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Even as late as 1941, the examination of questioned documents was unknown to many people in the legal arena. Despite the highly publicized case of *State v. Hauptmann* (the Lindbergh kidnapping), many attorneys and jurists were unfamiliar with what a questioned document examiner was and the kind of work practitioners performed. Both Albert S. Osborn and Albert D. Osborn felt that it was important not only to perform their duties as document examiners, but also to educate the judiciary and bar about the work that they performed.

Informative and sometimes lengthy precursors to the modern day newsletter were created within their office to distribute to clients and other interested parties. While this was to a certain degree a marketing effort, it served a higher purpose. Detailed writing with regard to the field helped to increase awareness of the questioned document examiner's function and how handwriting examination was performed.

In more recent years, many examiners of questioned documents have retitled themselves as forensic document examiners. This title is far more descriptive than the common lay expres-

sion "handwriting expert" and is employed by many today as a subtle reminder that handwriting examination is only one function of the document examiner. One of the goals of the Osborns in creating these informative diatribes was also to educate the judiciary and bar that appropriately trained document examiners performed, were capable of performing and were qualified to perform many different types of examinations unrelated to the examination of handwriting.

In January of 1941, Albert S. Osborn and Albert D. Osborn created their first newsletter style circular. Lengthy as it may seem, its content was a valuable source of basic information. There is a continuing need to inform the public, judiciary and bar regarding the capabilities of the qualified forensic document examiner and of new techniques and methods employed by practitioners. Today the Internet is used for much the same purpose. One search among the many websites maintained by private practitioners reveals a host of informative writings. The circular that is reprinted here is an example of early efforts by two examiners to keep people informed and aware.

Questioned Documents

Albert S. Osborn and Albert D. Osborn

Many phases of Questioned Document examination and proof are comparatively new as a result of scientific progress and especially of changes in laws and legal procedure permitting methods and processes not formerly admissible. The interests

of justice require that lawyers, judges and document specialists should know of these new laws and methods. This occasional publication will furnish some of this information.

Editor's note: This is an abridged version of an article published by Albert S. Osborn and Albert D. Osborn dated January 1941. The article was published just the year before the formal founding of the American Society of Questioned Document Examiners in 1942. Albert S. Osborn was the first president and primary organizer of the ASQDE. Albert D. Osborn served as the third president. This article is being reprinted in tribute to the 60th anniversary of our organization.

An incidental but highly gratifying result of the reformed procedure in the proof of documents permitting, and in certain courts requiring, expert witnesses to give definite reasons for their opinions, has been the clipping of the wings, or the elimination of the corrupt expert brought in by the attorney against the fact merely to bring about a "conflict" in the testimony. When a mere opinion was required it was very easy to bring about a conflict by calling an unqualified or corrupt witness who gave no reasons. There is but little con-

flict now, one expert witness reporting thirteen cases in succession with no conflict.

A New Profession

New laws, reformed procedure, and scientific progress in this country during the past sixty years, have created what in effect is a new profession relating to the study and proof of documents. Cases are now being successfully tried that a few years ago were ruled out of the courts on technical objections.

A document that is genuine that is attacked because it displeases someone, or one of the "found" documents that make a late and surprising appearance in the settlement of an estate, or one of the hundreds of vicious anonymous letters that all the time are being written, can all now be examined and, if necessary, the facts regarding them proved in a court of law. The subject is new in many courts and many law offices but more and more it is coming to be known that a new profession is promoting the interests of justice by discovering and proving the facts regarding documents.

Slumbering in court files, in opponents' brief cases, in your own case files perhaps, are documents that if not carefully scrutinized may cause embarrassment or loss when they appear. That is a bad day when one offers in evidence a document that is later shown to have in it a fatal defect, or when one is not prepared to attack an ingenious fraudulent paper that is against interest or against the interest of a client. A document may have any one of twenty or more different defects that are not seen until they are looked for. Some of these things are obvious when pointed out, while others to be seen and correctly interpreted must be explained and illustrated. These are the questions the document specialist studies and is prepared to illustrate and interpret.

Employment of Specialists

Many persons who need the aid of specialists refrain from even making a preliminary inquiry because of a mistaken idea that the cost will be too much. Lawyers are not consulted when their advice would be of great value; doctors and medical specialists often could give early advice and warnings of great value if they were consulted in time and experts of all kinds are prepared to aid those who need assistance but the engagement is

not made because of a wrong impression as to the cost.

It should be better known that all of these men are constantly giving service for nothing. They often can clear up a point in a few minutes that is giving distress of mind or body and they wait for compensation until a more important matter comes to the front. One reads the delightful new book "*The Country Lawyer*" can easily understand how service of this kind extends out into many fields and one reads that most interesting book "*The Citadel*" can readily see the important place in the community held by the family doctor.

Even the humble document expert is consulted in many more cases than those in which he is actually employed. In some cases his services are of great value and the compensation is in proper proportion while in many other cases the matter ends with an interview for which no charge is made. The specialist is usually able to protect himself from imposters and he is able to separate his possible or prospective clients into their proper classes.

One may be assailed by vile and abusive letters and, with experience and knowledge of the subject, one who is thus qualified sees at once that they are the invention of a diseased mind and in many cases the source of letters is easily found. It is not often that anything new and unique comes to light.

It is sometimes very important to know that a promised great benefit comes from a suspicious source and action in these matters should always be based on accurate advance information.

Continuous Testimony

The qualified document expert, after proper qualifying and introductory questions, is able to take the original documents and the photographs and, without specific questions, detail the reasons for the opinion he has expressed. In some instances in a complicated and important case this testimony may cover considerable time, an hour or more, and if properly presented, is very effective and legally unobjectionable and is entirely responsive to the general question asking for the specific reasons for the opinion expressed.

Unfortunately, however, there are attorneys and presiding judges who have never heard testimony presented in this manner. In some instances it is, no doubt, advisable that this recital of reasons

be interspersed with appropriate questions in order to overcome the natural criticism of those who are not familiar with this modern manner of giving testimony. The question and answer method no doubt weakens the force of the testimony. If the catechism method is followed throughout, the testimony often is weak and unconvincing when it might be forceful and persuasive. A public speech presented in this manner would be ridiculously ineffective.

If testimony is in effect the presentation of the original report of the witness, as it usually should be, certain appropriate questions can be inserted at various points. These questions should be prepared not by the lawyer but by the witness so that his testimony will be responsive and also will include all of the special points that he wishes to cover.

Of course, throughout the eastern courts and before judges who are familiar with this modern method of testifying continuously without questions, it is not necessary to include the questions, although even then it sometimes is desirable. There are many opposing attorneys who are very much disturbed by unfamiliar continuous testimony of this kind and will make frequent violent objections and arguments and, perhaps, to avoid some of this interruption and criticism in certain cases, the questions should be included.

There are many courtrooms where a handwriting case has never been properly presented in the modern manner. Giving reasons for an opinion in a handwriting case is a comparatively new thing in a court of law. This is particularly true if reasons are given continuously in response to a general comprehensive question.

As is well understood, it is a well established legal rule that an ordinary witness cannot argue and this same restriction is likely to be applied to the handwriting expert witness by those who are not familiar with this modern method of giving reasons for an opinion. Of course, giving definite reasons for an opinion is in effect an argument or can be construed as an argument.

Some of the specific questions that may be asked as the testimony is being given are:

"Will you now please take the original documents and the photographs and give the reasons for the opinion, or opinions, you have expressed, stating what papers you examined, what facts you considered that had any bearing on your opinion? You will consider this general question as cover-

ing all the general and special points included in your examination."

"Will you please state what examination you made and what papers you have examined? Also whether the standards submitted were sufficient on which to base a positive opinion?"

"Will you describe the photographs you made as you use them and say whether the photographs are necessary on which to base your opinion, or whether they are illustrative and explanatory of your opinion?"

"Why are enlargements desirable?"

"Will you explain somewhat in detail what you mean by 'handwriting characteristics' and their comparative value in their connection with studies of this kind?"

"Will you please point out somewhat in detail what you consider are the controlling characteristics and the minor characteristics in this particular handwriting problem?"

"Will you please explain what is described as 'habit in handwriting'?"

In some cases these questions in effect can all be asked in advance and the witness is then asked to answer them in such order as will best explain the reasons for his opinion, but this method is not usually desirable.

There are many special questions that may apply to a particular case in hand that can be asked as the testimony is being given. The witness should be left free to discuss the matter in the order in which he sees fit to discuss it and should not hesitate to say at any point that he will come to the question asked in the regular course of his testimony.

In two recent cases of importance judges who never before had conducted a case where technical handwriting expert testimony was presented, were critical of the testimony throughout the trial and this attitude and the frequent sustaining of objections to portions of the testimony suggested to the jury that the witness was endeavoring to do what was illegal and improper and adverse verdicts followed.

On close legal questions as to admissibility of the testimony, if the question is asked the objec-

tion is made to the question of the lawyer and if it is not allowed the criticism does not apply to the witness or the testimony of the witness. On the other hand, however, if the witness makes a statement that is objected to and stricken out, the jury may criticize him for attempting to give testimony that is improper. It is, therefore, desirable on all close questions as to admissibility that the objection should be made to the question and not to the answer to the question. This is one of those delicate phases of proof that may have an important bearing on the result.

Of course, if a judge is prejudiced regarding documentary testimony, it doesn't matter much how the testimony is presented, as he will criticize it in any event, but the above suggestions are made for use where the attitude of the judge to some extent grows out of his inexperience and lack of familiarity with the particular problem in hand and where he is not unfriendly. In some cases the competent attorney can explain the change that has come about in presenting testimony of this kind but, of course, the attorney himself must be informed.

There are two things asked of the document expert. The first of these is the discovery of the exact facts about a document and the second is the proof of these facts in court. The second requirement may be more difficult than the first if the attorney is not prepared to assist.

Brief Outlines of Interesting Cases

In the recent contest of the will of Mrs. John Dibert in New Orleans seven important words, affecting a bequest of \$700,000, had been marked out with a pen with two strokes through each word. Inquiry was made whether it would be possible to determine whether or not the words were marked out by the testatrix who wrote the four long pages of the will in longhand. Notwithstanding that the answer to the inquiry said that probably it would be impossible to answer the question definitely, it was later shown by expert testimony that the seven words were undoubtedly marked out by the writer of the four pages of the will. A decision was rendered to that effect. The matter went at once to the Supreme Court of the state and the decision was affirmed.

Of the fourteen marking out lines nine of them contained delicate but peculiar, distinctive, individual hooks exactly like those in the many "t" crossings in the will. The marking also was with

the same pen and ink and a definite opinion could be given in the matter.

A few years ago, in many states, on account of the restrictions surrounding document expert testimony, this case would not have been tried.

A few years ago an angry recipient of a very disagreeable anonymous letter accused his sister-in-law of writing it. She indignantly denied the charge. He brought it to a handwriting specialist who at once reported that the letter in English was written by one who originally learned to write in French. The hasty man turned pale and exclaimed, "My God! Then it was the nurse."

The long-distance telephone and the airplane have greatly widened the field of the specialist. One can now go overnight to many places where immediate special aid is needed.

Recently in a western city a will was produced dated 1926 with the words "Rag Content" in the watermark. This detail of a watermark was the result of an agreement among paper manufacturers of the year 1930, so that this watermark alone showed that the will could not be genuine. The document was also written on a typewriter which had not been made on the date of the will. John L. Harris, document specialist, of Los Angeles, proved conclusively that the document was fraudulent.

In most of the states in this country some of this evidence would have been inadmissible a few years ago, but with the changes and reform in the procedure relating to documents the facts could be conclusively shown.

In connection with the recent 1940 election, a Nominating Petition in the State of Massachusetts containing 90,000 names was thrown out by a competent Examining Committee. A careful examination of the written signatures showed conclusively that hundreds if not thousands of them had been written by the same writers who wrote in succession on the various petitions so that number four and number ten signatures on one petition would be the same as the number four and number ten signature on another petition.

In most states this testimony is now admissible, but in certain jurisdictions there still are restrictions surrounding it which would undoubtedly have made it difficult, if not impossible to prove the fact. The laws of Massachusetts relating to documents have always been very liberal and progressive.

In the recent Rachel Newgold case tried in the Surrogate's Court, New York, a stock certificate for a large amount was presented in evidence and was dated in 1919. The typewriting on the face of the certificate and the stub which was still attached was written on an Underwood machine. This machine made certain definite changes in the type in 1924 and the document dated 1919 had the 1924 changes. It was promptly decided by the Surrogate's Court that the document was not genuine. Standards of comparison in typewriting cases were admitted in the State of New York by the ruling in *People vs. Storrs*, 207 N.Y. 147 in the year 1912.

No doubt many typewritten documents should be carefully scrutinized. Too often it is assumed that it cannot be shown that a typewriting is not genuine, but more and more this false impression is shown to be false.

When we see the completely preserved baked mud documents from ancient Nineveh and Babylon that can still be read, we cannot but wonder what would be left of our records under similar adverse conditions. Perhaps our history should be written out on baked tablets.

The clearest and best preserved gravestone records in the old Plymouth, Massachusetts, cemetery are those on slate stones. This stone contains a kind of preserving oil. The stones have a tendency to sliver and an inscription may thus be destroyed but generally they are much more permanent than marble and granite. Important records could be put on slate stones and buried in the ground under a slate or baked mud monument. There might be some difficulty in determining what records should thus be preserved.

Ink, paper, pens and pencils were not a part of the household equipment of a large number of homes a few generations ago and there still are countries with many households where no writing of any kind is done. Even in this land, that we think of as a land of education, there are hundreds of thousands of adults mostly, but not all, foreign born it is true, who cannot write their names.

In the old days there even was class prejudice by the great unlettered majority, against one who could write. In Shakespeare's *K. Henry VI, Act IV, Sc. 2* after a clerk has said, "Sir, I thank God I have been so well brought up that I can write my name," Jack Cade says, "Away with him, I say: Hang him with his pen-and-inkhorn about his neck."

The highly qualified handwriting experts who testified against Hauptmann in the celebrated Lindbergh-Hauptmann case made their examinations independently and held no conferences with each other of any kind regarding the evidence in the case before they testified.

Relevant Notes, Items and Comments

Only a comparatively few years ago no photograph, and no instrument, of any kind, not even a hand magnifying glass, was admitted in a handwriting or document case and of course it often was difficult or impossible to prove the facts. This has now all been changed in most courts and every assistance is given to judge and jury that will aid in proving the fact.

Graphology is the name of an alleged science that from handwriting, not the wording or message, undertakes to delineate the character and capabilities of the writer. The basis for opinions of this kind are too frail and indefinite to be depended upon. The best test of a graphology "reading" is insistence on the basis or reasons for each opinion expressed. The reasons show the unreliable basis for the report given which may be quite elaborate.

Typewriter Dates

Remington 1876-1879, Caligraph 1883, Hammond 1884, Yost 1887, Smith-Premier 1889, Densmore 1891, Blickensderfer 1893, Oliver 1894, Underwood 1896, L.C. Smith 1903, Royal 1906, Corona 1907, Woodstock 1914.

The Caligraph typewriter, and later the Smith-Premier, for a number of years, were quite formidable competitors of the Remington machine but their manufacture was discontinued many years ago. The Hammond is still used for certain kinds of special work. The Yost, Smith-Premier, Densmore and Blickensderfer were discontinued thirty or forty years ago. The Oliver was purchased by an English company and for a time at least the machine was manufactured by this company in England.

Many old documents of early dates were written on these abandoned machines and their dated type history may at any time be very necessary in proving certain important documents. A few other machines than those named were made from 1880 to 1900 but none of them came into general use.

In countries where the meter is the basis of measurements of length pica typewriting is arranged two and six-tenths millimeters to a letter, or thirteen millimeters to five letters. This is slightly more than one-tenth of an inch to a letter, the American spacing, or exactly .51181 of an inch to five letters or .00236 of an inch to a letter more than one-tenth.

This difference is easily shown on fifteen or twenty letters with a finely graduated millimeter measure on glass and such a measure is quite desirable in examining foreign typewriting. The line spacing on some of these machines is thirteen millimeters to three lines instead of three-sixths of an inch.

The millimeter spacing on elite type is fifty-eight (58) millimeters to twenty-six (26) letters or slightly more than one-twelfth ($1/12$) of an inch, the standard in American elite typewriting.

The reason there is such a mass of documents in the modern world is the fact that more than ninety per cent of the world's business is conducted, not with actual money, but with documents. Money is in fact only the small change in business and no money passes in any considerable business transaction. All of these documents, including books of account, are subject to forgery, alterations, substitutions, additions and erasures.

The loose-leaf book practice has made certain fraudulent changes easy even in elaborate board of directors' records especially when typewritten as they usually are. Records of boards of directors' meetings should all be in handwriting in books bound before any writing is put in them. Certain important bookkeeping records should also be in handwriting in bound books.

These questions are discussed in certain books but the existence of these books may not even be known to those whose interests may be in danger. Perhaps a brief manual for business men should be issued that lists the problems regarding documents and gives some preliminary steps that should be taken. The lawyer, who is all the time handling documents should know something about the possible faults in documents.