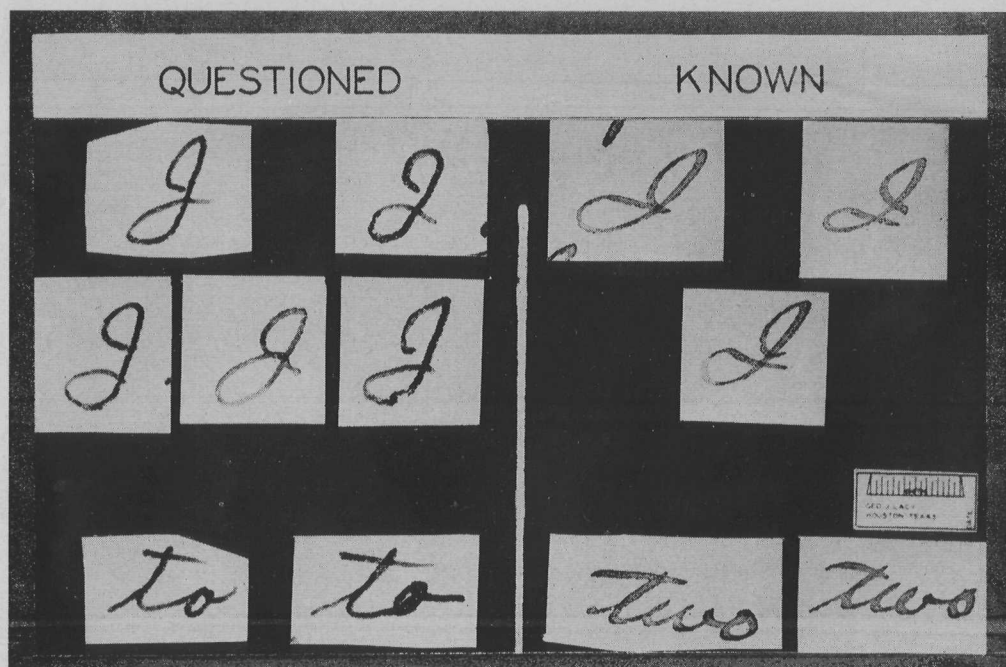
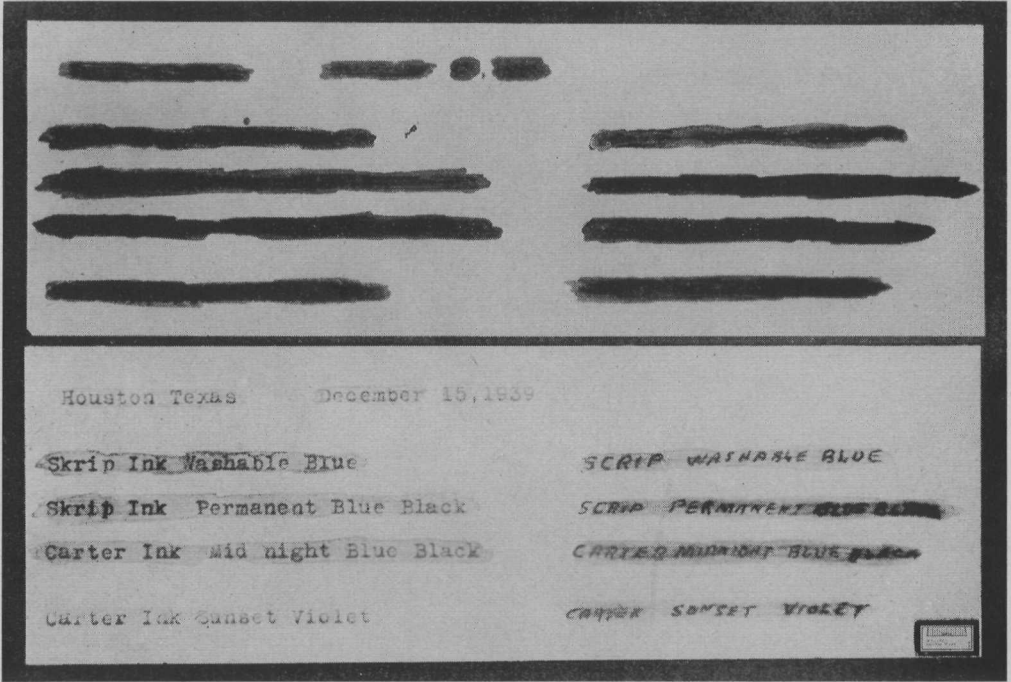


The writing under columns "A" were fraudulently alleged to have been written by a different person than those under columns "B." The juxtaposition photographs enabled the jury to more adequately compare the writings.



The writings under the headings, "Questioned," are from a fraudulent will. Those under the heading, "Known," are from the known genuine writing of the deceased. The line quality under "Questioned" shows a slow, drawn writing, whereas those under "Known" are in a smooth, flowing hand.



Demonstrating one of the uses of Infra Red Ray photography. Top picture is ordinary photograph of ink blotches over typewriting and ink writing, using different kinds of ink. At bottom is Infra Red Ray photograph of the same picture showing writing photographed through the ink blotches.

# Questioned Documents<sup>1</sup>

By GEORGE J. LACY

*Examiner of Questioned Documents, Houston, Texas*

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## *Genuine or Fraudulent?*

ATTORNEYS may have asked this question many times regarding documents given them by clients, or introduced during the trial of a case. It may not have been merely the question of whether the signature was a forgery. It may have been the date it bore, or a suspected added word, or line, or paragraph, or one or more of a dozen different things that raised a question concerning the instrument.

Practically all business is carried on by the use of one or more written instruments. Due to this fact, cunning minds have many opportunities to practice their trickery, and the alert attorney has this in mind when examining such documents. A fraudulent document may appear to the average untrained eye to be genuine and without fault, but to the trained eye of the qualified document examiner there may appear one or more defects that unmistakably brand the document as deceptive and fraudulent. A genuine signature does not necessarily make a genuine document. Many fraudulent instruments bearing authentic signatures have been proven forgeries because of alterations in the text.

The client relies upon his attorney for protection against fraud. Thus it becomes the attorney's duty to do everything possible to afford this protection. It may require additional legal assistance, or the services of a surveyor, a doctor, a questioned document examiner, or an expert in some other field or profession. Not even the most competent attorney can be expected to have expert knowledge on *every* subject.

There is an erroneous impression in some quarters that the only time a questioned document examiner can be of value is when the genuineness of the signature or other writings is questioned. There have been cases where wills and promissory notes bearing genuine signatures were proven by the expert examiner to have been originally either a power of attorney, letter of recommendation, contract, option, or some other document bearing a genuine signature. It is well to remember that not

<sup>1</sup> This article, addressed to attorneys, but also of interest to archivists, originally appeared in the form of two pamphlets copyrighted by the author in 1941 and 1943, respectively. THE AMERICAN ARCHIVIST acknowledges with thanks, Mr. Lacy's gracious permission to reprint here, also the loan of his cuts.

all fraudulent documents bear forged signatures. The signature may be genuine, without doubt, and the document still be fraudulent.

A document may appear suspicious to the attorney for various reasons, and the aid of a qualified examiner may prove or disprove these suspicions. An important fact to consider is that questioned document evidence does not always consist entirely of *opinion evidence*. Often such evidence is supported by photographic exhibits showing physical evidence to corroborate the expert's opinion.

### *The Questioned Document*

As stated by Mr. Albert S. Osborn in his book, *Questioned Documents*, there are many questions that may arise concerning the authenticity of a document, but generally they may be divided into eight classes. For the purpose of this pamphlet they will be grouped into six classes:

A. Documents where the signature or other handwriting may be questioned.

Most cases will fall into this group. This class of document may be any handwritten paper, whether legal, business, or anonymous, including deeds, wills, contracts, leases, assignments, agreements, checks, drafts, notes, threatening and blackmail letters, or any paper signed or written in whole or in part in handwriting or hand printing. It may be only the question of the signature, or all or part of the writing may be questioned, or it may be writing of an anonymous nature (such as threatening or blackmail letters) where the identity of the writer is sought.

B. Documents questioned as to the alleged or purported date or age.

Under this group fall those cases where the age of the document is questioned; or where the comparative age of different portions of the document have a bearing on its genuineness. These may be alleged old documents of great value, or documents which are purported to be of recent origin. There have been numerous cases where the alleged date of the instrument was prior to the date of the manufacture of the ink, pen or paper used. In a recent case, where a will dated 1847 was offered in evidence in support of the plaintiff's contention, it was found to have been written in a style of handwriting which did not come into being until the 1860's.

Limited information can be obtained about the age of certain kinds of ink. When certain inks are used in pen and ink writing the qualified expert may be able to tell if the writing is more than a few days old; or the difference in ink writing one year old and writing eight or ten years old. When the ink alone is considered, there are questions about

the age of the ink writing that the examiner can determine, but to determine the *exact* age of the writing is impossible.

C. Documents where fraudulent alterations are suspected.

In this group will be found questions concerning alterations of documents, such as erasures (chemical or mechanical), ink blotches, superinscriptions, additions, interlineations and substitutions. In the investigation of this class of questioned document there may arise the question of sequence of writing which is frequently shown by cross strokes, and whether the writing was done before or after the paper was folded.

In cases of erasures and ink blotches, the use of ultra-violet and infra-red photography frequently enables the expert to show the eradicated writing. I recall a case of a long term lease where the original dates had been erased and others substituted. It was possible to show by photographic exhibits the disturbance of the paper fibers caused by the erasure, as well as the original date, thereby proving the document to be fraudulent.

When added writing causes a document to be fraudulent it is not unusual for a different pen and ink to be used. For instance, in a litigation where a check was given in payment of an account, it was alleged that when returned to the writer he wrote on the face of the check, "For one share of capital stock." The expert was able to show the court and jury that the notation was written with a different pen and ink.

D. Documents questioned as to the material used in their composition—such as paper, ink, pen, pencil, etc.

In this group are those instruments which are questioned due to the materials used, such as a substitution of paper, ink, pen or pencil. This may occur in instruments having more than one page, or where corrections or additional writing appear, and it is alleged that such corrections and additions were made at the time the instrument was written.

E. Typewritten documents questioned as to the alleged date, source, and fraudulent substitutions or alterations.

Falling into this group are instruments which are wholly or partly typewritten. As compared to handwriting and printing, the typewriter is a comparatively new means of recording the spoken word or thought. Some individuals still think that if a fraudulent document is typewritten there is little or nothing that the expert can do about it.

This is not true. There is much that the expert can discern once the document is submitted to him for examination. For instance, whether it was typed after a certain date; or if two different documents were written with the same or different machines; if they were written with



the same make of machine; if inserted words or paragraphs were written at the same time as the body of the instrument.

Individual typists have their own characteristics which show up in punctuation, speed, touch, spacing and arrangement. Often the expert can tell if two different papers were written by the same operator. The color, condition or thread count of a typewriter ribbon may prove to be of great value in proving certain questions regarding a typewritten document.

I recall the case of a man who died leaving a sizable estate. No will was found. He had no near relatives. After an investigation extending over several months one distant relative was located and notified. Before this relative could make the proper claim, however, another person filed an alleged will bearing an unquestionably genuine signature of the deceased. This instrument was in the form of a letter, bearing a date several months prior to death, and was addressed to the party who filed the will.

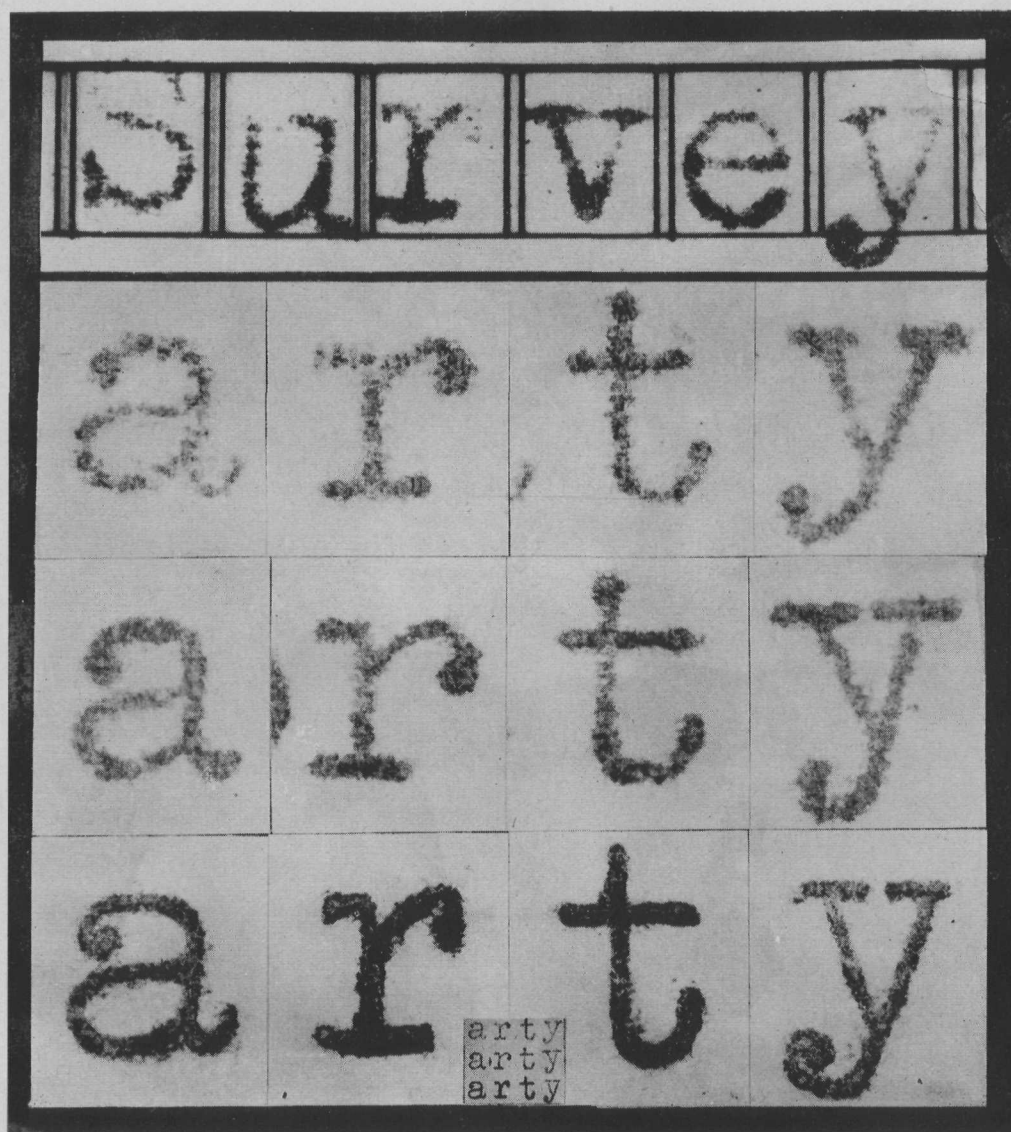
The first part of this letter thanked the addressee for transacting several business deals and expressed the writer's appreciation. The last part of the letter said, "In appreciation for all that you have done for me, and due to my not having any relatives, I am herewith willing you my entire estate, whatever it may be at the time of my death."

This will was submitted to a questioned document examiner, who was able to show that the date had been changed, and that the type-writing in the last part of the letter was not in alignment, either vertical or horizontal, with the rest of the writing, thus indicating that it had been added after the first part of the letter had been written and removed from the machine.

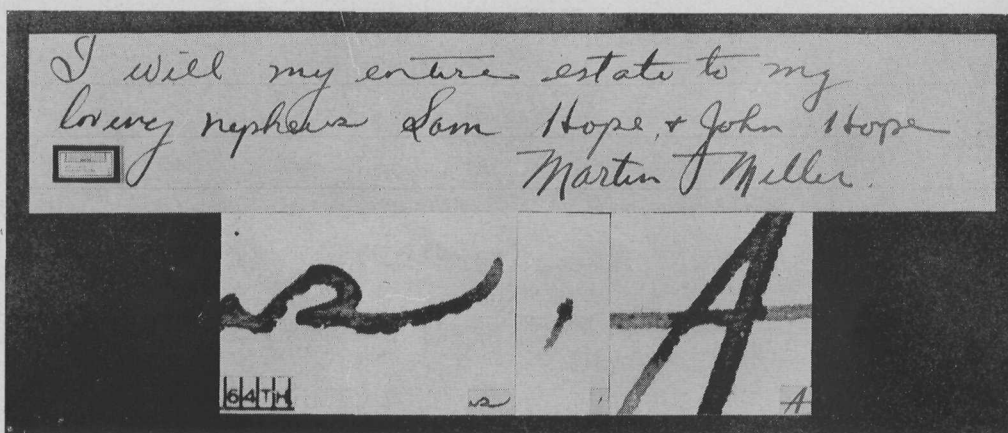
The examiner was further able to show that a different typewriter of the same make had been used to write the will part of the letter. He was able to testify that in his opinion the instrument was originally a letter of thanks; that the date was changed to a more recent time; that the will part of the letter was an addition, written on a different machine after the letter had been originally finished, taken from the machine and signed. The will was denied probate.

F. Where genuine or authentic documents are attacked.

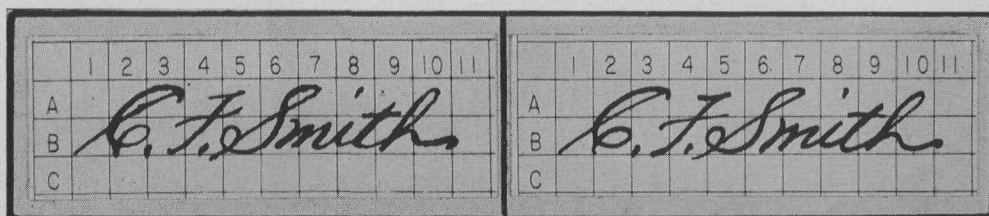
In this group will be found that class of questioned documents which frequently show up in court where a genuine, authentic document is alleged to be fraudulent, either in whole or in part. Usually it is the signature that is alleged to be a forgery, or the whole document is denied. Such allegations are often erroneous, but generally are alleged with fraudulent intent. In another case where the entire document, a typewritten letter, was denied and the signature alleged to be a perfect forgery, the examiner to whom the document was submitted was suc-



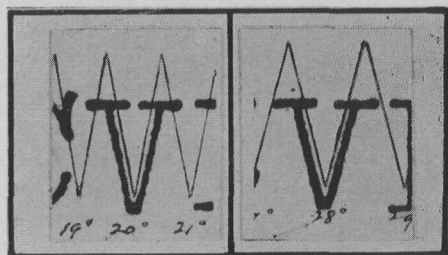
The word "Survey," photographed under ruled glass, shows malalignment. This malalignment was not noticeable to the naked eye. The letters "a-r-t-y" in the smaller type at bottom appear to have been written on the same typewriter. Enlargement, however, revealed the difference in letter formations, easily discernible to the naked eye, and proved that they had been written on three different makes of machines.



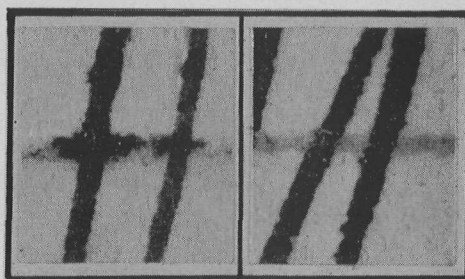
Example of altered will. This originally read, "loving nephew Sam Hope." The "&" and the words "John Hope," were added after the signature. Photographic enlargement shows addition of an "s" to the word "nephew," a period made into a comma, and ink flow at cross stroke of the bottom of the "J" in John and the top of the "M" in Miller, indicating that the "J" was written after the "M."



The left signature is a traced forgery of original signature on right, photographed under ruled test plate to show same lateral spacing and height of letters. This condition is practically impossible in free hand writing.



Left—Two "V's" from different typewriters photographed under angle test plate showing the angle of one to be 20° and the other 28°.



Right—Microphotographs revealing ink writing over fold in paper, and fold over ink writing. In the left picture the writing was done after the paper was folded, and where the line crosses the fold the ink has run out into the fold.



cessful in showing the court that the instrument was written on the same typewriter, by the same operator, and on the same make and kind of papers as were used in other letters admittedly written and signed by the same person, on or about the same date as the one denied. Evidence was also introduced to show the genuineness of the signature.

In a case where the signature to the cancellation of a contract was denied, by comparing the denied signature with numerous admitted signatures, the expert was able to convince the jury that the denied signature was genuine. In support of his testimony the expert exhibited enlarged juxtaposition photographs of the denied signature and admitted signatures, with which he explained to the jury how and why he arrived at his conclusions.

Contrary to the belief of some, an examiner of questioned documents may be of assistance in many cases other than those where there is only a question of the identity of the writer of some particular handwriting.

The field of questioned document examination is an acknowledged science, and for one to properly practice it he must not only have had training and experience, but must have precision equipment, such as microscopes, special measuring instruments, photographic apparatus, etc.

The questioned document expert is now allowed in practically all courts of this country, not only to give his opinion, but also to give the reasons for that opinion and how he arrived at his conclusions. He may further exhibit and explain to the jury photographs that tend to corroborate his opinion and make it easier for the jury to see why and how he arrived at his conclusions. This being true, the testimony of an expert, wherein he merely gives his opinion, and does not state the reasons for it, or does not attempt to show by photographic exhibits why and how he arrived at such an opinion, is no better in the eyes of the jury than the opinion of a layman, who, under the rules of evidence, is not allowed to testify as to his opinions.

It is reflected in the opinions handed down by the appellate courts that such bodies look with favor on expert testimony given in a scientific manner by a qualified document examiner. Some of these opinions have gone so far as to say that it is more than just merely *opinion evidence*.<sup>2</sup>

### *How the Questioned Document Examiner Proves the Facts*

Seldom, if ever, is a civil case tried in a court of law where there is not more or less documentary evidence introduced.

<sup>2</sup> Citations on this point, quoted from Albert S. Osborn's *Questioned Documents*, Second Edition, which appeared in the original pamphlet, are omitted here.

In many cases this evidence may be just collateral evidence, but frequently it is the primary or basic evidence upon which the outcome of the case depends. Both are of importance, but when it is the primary issue it is vitally important.

When an advocate is contending that a deed, note, contract or will is genuine or fraudulent, and he fails to convince a jury of his contention, his case is lost.

It is not infrequent that documentary evidence is introduced to substantiate the main issue. This type of evidence is generally what is called surprise evidence, as the opposing side seldom knows it is going to be introduced. On occasions like this it gives those who are prone to introduce fraudulent manufactured documentary evidence, a good opportunity to get by with their crime, due to the difficulty of having the document examined by an expert after it has been introduced. Often under these circumstances a fraudulent document is permitted to enter the case without question, because it is not the main issue in the case.

Unfortunately the client does not always tell his attorney the truth. But the wise and alert attorney may save embarrassment before the court in document cases by having any questioned document examined by a competent examiner.

Any document that is worth introducing is worth a serious study to determine its validity. A document may have the pictorial appearance of being genuine, but thorough examination and study by a competent examiner may reveal its falsity.

It is understandable why the average lawyer thinks of a forged signature when the subject of questioned documents are brought to his attention. Where there are hundreds of such cases throughout the United States each year, the average individual lawyer may have only one or two throughout his career.

While it is true that a great number of these cases are cases where the signature is questioned, it is by no means the only question that may arise. Not infrequently a fraudulent document bears a genuine signature. The addition of one stroke of the pen or one additional type-writer character, or the eradication of either one, may cause a document to misrepresent the facts.

In view of the many and varied questions that may arise concerning a disputed or suspicious instrument I am listing here some of these questions.

(1) Is the signature genuine? (2) Is the handwriting in the document genuine? (3) Was the anonymous, blackmail, threatening, or obscene letter written by a certain suspected person? (4) Are there any

material erasures or alterations? (5) Was a certain writing written before or after the paper was folded? (6) Is there any fraudulent substitution of pages? (7) Was the writing continuously written in the order that it appears? (8) Was more than one kind of ink used in writing the document? (9) Is the ink as old as it is purported to be? (10) Is the paper as old as the date the document bears? (11) What is the original writing under an ink blotch? (12) How did the document originally read before eradications were made? (13) Was the typewriting written on a particular typewriter? (14) What make of typewriter was used to write the document? (15) Is the typewriting consistent with the date of the instrument? (16) Was the typing done by a certain suspected writer? (17) Was the page written continuously without being removed from the typewriter? (18) Were any material sentences, phrases, words, letters or figures added to the original writing? (19) Were different typewriter ribbons used in writing two different documents? (20) Is there evidence of a carbon copy having been made of a particular document?

These and many more are questions that may be asked of and answered by a qualified questioned document examiner in cases of suspicious, questioned or disputed documents.

It must be remembered that often a perfectly valid document is attacked as fraudulent. In cases of this kind the expert is called on to prove validity.

Too many times when claims or agreements are presented in estate matters, bearing the name of the deceased, the attorneys are inclined to recognize them as genuine because they look genuine. In a recent case, a ten-thousand-dollar agreement was presented for payment to the attorneys representing the estate of a wealthy oil man. The signature of the deceased on this agreement was the pictorial image of the genuine signature. When it was presented to me for examination I concluded it was a traced forgery and asked for the file concerning all matters the deceased had had with the person presenting the claim. This contained numerous letters, contracts and agreements dating over a period of ten or twelve years. In the file was found the genuine signature from which the questioned signature was traced. The genuine signature was dated some eight years previous to the fraudulent agreement.

It was also possible to prove that the alleged agreement was not written on the typewriter stated by the claimant. When the claimant was confronted with the evidence developed by the examination, he withdrew his claim, stating that he did not care to litigate.

A deed dated 1858 on a tract of oil land valued at \$50,000, was offered as genuine. It appeared to be very old, was worn and dirty, torn

in places and had a yellowish color. The examination of this deed revealed, among other facts, that the kind of ink used to write it was not in existence in 1858. It further showed that the fibers used in the manufacture of the paper were not used until years later than 1858. Of course this proved that the deed was spurious. It was rejected by the attorneys.

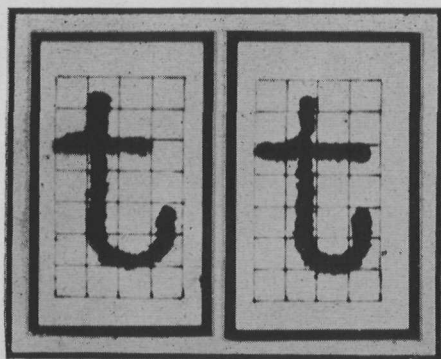
Many law suits can be prevented by examination of suspicious documents prior to the litigation.

Mr. James Clark Sellers, Questioned Document Examiner of Los Angeles, California, reports a case where one stroke of the pen made a genuine document fraudulent. A "2" appearing in a date was altered to a "3". To the untrained and unaided eye this alteration was hardly visible, but was clearly shown by correctly made photographic enlargements.

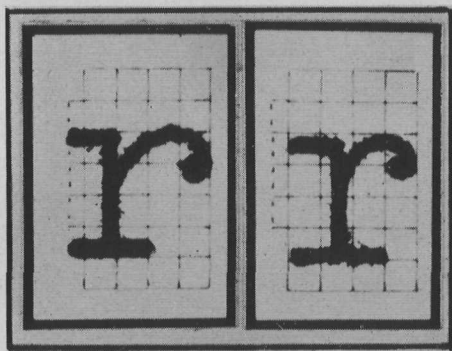
Contrary to the belief of many, it is possible to make erasures in both typewritten and handwritten documents so perfect that they cannot be detected by the untrained and unaided eye. However, these so-called perfect erasures, either mechanical or chemical, can be detected and exposed to anyone by the proper use of photography, utilizing the microscope, ultra violet and infra-red light.

The value of expert testimony in questioned document cases has been belittled by some attorneys who claim that regardless of what the expert contends, one can always get an expert that will testify to the contrary. This may be true in some cases, but is it not also true that regardless of how simple the litigation, one can always find an attorney who will represent a client against the facts? However, when this does occur, the able attorney representing the right side of the case experiences little difficulty in proving to the court and jury the erroneous contention of the opposing counsel. Likewise, the honest qualified questioned document examiner has little difficulty in convincing the court and jury that he is trying to assist the court in discovering and presenting the facts.

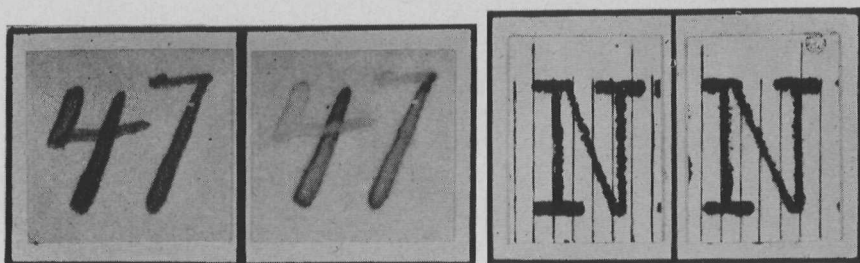
Under the old rule of evidence, the expert was only allowed to give his opinion. He was not permitted to say how and why he arrived at that opinion. Under this rule it was difficult for court and jury to determine which expert to believe. But under the new rule, which is now followed by practically every State in the Union, the questioned document examiner is permitted to testify as to how he arrived at his opinion and why. He is further permitted to use photographic exhibits which will help him in his explanation of the reason he arrived at his opinion. This class of expert testimony becomes more or less demonstrative testimony. The average man is quicker to believe what he sees than



Two "t's" from different typewriters photographed under ruled square showing difference in width of hooks and length of crossing.



Two "r's" from different typewriters photographed under ruled squares to show difference of design.



*Left*— On the left is a raised figure, photographed by ordinary photography. On the right is the same raised figure, photographed by infra-red process. The same color of ink but different chemical composition than the original "11" was used in raising the figure.

*Right*—Two "n's" from different typewriters photographed under ruled glass measuring plate to show the difference in widths.



what he hears. When the proper photographic exhibits are presented and explained by the examiner, he indirectly says to the court and jury, "Do not take my word for it; see for yourself."

When it is contended by the expert that the figure 47 was originally 11 and photographs made by the infra-red ray process are exhibited showing the original 11 in dark outline and the additional strokes which make the 11 read 47 in faint outline, due to the different ingredients of the ink, even when both have the same color, the court and jury do not have to rely on the expert's opinion.

The examiner may testify that the second page of a typewritten document was not written with the same typewriter as the first. The mere statement may be questioned by the jury, because to the unaided eye the type looks the same. But if enlarged photographic exhibits are shown to the jury, revealing clearly that the "N" and "M" on page one are wider than those on page two, that the "r" and "t" are of different design, that the degree of angle of the "v" and "w" are not the same, as well as other obvious differences, there can be little doubt as to the correctness of the examiner's statement.

Neither is it difficult for the jury to see and understand similar photographs of handwriting that plainly reveal the personal handwriting characteristics and habits of the writers. The qualified examiner knows how to arrange and prepare such exhibits as well as how to clearly explain them to the jury.

Photographs of this nature, which should always accompany the examiner's testimony, tend to put such expert testimony in the class of demonstrative testimony. Therefore the testimony of the expert witness on questioned document matters, as stated by various appellate courts, (Boyd v. Gosser, 78 Fla. 64. Lyon v. Oliver, 82 So. 758, 316 Ill. 292, 148 N. E. 251. Seaton v. State, 16 S. W. (2nd) 823. Venuto v. Lizzo, 148 App. Div. 164, 132 N. Y. Supp. 1066.) is more than mere opinion testimony.<sup>3</sup>

Thus does the honest, qualified and experienced questioned document examiner prove the facts.

<sup>3</sup> Leland v. Leonard, 112 A. 198, 95, Vt. 36, (1921). "The value of photographs and photographic enlargements of signatures and documents is everywhere recognized."

Scott's Photographic Evidence, p. 710, Sec. 775. . . . "Certain types of photographs may come within the incontrovertible physical fact rule."

State v. Ready, 72 A. 445, 77 N. J. L. 329. . . . "Nor did the fact that the photograph exhibited the signature on a background of ruled squares destroy the admissibility of the offered picture."

Gaines v. Union Central Life Ins. Co., Supreme Court of Okla., Sept. 15, 1942. . . . "Some courts have said that such evidence (handwriting expert) is in small favor and may be disregarded by the triers of the facts. But this court has approved such evidence . . . We can not say that plaintiff's testimony was of greater weight. Judgment affirmed."