework of democratic principles and the highest ideals of the nation.

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