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Elbridge W. Stein

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HANDWRITING TESTIMONY IN A CRIMINAL CONVICTION AND THE DISBARMENT OF A LAWYER

Elbridge W. Stein

Elbridge W. Stein, Examiner of Questioned Documents, New York City, has been active in this field for upwards of thirty years and has figured in the investigation and trial of important cases throughout the country. During all his professional practice he has been interested in the development of scientific methods in the examination of documents and the proof of facts in court and has done much to promote these advancements. In this connection he was a moving force in the founding of the American Society of Questioned Document Examiners which today numbers among its members the leading handwriting experts of the country. From its formation he has held office in the Society and is at present its Vice-President. Mr. Stein has contributed to a number of legal and scientific publications including two previous papers in this Journal.—EDITOR.

The case of the People of the State of New York vs. Raymond J. Riley is both tragic and unique. It is tragic in that a young lawyer was unjustly convicted and disbarred. It is unique in that the conviction was vacated years afterward mainly because the assistant district attorney who tried the case failed to call as a witness for the prosecution his handwriting expert who had reported to him during the trial that the complaining witness was not telling the truth about the genuineness of her signature on an authorization which was the main basis of the defense.

It is not unique that the expert on handwriting reported adversely on the genuineness of the disputed signature because 40% to 60% of the cases investigated by a handwriting expert result in opinions by him unfavorable to the client who presents the case. These adverse opinions seldom come to the attention of the general public, and some persons still believe that a handwriting expert always gives an opinion favorable to the client who consults him.

Raymond J. Riley was a young practicing attorney in New York and was engaged by Gladys Dymont, administratrix of the estate of Nettie S. Woods, to assist her in the settlement of this estate. Nettie S. Woods was killed in an automobile accident in Buffalo, N. Y. Her estate consisted of bank deposits amounting to \$235.28 and an undetermined claim against the driver of the fatal car.

Mr. Riley advanced \$300.00 of his own money to employ an attorney in Buffalo to prosecute the claim against the driver

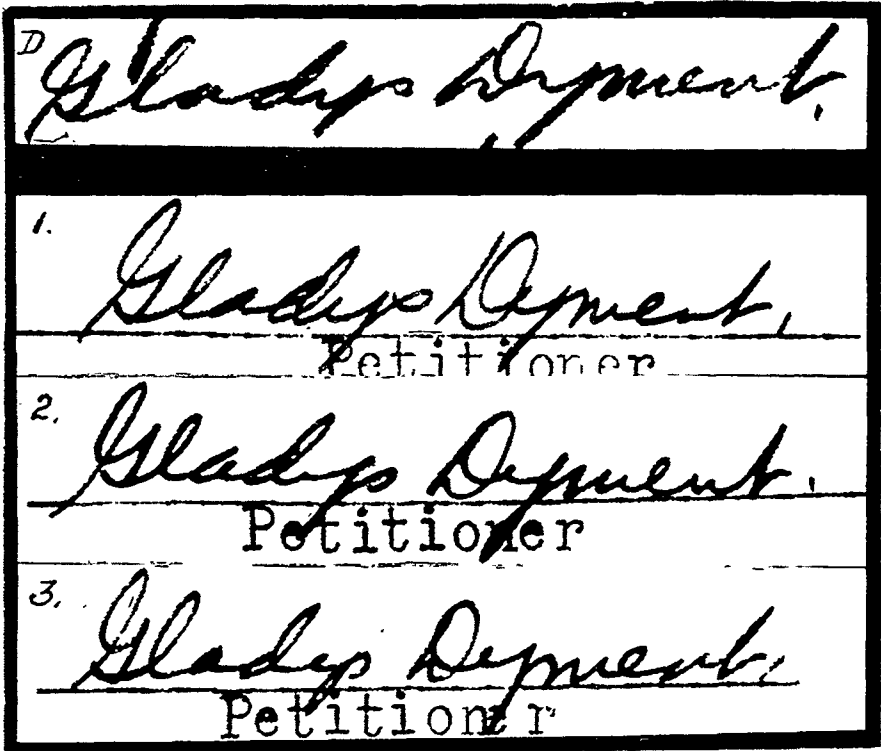


Illustration A

The signature at the top marked D is the one on the authorization denied by Gladys Dyment. Numbers 1, 2 and 3 are undisputed signatures of the writer.

The denied signature contains every quality and element that it should have been written by Gladys Dyment. The speed and vigor with which it was written, combined with the details of the letter forms and peculiarities, take it out of the possibility of being an imitation.

There are no significant differences, and the similarities are obvious, overwhelming, and conclusive.

of the car, and this attorney succeeded in concluding a settlement of the claim for \$2000.00. In the meantime the bank had issued a check to Gladys Dyment, the administratrix, for \$235.28. This check she brought to the office of Mr. Riley and after endorsing it directed Mr. Riley to deposit it in his own account and apply it against the advance he had made to the Buffalo attorney. Mr. Riley properly advised the administratrix that this could not legally be done without her written authorization. In accordance with this suggestion the authorization was prepared, and Gladys Dyment signed it, "Estate of Nettie S. Woods, Gladys Dyment, admr." This was on January 11, 1935.

Later, Gladys Dyment made a complaint to the district attor-

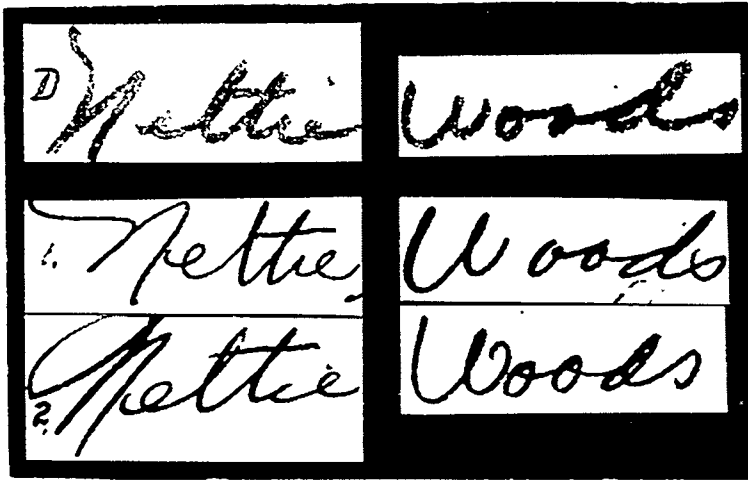


Illustration B

The authorization was signed, "Estate of Nettie S. Woods, Gladys Dymont, admr." Line D is a portion of this signing; lines 1 and 2 are undisputed writings by Gladys Dymont.

This illustrates in the same forceful way that Gladys Dymont wrote all of the denied matter on the authorization.

ney that Mr. Riley had without authority taken funds from the estate, and thereupon a criminal charge of grand larceny was brought against him.

At the trial Mr. Riley's main defense was the written authorization given him by the administratrix, Gladys Dymont. To his great surprise, however, she denied having signed it. The defense then submitted the problem to a handwriting expert who testified that the signature, Gladys Dymont, on the authorization was genuine and that it had been written by her. In order to offset this testimony the assistant district attorney who was trying the case submitted the matter to his handwriting expert, Elbridge W. Stein, of New York, who reported to him that the complaining witness, Gladys Dymont, was not truthful about having signed the authorization and that she had unquestionably signed it. (See illustrations A and B.) The assistant district attorney not only did not call Mr. Stein as a witness for the People but asked him to leave the examination room by a side door so that the persons in the court room would not know that he had examined the disputed signature for the prosecution.

Mr. Riley was convicted and sentenced to from 18 months to 5 years in Sing Sing. Sentence was suspended upon full restitution being made, but this criminal conviction led to automatic disbarment from the legal profession. An appeal was taken,

but it was never perfected because the expense of the trial had entirely depleted Mr. Riley's funds. These happenings occurred in June 1936, and for twelve long years, the best years of his life, Mr. Riley labored under the paralyzing stigma of a criminal conviction and disbarment as a lawyer.

Heartened by the results in the Campbell case in New York in which a man had been unjustly convicted and after a period of years the conviction had been vacated, Mr. Riley put forth every effort to have his case reconsidered by the proper tribunal. State Senator Louis B. Heller, an able lawyer, unselfishly took Mr. Riley's case without fee and successfully brought it before Kings County Judge, Hon. Carmine J. Marasco, who reopened the case and, after hearing the entire story of the trial and conviction from the witnesses, wisely and courageously decided that Mr. Riley had been unjustly convicted and vacated the conviction and set aside the indictment. Justice was thus partly done to a grievously wronged defendant after twelve bitter, heartbreaking years.

During the hearing before Judge Marasco an assistant district attorney who represented the Brooklyn Prosecutor's office submitted the disputed signature problem to the handwriting expert of the Technical Research Bureau of the New York Police Department, and as a result of his study he testified that the authorization signature of Gladys Dymont was genuine. It should not be inferred, therefore, that the present Brooklyn Prosecutor's office was in any way trying to justify the conviction of Mr. Riley, but rather that this office was making an effort to establish right and justice.

Some excerpts from Judge Marasco's opinion are given here which may be of value to a prosecutor trying a case in which a similar or parallel set of facts may exist.

"The issue involved in this motion is whether or not the assistant district attorney who tried the case, in bringing about the conviction of this defendant by suppressing evidence which would have been helpful to the defendant, practiced a fraud which deprived the defendant of the constitutional protection guaranteed to him under our laws.

"A prosecutor is a quasi-judicial officer representing the People of the State of New York and presumed to act impartially in the interest only of justice. It is as much his duty to see that no innocent man suffers as it is to see that no guilty man goes unpunished. If he disregards his dual duty and suppresses or omits to present evidence which may be helpful to the jury in determining a true and just verdict, especially if such sup-

pressed evidence could be helpful to a defendant, he ceases to properly represent the public interest. It is the duty of a prosecutor to present to the trial jury all of the material evidence of which he may become possessed, in order that the jury may properly evaluate the credibility of the witnesses called before them to testify and more particularly to aid them in ascertaining the truth as to a disputed fact.

“It was the duty of the assistant district attorney to offer the testimony of Stein who was available to testify, even though his testimony was detrimental to the State, so that the jury would be aided in arriving at the truth of the authenticity of the authorization. True administration and a fair trial required the disclosure to the court and jury of Stein’s opinion which was known only to the assistant district attorney. The failure of the prosecutor to do this deprived the defendant of a fair trial.

“The strong probability is that had Stein testified as a witness for the People, his testimony would have affected the result. It cannot be said that Stein’s testimony would have been cumulative. Testifying as a witness called by the People, Stein’s opinion that the signature of the complainant affixed to the authorization was genuine, would have destroyed the probative force of complainant’s denial of the authenticity of her signature which denial undoubtedly influenced the jury in its verdict. The authorization was a complete defense to the indictment. The conviction in this case *cannot* be permitted to stand.”¹

¹ New York Law Journal, March 17, 1948.