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## THE DEVELOPMENT OF THE DOCUMENT SPECIALIST

Albert S. Osborn†

It is impossible to fix a definite date, but for something more than eighty years there has been developing in this country the new profession of questioned document examiner. During the last year (1942) the American Society of Questioned Document Examiners has been organized.<sup>1</sup> This formal organization has followed the slow growth of this specialty, and two main influences have been instrumental in developing it.

The first of these influences was the ever increasing millions of documents in the modern world, a condition, as is well understood, greatly in contrast with earlier days. Out of this great flood of written papers many important problems inevitably arise.

The second important influence that developed the Document Specialist was the fact that questioned documents, good and bad, naturally came to the office of a lawyer who, except in rare instances, was wholly unqualified to solve the problem or even consider it in a proper scientific manner. The long curriculum that led to his degree did not lead him to study, or even read, one paragraph that would assist him in solving these practical problems regarding documents.

In an actual trial of many of these cases, it is not necessary to open one law book from the beginning to the end of the proceeding, but there are other books that now should be opened. This lawyer with the new problem needs the immediate assistance of a qualified and experienced questioned document specialist.

These appeals for assistance naturally at first came to those whose occupations had qualified them in some measure on the subject, but those appealed to as a rule had given no special study to the subject of disputed writing, as there had been but little necessity for it. Those thus consulted were special teachers of handwriting, bank clerks who had become familiar with the signatures of a limited number of depositors, notary public officials, bookkeepers, and others whose duties had something to do with handwriting, especially signatures.

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<sup>1</sup> This is the first public announcement of the organization of this new society. Its Constitution is being prepared and will soon be published. A detailed Course of Study and a Reading Course are also in preparation. The Officers of the new society are: President, Albert S. Osborn, New York, N. Y.; Vice President, Clark Sellers, Los Angeles, Calif.; Secretary, Elbridge W. Stein, New York, N. Y.; Treasurer, John F. Tyrrell, Milwaukee, Wis.

The opinions of these men were mainly the result of a hasty judgment based on general appearance after a stand-up view of the problem lasting perhaps from five to ten minutes. As witnesses they expressed bare opinions and in fact were not at first permitted by the legal rules to do more. The testimony was about as apt to be wrong as right, although the untrained observer then and now usually decides that a writing is genuine because he knows but little if anything about the characteristics of forgery. As the years went by the requirements for assistance by the legal and business world became more urgent, and a few of those thus consulted about writing problems became interested and began a more scientific and thorough study of the subject.

One of the prime difficulties for a long time was that genuine writings could not be put in evidence for comparison, and opinions of witnesses were based on dim memories of writing seen sometimes long before. This testimony in many, if not most, cases was absolutely unreliable because of the conditions. It was given at first not by specialists but entirely by those who "had seen the person write at least once" and thus the law said, were *familiar* with the writing.

It is obvious that this was a mere legal fiction invented to fit the conditions. In these early days anonymous letters, or even cruel "ransom letters," like those in the celebrated Lindbergh-Hauptmann case, could not be identified as no standard or genuine writings could be admitted for comparison. This was the condition that existed in this country, except in a few New England states, and continued for many years and in the great state of Texas continued in civil cases until 1928. This now seems impossible but it is a fact. Writing or signatures accidentally in the case *for some other purpose* could be used, but in most instances were inappropriate and the ordinary witness was not allowed to compare writings. Important cases were tried with only one old signature, perhaps twenty years old, as a standard and in a great many cases no standards whatever were available.

The document specialist could do but little without proper standards, and the specialty developed very slowly. Photographs were excluded, and even a pocket magnifying glass could not be used in court by a witness or by the jury. No reasons whatever for an opinion could be given, and a witness thus handicapped, of course, could not give effective testimony; and the courts repeatedly described the testimony as weak and ineffective, as it was, but did not say why this was so.

As the years went by the specialist became more efficient, and the gradual changes in the legal rules made improvement possible. Finally, photographs were admitted and specialists learned to make them more effective and convincing, and the trial attorneys learned

more about this special work; and now for some years, definite, detailed reasons can be given for an expressed opinion, although this latter change met with the most vigorous opposition. In progressive, modern courts, reasons are now not simply allowed, but required, which has had the effect of eliminating, not only nearly all bank witnesses who gave mere opinions, but other incompetent witnesses.

The fully prepared, fully equipped and finally, in nearly all modern courts, the fully accepted document specialist has appeared after a long struggle against prejudice and the old rules. This modern specialist has grown out of this necessity of discovering and proving the facts regarding "found," unusual, surprising, and suspicious documents that were not genuine, and is also called upon to defend genuine documents improperly attacked because of their source, their nature, or their contents. This modern specialist has available the new test instruments and special devices, including microscopes and suitable cameras, and in addition there are now available several hundred books and pamphlets directly or indirectly related to the subject. The conditions and development of the new profession were similar to the development of the new science of "Palaeography" in the seventeenth century.<sup>2</sup>

A small piece of paper often only a few inches long and not quite so wide, on which a few handwritten or typewritten words appear, and one pen-dip of ink in a signature may affect the distribution of hundreds of thousands of dollars and may do great injustice.

When this small piece of paper with writing on it, described as a "questioned document," is laid down on a lawyer's desk, it may be the first one he has ever seen. He may never have attended a trial involving a similar document, and he knows practically nothing about the procedure, the books, the arguments, or the specialists connected with such an investigation and such litigation. His ignorance on the subject, while not quite total, is almost so; but this is not altogether his fault as he received no special instruction whatever on the subject.

This necessity for special aid and for necessary knowledge of

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<sup>2</sup> "For some time after the invention of printing, as both compositor and scholar were familiar with the mediaeval script, no need of palaeographic study was felt; but, as the old contractions disappeared from printed books and the new Italian hand crowded out the crabbed monastic writing, the manuscripts grew unintelligible. . . . At the same time the exposure of such forgeries as the Constantian Donation and the Pseudo-Isidorian decretals threw doubt on the genuineness of all ancient documents. . . . In 1675 the learned Jesuit Papebroch . . . made a sweeping assault on all charters claiming early Frankish origin. These charters were almost wholly in the hands of the one ancient monastic order of the West, the Benedictines, and the ablest of its scholars, Mabillon, came to the rescue of the questioned documents by the publication in 1681 of his *De re diplomatica*. It created at one stroke a new science. . . . With the sure hand of a master he laid down the criteria and rules for the determination of the age of MSS."

Prof. G. L. Burr, of Cornell University, in *Universal Cyclopedia*, under "Palaeography."

facts, not law, and the enormous increase in the number of documents in the modern world has, as we have seen, developed this new profession, the questioned document specialist. The word questioned is used as it is not true, as stated above, that all suspected documents are forged documents, and part of the work of the document specialist is proving genuineness.

It has been known in a general way for more than two generations that a new profession of document specialists, usually referred to as "Handwriting Experts," was being developed. While the identification and proof of handwriting is the most frequent problem regarding documents, this special work now covers a much wider field than handwriting alone. It now includes typewriting, a growing subject, as well as age and identity of ink and paper, also erasures, additions, alterations, substitutions, forgeries over genuine signatures, anonymous letters, significance of crossed lines, cross marks, kidnapper demands, and other important questions.

Another reason, in addition to those given, why the trained and experienced specialist is necessary is the fact that there are certain cases in which it is very difficult to prove the facts. A document that the alleged signer never saw may do what relatives, friends, and neighbors think is substantial justice, and they may be inclined to say that if it is not genuine, that it ought to be. It is unfortunately true that there have been owners of property who were stingy, miserly men who denied the family not merely the luxuries, but many of the necessities of life. In some of these families the son ran away from home, and the daughter married against the father's wishes. Out of these conditions, some of these cases arise and are hard cases to win because of the circumstances and the personality of the one whose name appears on the suspected document. It is for these men that juries are inclined to make wills. Even if the prejudices are only partly justified, a lawyer who is asked to prove the facts in these cases needs technical assistance in order to determine just what action to take.

Most forgeries, however, are unjustified, criminal acts and should lead the forger, his witnesses, and in some instances his contingent-fee attorney, when a party to the conspiracy, inside of prison doors. The burglar, caught going down a ladder with a bag of silver, is no more deserving of punishment than those who attempt in this way to loot an estate and are caught at it.

Another contributing condition surrounding forgery that no doubt has had influence in developing the Examiner of Questioned Documents is the difficulty of proving the facts against the prejudice arising from matter still printed in the old books, and the deliberately manufactured prejudice in these cases that often are very strong. This prejudice often is skillfully and deliberately developed by sympathetic witnesses and disappointed relatives and "next

friends" who do not, for example, approve of a will that is not favorable to them.

There formerly was widespread prejudice against the handwriting expert, but this to a large extent, as already stated, has disappeared excepting in the old law decisions and some of the text-books made mainly with the shears. The law is the only science that reprints its errors. The law now says, however, in most jurisdictions, that this special help of the document specialist is not only desirable but necessary. There still is a remnant of this old prejudice left, but it grows less each year following certain funerals.

These disputed documents, good and bad, that get into court each year come to the offices of two lawyers, one of whom is asked to defend the document, whatever its nature, if it is attacked; and the other lawyer is asked to attack the document. If justice is to be served, it is at just this point, that the necessity arises for reliable and qualified expert assistance in first discovering what the fact actually is, and then if necessary proving it. The qualified questioned document examiner gives many adverse opinions and that ends his connection with the case, and the matter is disposed of according to the ethics of the participants, or by the lawyer withdrawing from the case, or settling it out of court.

The lawyer with little or no experience in this field and no knowledge of the special subject, does not even know the names of the "fact books" in which the subjects are technically discussed that he must consider, and he knows nothing of the conduct of such a trial nor the standing and experience of the various specialists on the subject, nor where to find them. It would seem that it might have been possible in a long law course to have found a few hours to give to this subject. One American law school, fortunately one of the leading institutions of the kind, The Law School of Harvard University, requires its Practice and Procedure classes to read a book that discusses the procedure in cases of this kind. It is to be hoped that other institutions will follow this commendable example.

The telephone, the telegraph office, and the law library may help the struggling and confused lawyer at the beginning of a case of this kind. A friendly attorney, who has been through such a case, may give valuable information, especially confidential advice about specialists.

This lawyer who is giving attention to the question for the first time will find that here and there are specialists, mostly incompetent, who, like certain lawyers, take any case and do the best they can for it. He will also find that there are competent and reliable specialists, who have been through a hundred or more cases on the right side who from their extended experience are able to give him the definite information he seeks as well as valuable suggestions

about certain phases of the case entirely outside of the technical questions involved.

Most lawyers, of course, highly appreciate this assistance, but there are others who blunder through in their own weak way at the expense of their clients. Naturally the best lawyers, in this as well as in other fields, are the most eager for any proper help that may assist in winning the case. As stated, some cases are very difficult to win, even when the facts are favorable, and there are technically difficult cases that may warrant as favorable an advance settlement as can be secured. The experienced specialist is sometimes able to give valuable advice on this latter question, based on experience in other cases.

Specialists against the facts, as a rule, are not very effective as witnesses in these days when they must give the detailed reasons for the opinions they express. This latter requirement has almost entirely eliminated the unqualified bank clerk who, a number of years ago, appeared in many cases and usually gave merely a bare opinion, often against the facts. He did not do this because he was dishonest, but because he was incompetent and did not know how to examine a case. These men often testified for the lawyer who got to them first. When in these later days, this bank clerk is asked by the Judge perhaps, "Why do you say this?" he is highly embarrassed and unable to give any good reasons for his opinion and as a rule does not again appear.

There are great sections of this country, hundreds of thousands of square miles in extent, and some large cities, where there are no qualified and experienced document specialists available. One of the purposes of the newly organized Society, referred to above, is the finding, assisting and developing specialists in these unoccupied fields. Lawyers can aid in this work by a careful discrimination in a wider and more thorough inquiry in selecting specialists.