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Elbridge W. Stein

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PROOF OF HANDWRITING AND TYPEWRITING

Elbridge W. Stein†

Many attorneys are not fully acquainted with the progress that has been made in the investigation and proof of the facts relating to documents. This condition of mind does not always imply a lack of alertness on the part of the lawyer because cases in which documents are disputed come infrequently to the trial attorney. Sometimes only a few in a decade appear, but the number is rapidly increasing. This activity is due to a tremendous increase in the use of documents in general business and to the progress that has been made in the application of scientific processes to the discovery and proof of the facts regarding disputed documents.

There is no doubt that many fraudulent wills, notes, receipts, contracts and other papers have gone through a trial and their spurious character was never discovered; and some genuine ones have been set aside because the means for discovering and proving the facts were not readily available and the attorneys did not understand what modern progressive methods have done toward increasing the scope of document investigation.

Today an attorney has not discharged his full duty to a client until all the resources of science have been exhausted in the discovery of the truth concerning a suspected document. The

public prosecutors have, in general, been more progressive in this field than civil practitioners, probably because of the awakened consciousness of the general public to crime detection.

Justice might be advanced a long and important step if more attorneys understood the direct application of the modern science of document investigation to their own practice. Appended below are brief outlines of a few illustrative cases:

Commonwealth vs. Michael Fugmann

A few years ago just before Easter, in Wilkes-Barre, Pennsylvania, five powerful dynamite bombs were put in the mail addressed to prominent men in that city. A cigar box was used to make each of the bombs. When the lid was opened, a wire came in contact with an enclosed battery which exploded the enclosed dynamite.

The first of these bombs was received by Thomas Maloney. No facts are known concerning the opening of this box because a terrific explosion followed, killing him and his grandson instantly, and almost completely wrecking his home. Only a few of the identifying fragments of this bomb were found. Fortunately, however, one of them was a part of the address on the wrapper used to send the bomb through the mail.

The explosion of this bomb and the killing of Mr. Maloney created intense

† Examiner of Questioned Documents, 15 Park Row, New York City.

excitement which soon reached the efficient Pennsylvania State Police and United States Postal Inspectors who immediately broadcast a warning that no mail packages received that day were to be opened. To the success of this effort can be attributed the saving of no one knows how many lives.

One of the unexploded bombs was intercepted at the Post Office and several of the others were received by the persons for whom they were intended, but were unopened on account of the alarm that had been given. The caution had not come to the attention of Luther Kniffen, and, after his secretary had removed the outside wrapper of the bomb sent to him, he attempted to open the cigar box in the usual manner, but a larger nail than the one used originally to fasten the box lid had been used and it did not open easily. Mr. Kniffen thereupon cut the paper hinge at the back of the box lid and opened it backwards. The wire which was arranged to come in contact with the battery operated only when the box lid was opened from the front. The maker of the bomb, by reason of closing the box so securely with a stronger nail, thus unconsciously saved Mr. Kniffen's life and that of his secretary who was standing by when the box was opened.

The State Police and Postal Inspectors of Wilkes-Barre made a most thorough and determined search for the murderer and, when most of the clues had been run down and all the available facts were considered, they seemed to point toward Michael Fugmann. In addition to the clues pointing toward Fugmann as the bomb sender,

there was still left the written addresses on the wrappers used to send four of the bombs through the mail, and the fragments of the address on the one that killed Mr. Maloney. It was thought that there undoubtedly would lie the key to the positive identity of the murderer.

Mr. Leon Schwartz, the prosecutor in that county, promptly submitted the writing on the bomb wrappers, together with a large amount of Fugmann's writing, to qualified handwriting experts for study. The result of this investigation showed that Michael Fugmann had undoubtedly written the addresses of all of the five bomb wrappers. At the trial, the testimony of the handwriting experts, aided by photographic enlargements and a side-by-side arrangement of the writing of Fugmann and the writing on the bomb wrappers, demonstrated that Fugmann was the person who had addressed the bomb wrappers. He was convicted of the murder of Thomas Maloney.

Some additional facts were proved which tended to connect Fugmann with the murder, but, without the handwriting testimony, it would have been impossible for the prosecutor to positively establish the fact that Fugmann addressed the bomb wrappers, which connected him directly with the crime. Justice, therefore, was served because of the application of this special knowledge and skill in establishing the truth. And the facts were proved!

People vs. Arthur Perry

One morning, when certain busy New Yorkers were hurrying to work, they

found in a vacant lot the body of Mrs. Arthur Perry, who had been murdered some hours before. A paid gas bill found near the body contained the name of the landlord with whom the Perrys lived. When the New York Police interrogated the landlord about the murder, he seemed so frank and straightforward in his story that they doubted that the incriminating evidence found near the murdered woman actually pointed toward him as the murderer.

Arthur Perry, the husband of the murdered woman, was then interrogated. He had an alleged alibi for the period during which the murder was committed, which tended to show that he had not been near the scene of the crime. In addition to the alibi, he unwisely produced a letter addressed to Mrs. Perry, purported to have been written to her by the landlord. This letter contained some improper suggestions, combined with veiled threats of bodily harm if the contents of the letter were ever disclosed to her husband.

The Perrys had come to New York from North Carolina about a year and a half before Mrs. Perry was murdered. An investigation at the home of Mrs. Perry's father and mother resulted in securing two letters that Arthur Perry had written to his wife just before they were married. Perry readily admitted that he had written these two letters. The police suspected that Perry had murdered his wife and had written the letter he produced and that he had planted the other evidence to cast suspicion upon the landlord. With the two

undisputed Perry letters obtained in North Carolina for comparison, it was possible to show conclusively that Perry himself had written the letter to his wife which was alleged to have come from the landlord. This letter constituted very damaging proof in Perry's trial for murder. He was tried in Queens County and convicted of first degree murder. Because of an error by the trial judge this conviction was set aside by the Court of Appeals but when he was tried again a jury again returned a first degree murder verdict. This verdict was affirmed by the Court of Appeals.

The Perry case illustrates the value of investigating every clue in a murder case and making the investigation a real scientific inquiry.

People vs. Coughlin

In Bronx County, New York, a man operating as a collection agent for a worthy enterprise fraudulently secured a considerable amount of money from numerous people to whom he gave receipts. Some time later, the defendant, Coughlin, was arrested and tried in the Court of Special Sessions for this crime. On the trial of the case, he was identified by a large number of the persons who had been swindled, saying that they recognized Coughlin as the actual person to whom they gave the money and who wrote the receipts in their presence. The verdict of guilty by the three trial judges was unanimous. This verdict was reached in face of the emphatic denial of guilt by the defendant.

After Coughlin actually began to serve the sentence imposed upon him,

it was discovered that the fraudulent collections were still being made and bogus receipts being given for them. This evidence was such a shock to the District Attorney that he immediately began to investigate the handwriting in the receipts upon which the defendant was convicted and had a study made of the defendant's handwriting in connection with the receipts. This had not been done at the trial. Both the District Attorney and the defendant submitted this matter to handwriting experts, who gave as their positive and unqualified opinions that the defendant had not written the receipts upon which he was convicted. The case was reopened and the judges heard the new testimony. They were so impressed with the convincingness of the demonstration made by the handwriting experts that the defendant had not written the receipts upon which he was convicted that they immediately cancelled the former verdict of guilty and entered a verdict of not guilty.

This case is an illustration of the danger of personal identification from recollection and shows the necessity for checking such an identification in every possible way. The persons who identified the defendant as the culprit who stole their money were not dishonest, but mistaken. In the handwriting comparison, however, there was no personal equation. Here is an illustration of the fact that handwriting as a means of identification in criminal cases is an impersonal and reliable process which advances the interests of justice by helping to protect the innocent as well as to convict the guilty.

The Lindbergh-Hauptmann Case

Between the time the Lindbergh baby was kidnapped and the ransom money paid, thirteen letters and notes had been written by the kidnapper. At the trial of Hauptmann for the crime, these writings which were proved to have been written by him became the most damaging evidence presented by the state. Proof of this fact was made by eight of the foremost handwriting experts in the United States.

People vs. Siebert

A resident of Vermont was stopped by a police officer in Westchester County, New York, and charged with having driven past a red traffic signal. The Vermonter remonstrated with the officer that he had obeyed the signal but the officer drew out his pad of notices and began to fill it out. The driver was told that he would have to return in a week for the hearing. Finally it was agreed that the officer would accept \$10.00 and let the driver go his way. The Vermonter was on his way to visit friends in the county and to them he told the story. His friend was familiar with the police regulations and knew that this practice was extortion. The real fine would have been \$2.00 if the driver were actually guilty and he could have paid it within the hour to a police magistrate.

When this extortion was reported to the police chief, the offending officer was arrested and his blank book of notices taken from him. Upon the story of the Vermonter and his wife, the officer was indicted for extortion, but, when the blank notices of the officer

were examined, the one filled out for the red light offense could not be found and all of the used blanks were accounted for and agreed with the stubs. The Vermonter was under the impression that the ticket had been filled out with a pencil and the book was submitted to a document expert for the purpose of determining whether or not any of the blanks contained a pencil erasure. None could be found, but upon a thorough examination of all of the blanks by means of invisible short light waves, it was discovered that a ticket near the back of the pad had been filled out with ink and then carefully erased by a chemical. Special enlarged photographs disclosed that this ticket had been filled out with the Vermonter's name. This illustration so completely confirmed the story of the driver that the defendant was promptly convicted. Without this scientific process the important evidence of the erased ticket would not have been available.

Testimony regarding documents is just as valuable in civil as in criminal cases. The record of results is an imposing one, as is illustrated by the following described cases, but many attorneys are not familiar with the importance of this kind of proof.

The Wendel Case

At one time it was the practice of a few shrewd New Yorkers to buy real estate and to hold it until the growth of the city tremendously increased its value. Three generations of the Wendel family operated in this way. It was

rare that any of these land investments were sold and at one time the Wendel fortune was estimated at one hundred million dollars. By inheritance, all this property finally belonged to Ella, the last survivor, who disposed of it by will, in greater part to charitable and religious institutions and enterprises.

There were no close relatives and the estate became a most fertile ground for claims by alleged relatives. At the first hearing there were so many cases that all of the lawyers could not get in the courtroom at one time. The most likely of the claimants were finally heard and their relationship established.

Then came Thomas Patrick Morris, a claimant, with a fantastic story of a secret marriage, a child born in Scotland, abandoned by the mother, reared by foster parents, acknowledgement by the alleged father (John G. Wendel, a brother of Ella), arrival in America, and, finally, a claim which, if true, would entitle him to a great share of the immense Wendel estate. The stakes were high and the groundwork of the story was very carefully laid.

A marriage certificate, a letter, a will and a book were produced as documents supporting the story of the claimant. It was an ingeniously constructed story built around the actual movement of Morris and always difficult to confirm or attack on account of the alleged secrecy surrounding the claimed relationship. The documents thus became the vulnerable part of the claim. It was possible to show by skillful document investigation and testimony that all of them were fraudulent and that the marriage certificate was

not in existence until nearly forty years after its date. It can be seen how valuable this testimony became.

Horn vs. Atlas

The Atlas Company employed salesman Horn on a salary plus commission basis for a number of years and then the arrangement was discontinued. Periodical settlements were made by the company with Horn, but, after the termination of his employment, he brought suit against the company for a large sum claiming that the company owed him for commissions on orders they had been unable to fill. Upon the trial Horn produced numerous typewritten confirmations of orders allegedly sent him by the Atlas Company. These confirmations were written on an Underwood typewriter and the Atlas Company had an Underwood typewriter in its office. The typewriting question was submitted to a document expert and it was found that the confirmations were written on an Underwood machine manufactured at a later date than the Atlas Underwood. Upon a further study, it was found that typewriting admitted to have been written by Horn was written on a newer Underwood similar to the one used to write the confirmations, and a still further study revealed that the confirmations had been written on the identical machine used by Horn. Of course, the defendants won, but without the typewriting testimony the verdict might well have been the other way.

It should not be understood that any scrap of handwriting or typewriting can be identified. It is true that small amounts of handwriting may be so successfully disguised that identification is not possible. It is also true that a forger cannot always be identified from the forgery alone. If there is any considerable quantity of handwriting and suitable undisputed writing can be obtained for comparison, a very definite and positive conclusion often can be reached as to whether or not the two handwritings were written by the same writer. In the Fugmann and Perry cases it would have been very difficult to have convicted the murderers without the aid of the handwriting testimony and in the case of Coughlin the defendant might have served an extended jail sentence although he was innocent of the crime for which he was convicted.

Typewriting identification has now reached a point where the result is almost a demonstration of fact if a sufficient quantity of typewritten matter can be procured for comparison. Questions relating to paper, ink, pencils, age of documents, anonymous writing and pen or pencil printing in many cases can be answered with certainty.

The new laws and court decisions now permit a qualified expert to give detailed reasons for his opinion, and to introduce scientifically made photographs or illustrations, thus rendering his testimony of special value to a court or jury in deciding a disputed document case.