

HISTORICAL REVIEW

John Paul Osborn

Forensic Document Examiner, 2424 Morris Avenue, 2nd Floor, Union, NJ 07083

Albert S. Osborn wrote extensively on the examination of questioned documents, however his passion was the pursuit of justice. He struggled, as we still do today, with the effect of "hired gun" experts on the perception of expert testimony held by the judiciary and the negative impact such experts have on the just resolution of disputes in courts of law. While it is obvious that experts who lack objectivity and play the role of advocate to their client's cause, regardless of the field

that they pursue, have and continue to hurt the cause of justice, they are enabled by the lawyers who knowingly use them. "The Abuses of Expert Testimony and the Development of the Expert Witness" is an article of frustration. To some, what is expressed in this article will be viewed as laughable idealism. The message, however, is one which reminds us of the intended end product of our judicial system.

The Abuses of Expert Testimony and the Development of the Expert Witness

Albert S. Osborn

Examiner of Disputed Handwriting and Documents, New York; author of "Questioned Documents"

A contentious trial is defined as a legal controversy between two parties in which two opposed advocates are each endeavoring to prove, by witnesses, by argument, and by cross-examination of opposing witnesses, that the contention of his particular client is correct. The theory of the law is that by this conflicting, contentious process the truth will be brought out and justice served. The conflicting contentions of the two parties of course cannot both be true, so that, whether he knows it or not, one of the advocates is endeavoring to defeat proof of what is the fact.

One of the unwritten presumptions of the law is that neither advocate knows whether or not the contention of his client is a true contention. This theoretical and often amusing assumption is a convenient legal fiction that tends to excuse any desperate effort, no matter what facts the evi-

dence has developed. There are many defenders of the contentious trial who say that the advocate must believe and set upon his client's story to the bitter end, no matter what happens. Law writers and judges have said in the most definite manner that the advocate has no right to consider the interests of justice if those interests conflict with interests of his client. Of course it is a dangerous theory and especially dangerous to the advocate himself. It is only a short step from an essentially dishonest act for another to an actual dishonest act for himself.

Unless he is mentally incompetent, the defense attorney in many cases of course knows well enough whether or not his client is guilty and if, in a civil case involving a disputed document, for example, one advocate must use doubtful testimony of suspected witnesses, and must go to the third and least reliable and most incompetent expert before he finds one who will agree with him and assist him, it can hardly be said that he has no intimation of the fact that he represents a fraudulent claim. The fact is that too often, if

Editor's Note: This article, provided by the Osborn family library, was written by Albert S. Osborn more than 60 years ago. It is unknown whether this article was ever published or presented.