



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER  
*Attorney General*

September 16, 1975

ATTORNEY GENERAL OPINION NO. 75- 361

Mr. J. D. Euler  
Doniphan County Attorney  
Troy, Kansas 66087

RE: Evidence -- Handwriting Exemplars -- Power to  
Compel Production of.

SYNOPSIS: In a criminal action an accused may be compelled  
to provide a non-communicative exemplar of his  
handwriting.

\* \* \*

Dear Mr. Euler:

You have requested our opinion as to whether an accused in  
a criminal action may be required to submit handwriting exemplars.

The propriety of compelling an accused to provide a sample  
of his handwriting has been most often challenged on the grounds  
that to require the same is a violation of the constitutional  
guarantee against self-incrimination. The issue, couched in  
this context, appears to be well settled.

The leading case on the question is Gilbert v. California,  
388 U.S. 263, 18 L.Ed.2d 1178, 87 S.Ct. 1951. In that case the  
court held at pp. 266, 267:

"The taking of the exemplars did not  
violate petitioners Fifth Amendment priv-  
ilege against self-incrimination. The  
privilege reaches only compulsion of an  
'accused's communications, whatever form  
they might take, . . . ' one's voice and  
handwriting are, of course, means of  
communication. It by no means follows,  
however, that every compulsion of an  
accused to use his voice or write com-  
pels a communication within the cover

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of the privilege. A mere handwriting exemplar, in contrast to the content of what is written, like the voice a body itself, is an identifying physical characteristic outside its protection."

The holding in Gilbert, supra, has been extensively relied on by the jurisdictions. The clear implication of the case is that the exemplars may be compelled so long as it is sought as an exemplar and not for the content of the writing in it. Further, a refusal to provide the same pursuant to a court authorized request or order will subject the accused to the possibility of civil contempt proceedings. Lewis v. United States, 127 App.D.C. 269, 382 F.2d 817.

In conclusion, on the basis of the above authority, it is clear that an accused may be compelled to produce an exemplar of his handwriting and that the request is enforceable through contempt proceedings.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

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