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.

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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 privilege 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 compels a communication within the cover
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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