

Winter 1937

Found Documents

Albert S. Osborn

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Albert S. Osborn, Found Documents, 27 Am. Inst. Crim. L. & Criminology 731 (1936-1937)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

“FOUND” DOCUMENTS

BY ALBERT S. OSBORN†

The early life histories of disputed documents often duplicate each other in a surprising manner, and this is particularly true of documents that finally are found to be unmistakably fraudulent. Many of these documents make a very late appearance and it becomes necessary to explain the delay. This duplication of excuses and explanations is no doubt due to the uniformity of the manifestations of human nature. The psychologists tell us that under similar stimulus many different human minds will act in much the same manner.

The similarities in these histories of documents are: (1) the alleged unusual conditions surrounding the finding of the document—in bible, hymn book, or ordinary book, under carpet or linoleum, in picture-frame back of picture, inside of old linen, in old, worn purse or notebook, written on one of the pages of old memorandum book, received anonymously by mail or found in street letter-box; (2) the unknown and unexplained custody of the document; (3) the delay, and the incredible explanation of the delay, in bringing the document forward; (4) the suspicious character, absence or decease of the witnesses; (5) the alleged reasons why the document was drawn—anticipating criticism of the document—and arguments *in the document* itself defending it; (6) unusual, peculiar and inappropriate paper on which the document was written; (7) simulated age and staining of the document itself; (8) extreme wrinkling and folding of document; (9) document or signature in pencil writing, or a carbon copy; (10) the unknown author of the document.

The experienced examiner who has seen a hundred or more of these documents can, in many cases, make a shrewd guess regarding the authenticity of the document from the familiar story alone, but of course will not base a positive opinion on this evidence.

An astonishing disputed document often is dropped like a bombshell into the quiet settlement of a large estate only a few days before the time limit expires. A consideration of all other matters

† Author of *Questioned Documents* (2d ed., 1929), and *The Problem of Proof* (1922).

stops for investigation of the startling new claim. Relatives and beneficiaries may at once be marshalled into two warring camps. The document may have come anonymously to a public officer, and sometimes a suspected document appeals especially to those beneficiaries who otherwise have not been provided for. In some instances highly deserving charitable societies or churches are willed a considerable part of an estate in order to get support for the document by those thus directly benefited.

The claimants in these fraudulent cases are of numerous classes. In many instances they are members of the family, sons, daughters, or nephews or nieces, who by a genuine will are to receive only the income of trusts or who had been provided for only during the life of the beneficiary. Many of the claimants are women who, no doubt, hope to be aided by sympathy, and in some instances there is a veiled suggestion of unknown, illicit relations. In other cases there is a claim of secret marriage and that a claimant is a son or daughter never openly acknowledged. Many claimants are those "who took care of" the decedent, and nurses and doctors make fraudulent claims for special services.

Fantastic stories are often told of unknown acts of kindness, alleged relationship, and vaguely described services that it is alleged justify a large reward. There is no doubt that in some instances a "found" will does what a decedent intended to do but failed to do, and these cases are often successful although actually based on a forged document.

A wild or improvident son of a wealthy decedent, well provided for by a trust, may "find" a surprising will, or an estranged daughter may be the beneficiary in a plausible but tardy will. Fiances of slow-acting lovers sometimes are successful in probating a will that the bridegroom-to-be never saw. In some of these cases a claimant is aided by the perjury of those who frankly say to each other that the document ought to be genuine whether it is or not. Circumstances in some of these cases are powerful witnesses.

All unusual wills are not bad, but many of them are, and in many cases they are shown to be palpably defective when properly investigated. It may be impossible to get the suitable paper, or a typewriter may uncover a fraud. These documents, when typewritten, often show they were written by an inexperienced operator, and spelling and punctuation may have identifying value. Ignorant

claimants do many kinds of things that cast suspicion upon a document.

One of the most common weaknesses in these "found" wills is that they are not witnessed by the right kind of witnesses. In some cases one or both of the witnesses cannot be found, and again the witnesses themselves are under suspicion as well as the claimant. Another characteristic of these documents is the ignoring of a trusted lawyer who has acted for the decedent in all legal and important business matters for many years.