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Edward W. Spencer

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USE OF EXTRANEOUS OR UNPROVED WRITINGS IN CROSS-EXAMINATION IN QUESTIONED DOCUMENT CASES, WITH SOME DIGRESSIONS

By Edward W. Spencer*

A n article by the present writer entitled "Spurious and Questioned Documents" appeared in the Marquette Law Review for April, 1917. It dealt almost exclusively with the legal phases of the subject, and particularly with the competency of writings other than the questioned one as standards of comparison in proving or disproving its claimed authorship or authenticity. It touched upon the present subject, however, only incidentally and in a general way. It was expected at that time that the writer would prepare another paper approaching the subject of questioned documents rather more from the standpoint of the handwriting expert or specialist, or the "examiner of questioned documents" as he is called in these progressive days when real estate agents are "realtors," undertakers are "morticians," and justices of the peace are "jurists," almost without exception. Though something was done toward writing it, pressure of other things intervened, as did the growing conviction that the subject was much too broad and technical to admit of any very useful general survey within reasonable or available limits of space. Furthermore the technical field has been so admirably covered by Mr. Osborn's work on questioned documents, recently supplemented, especially for the legal profession, by his book, The Problem of Proof, that it would seem more pre-

* Of the Milwaukee Bar.

1 Marquette Law Review p. 114, and particularly pp. 135, 136 as to the present subject.

2 Questioned Documents, by Albert S. Osborn (1900), with an introduction by Dean John H. Wigmore. A new edition of this book is now in press and is expected to be reviewed in the June issue. A few references to this edition by chapter members are from a list of them kindly furnished by Mr. Osborn.

sumptuous now than ever to much invade the technical field of the expert.

In view of the foregoing the present discussion is confined, save for a few incidental digressions, largely for the purpose of bringing the Wisconsin case law as to questioned documents down to date somewhat in the light of recent legal developments elsewhere, to the narrow but sometimes important question of whether and to what extent, at common law and under statutes, extrinsic writings or those not already in the case as genuine, may be used on cross-examination to test the knowledge, skill, and credibility of a witness, lay or expert, testifying for or against a document, the genuineness or authenticity of which is in issue or relevant to the issue.

It is well to remember that witnesses with respect to questioned handwriting or documents are generally assigned to one of the three following classes:

I. Those who testify, whether as attesting witnesses or otherwise, that they actually saw the document in question made or executed. These are often described as eye-witnesses or fact witnesses, as distinguished from those of the next two classes, and their testimony is often called direct.

II. Lay witnesses, or those who testify from previously acquired knowledge of, or familiarity with, the hand of the person whose chirography is in dispute, and whose opinion is therefore based upon a comparison of the questioned writing with a pre-existing mental standard or exemplar. One who testifies from memory of the fact that he himself wrote or executed a document belongs to the preceding class, but otherwise he belongs to this one.

III. Experts, or those specially skilled and experienced with respect to handwriting or other matters affecting the origin or authenticity of documents either generally or in some relevant particular, and whose opinions or statements are based upon comparison (juxtaposition seems the better word) with competent and admissible standards, or upon such inherent peculiarities of the questioned document independent of any standard in the ordinary or usual sense, as tend to prove some relevant fact with respect thereto. While witnesses of the first class, as stated above, are usually termed fact witnesses, those of the last two classes are usually classed as opinion witnesses, regardless of the fact that in some cases, experts are no better qualified than is the jury to draw conclusions from the physical facts which their expertness enables them to discover and bring before it. While none but experts

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As to the qualifications of witnesses of the second and third classes, the MARQUETTE LAW REVIEW, 130-134. 1 Wigm. Ev. (2nd Ed.) sec. 693 et seq.

In some cases where document experts have been successfully employed, there was no comparison or juxtaposition of hands in the strict or proper
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William will be permitted to testify from juxtaposition merely, the testimony of a witness belonging to any one of the foregoing classes in questioned document cases is in no sense secondary to that of a witness belonging to any other class under the rule requiring the best evidence. Witnesses of both the second or third classes in a broad sense usually testify from comparison—the former with a mental standard and the latter with a physical one or by juxtaposition.

The question chiefly considered here does not involve, save incidentally, the competency of what may be rather loosely called primary or initial standards, or writings that must be proved or admitted to be genuine or must be already in the case as genuine before any comparison can be made by court or jury and before an expert will be permitted to give in evidence any opinion, at least upon his examination in chief, based upon the comparison or juxtaposition of writings. This matter was considered somewhat in detail in the earlier article in the

sense. This was because there were no available or admissible standards, or because the nature of the inquiry rendered standards of comparison of little if any use. Cases of this kind may simply involve erasure, or the order or sequence of writing, or of the age of a writing as indicated by the nature and condition of the paper or ink, or the style or type of the writing with respect to a certain time or period, (See Tracy Peager Case, 10 Cl. & F. 154, 8 Reprint, 705) or other facts and circumstances tending to authenticate or disauthenticate a document inferentially with or without the juxtaposition of such document with any other writing of the claimed writer or with the writing of any other person. For a number of suggestive instances of this character, see 22 Corp. Jur. 632; 4 Wigm. Ev. (2nd Ed.) Sec. 2023 et seq. See also infra, note 30; In re Jackson's Est., 215 N.Y. Supp. 230; 3 Jones, Ev. (Horwitz Ed.) sec. 556, note 17. See also infra, note 33.


As to the necessity of calling the alleged writer of a document to prove its execution, see Jones, Comm. Ev. (2nd Ed.) secs. 1275, 1276.
It seems advisable to say here, however, that Wisconsin, like the federal courts and those of most of our states outside of New England adopted the common law substantially as settled by the English courts a little less than a century ago, and which persisted therein down to the statute of 1854, excluding as standards of comparison all writings save ancient documents coming from proper custody and writings already in the case as genuine for some other proper and relevant purpose, the reasons for which rule are well stated in Pierce v. Northey. In other words no writing could be proved genuine for the sole purpose of making it a standard of comparison with a disputed one. This rule, however, has been quite generally changed by statutes. Our own statute (sec. 327.26) which quite closely follows the common type reads:

Comparison of disputed writing with any writing proved to the satisfaction of the Court to be the genuine handwriting of any person claimed at the trial to have made or executed the disputed writing, shall be permitted to be made by witnesses, and such writings and evidence respecting them may be submitted to the court or jury.

The federal statute of February, 1913, C 79, 37 Stat. 683, is as follows:

In any proceeding before a court or judicial officer of the United States where the genuineness of the handwriting of any person may be involved, any admitted or proved handwriting of such person shall be competent evidence as a basis for comparison by witnesses, or by the jury, court, or officer conducting such proceeding, to prove or disprove such genuineness.


2 Under some statutes it is held that where the writing of A is in issue, genuine writings of X cannot be admitted as standards to show that X was the actual forger. See Pennisboro v. First Nat. Bank, 74 W.Va. 244, 83 S.E. 898; Franklin v. Franklin, 90 Tenn. 44, 16 S.W. 557. See also Peck v. Callaghan, 95 N.Y. 73, which apparently led to the New York statute of 1888 rendering the writings of X competent, (People v. Molineux, 168 N.Y. 322, 61 N.E. 286, 62 L.R.A. 193) as they clearly would be under the Wisconsin statute quoted above. Holding them competent, apparently upon general legal principles, see Adams v. Ristine, 138 Va. 273, 133 S.E. 126, 31 A.L.R. 1413. See also 1 Marquette Law Review 124; 32 Oh. Ct. of App. 7.
Prior to our own statute the competency of extrinsic writings to test a witness on cross-examination was squarely before our Supreme Court in Pierce v. Northey,11 which quite typically presents the principal question discussed herein. In this case lay witnesses (non-experts) for the plaintiff had testified from claimed familiarity with the signature of the defendant, that his purported signature to a certain note in issue was genuine. It was held error to permit them to be interrogated on cross-examination as to whether his name written on sundry separate slips of paper handed them were genuine signatures, and afterward to permit the jury over objection to examine such slips in considering their verdict, the genuineness of the signatures on such having been neither admitted nor denied, and after defendant had testified that none of the signatures were written by him but were prepared by others in his presence by the use of colored tracing paper and his genuine signature, whereby fac similes of the latter were produced.

The next came Hazelton Adm'r v. Union Nat. Bank,12 in which no question of cross-examination was involved, and which definitely aligned Wisconsin with the states adopting the common law rule as to extrinsic standards favored, if not actually adopted, in Pierce v. Northey.

State v. Miller13 reafirms the English rule as to extrinsic standards. No question arising out of cross-examination was involved, but only whether a writing by the defendant while in custody, done at the request of the police officers and at their dictation, was admissible against him as part of his alleged voluntary confession of the crime of arson to connect him with prior letters threatening the burning. The request writing was held not to be in any proper sense a part of such alleged confession, and not being in any sense a part of the record or admissible as part of the confession, was inadmissible for comparison with the arson letter to prove that the latter was written by the defendant. As stated in the opinion, however, the request writing contained the same matter as the arson letter and both letters "contained words of peculiar form, style, and autography." Had the admission of the test writing been urged on the ground of its tendency to show authorship of the arson letter by reason of such peculiarities, its exclusion would

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11 14 Wis. 10.
12 32 Wis. 34, 47.
13 47 Wis. 520, 532. Under the present statute specimens made by a defendant voluntarily and without coercion are admissible as standard of comparison with a disputed writing claimed to have been made by him. Magnuson v. State, 187 Wis. 133, 203, N.W. 735. Standards of this kind may of course be barred under the rule against self-crimination unless the defendant writes voluntarily. See People v. Molineux, supra; Sprouse v. Com., 81 Va. 374.
appear to have been wrong. This phase of the case, seems not to have been presented, argued or considered.\textsuperscript{14} It seems hardly necessary to add that peculiarities of orthography, diction and arrangement are often great aids in throwing light upon the true origin of writings, and particularly of anonymous writings in view of the fact that a disguised hand is very apt to be used by those who wield a threatening, libelous, or pus-running pen.\textsuperscript{15}

Alesch v. Haave\textsuperscript{16} decided since the enactment of our statute previously quoted permitting the proof of extrinsic writings as standards of comparison with questioned writings, presents squarely the question of the admissibility of extrinsic writings to test the witness on cross-examination. Here the witnesses were evidently not experts but laymen, testifying from familiarity with the signature of the defendant that his signature to a certain contract in issue was genuine. The witnesses were allowed over objection to be questioned on cross-examination as to the genuineness of other purported signatures of defendant to an exhibit not in evidence. This was held error, cured, however, where the court at the conclusion of the examination, rejected the exhibit, struck out the testimony relating to it, and directed the jury to disregard it. The court said: "In some jurisdictions spurious signatures, or signatures on documents not in evidence, are allowed to be exhibited to witnesses as to handwriting for the purpose of cross-examination.\textsuperscript{17} This is not the rule in Wisconsin. The court cites no authorities for its ruling save the three Wisconsin cases already considered and our statute (not enacted when they were decided) permit-

\textsuperscript{14} See 1 \textit{Marquette Law Review} 119, 120, 121 140.

\textsuperscript{15} See 3 Jones, Ev. (Horwitz Ed.) 643 reprinting a valuable paper by Commissioner Clayberg from 2 Mich. Law. Jour. 16. See also 1 \textit{Marquette Law Review} 121, 122.

We once read a long manuscript in which the author, frequently using the phrase "at all," invariably wrote it a-tall. See Jones, Ev. supra; Osborn, Ques. Doc. (2nd Ed.) particularly Chap. XXIII. See also Magnuson v. State, supra in which the spelling in the address on a bomb package was "Marsfilld," instead of "Marshfield," and this misspelling was repeated in defendants request writings, as tending to show that the writer was familiar with the Swedish language, defendant being in fact a Swede. See the unique case of \textit{State v. Kent}, 83 Vt. 28, 74 Atl. 389, 26 L.R.A. (N.S.) 990, 20 Ann. Cas. 1334, involving the peculiarities of punctuation in the inscription on the handle of a lawn mower and the carving on a barn door. The dictum of one of the earlier governors of Wisconsin in that "spellin is d——n small business," does not always hold good. See Ried v. State, 20 Ga. 681. The defendant habitually wrote "hit" for it. See also Ninoff v. Hazel Green St. Bank 174 Wis. 560, 183 N.W. 673, where weight was given to the spelling of a name, and the recent valuable case of \textit{In re Creger's Est.}, 274 Pac. 30, Okla. Jan. 1929.

\textsuperscript{16} 178 Wis. 19, 189 N.W. 155. (1922)

\textsuperscript{17} Citing Browing v. Gosnell, 91, 1a. 448, 59 N.W. 340. For other cases in point see infra, notes 32 et seq.
tings the proof or disproof of questioned writings by comparison with standards proved genuine to the satisfaction of the court.\textsuperscript{18} The decision in this case seems to involve a rather strict interpretation of our statute as wholly excluding by implication all writings not so proved as a basis of comparison,\textsuperscript{19} and apparently leaves the law as to extrinsic writings on cross-examination much as it was prior thereto. Of course writings already proved genuine to the satisfaction of the court as standards of comparison under the statute may now be shown the witness on cross-examination, but if he and counsel calling him are alert, he will usually know what writings presented have been so proved, and this is true of other writings "already in the case."\textsuperscript{20} Technical reasons based upon the danger of collateral issues aside, this decision has much to commend it since it prevents the cross-examination from dragging in by the ears a lot of miscellaneous writings, genuine or otherwise, and if genuine purposely disguised, and practically requiring the witness, without adequate time for study and comparison with any standard, mental or physical, to identify or distinguish them practically instantaneously and frequently under light conditions and other surroundings that are abominable for the purpose, or else lose credit with a jury that may suspect him of incompetency or worse. If a capable and conscientious expert may sometimes err under the circumstances the predicament of the lay witness must be considerably worse.\textsuperscript{21} Aside from the argument based upon the danger of collateral issues, a different rule would, as said in \textit{Pierce v. Northey}, "open the door to great frauds and unfairness in the selections to be made. Experiments might be tried and selections made for the very purpose of tricking the witness and the jury. The papers offered here were mere slips, having upon

\textsuperscript{18} See the Wisconsin statute quoted herein as sec. 327.26 and cited in the opinion as sec. 4189a. Stat. 1921. See also the federal statute quoted herein and \textit{McArthur v. Citizens' Nat. Bank}, 223 Fed. 1004, 1008, 139 C.C.A. 380 and infra notes 19, 36 et seq.

\textsuperscript{19} \textit{McArthur v. Citizens' Nat. Bank}, supra; \textit{Fourth Nat. Bank v. McArthur}, 168 N.Car. 48, 84 S.E. 39, Ann. Cas. 1917B, 1054. That statutes of this kind are in derogation of the common law and hence to be strictly construed, see \textit{Franklin v. Franklin}, 90 Tenn. 44, 16 S.W. 557; But see \textit{Fervon v. State} 195 Wis. 416, 217 N.W. 711. Further as to this case see infra, notes 56, 57.

\textsuperscript{20} The phrase "papers in the case" by some authorities includes not only such writings as are properly in evidence for some other purpose than comparison with the disputed writing, but such other writings of the party as are part of the record, as signed or verified pleadings, affidavits or bail bonds, (See \textit{Marquette Law Review}, 128, 129) though some courts exclude the latter as having been made post litem motam. See 22 Corp. Jour. 784, 785. See also Ann. Cas. 1917 B, 1071.

them the name of the party only and these names had been copied by others from his genuine signature by means of colored impression paper. A more naked and wanton trick devised to impose upon the witness and the jury could not well be imagined; and though it was exposed in this case, it shows the danger of receiving such papers in evidence.\textsuperscript{22a} However, where a lay witness has testified that his conclusion is based upon the peculiar definite habit of the party in writing his name it has been held proper to cross-examine him by using writings showing a departure therefrom, and if he pronounces them genuine to ask him if it is not a departure in fact.\textsuperscript{22a} On one or two occasions prior to \textit{Alesch v. Haave}, the writer spent a rather bad few minutes under somewhat similar methods of cross-examination. That he was evidently correct in his answer he is inclined to attribute almost as much to good fortune and the crude methods of the cross-examiner as to any particular expertness on his own part in making offhand identifications and distinctions.

Cross-examination by the use of extrinsic writings is usually unfair, even to an expert, and should not, if the matter is sensibly viewed, tend to weaken or strengthen his testimony in chief by showing his ability or want of it to judge handwritings under proper circumstances and conditions. By this mode of examination the honest and capable expert may be forced to so guard and qualify his opinions as to unproved writings as to materially weaken his testimony in chief, particularly with a jury, since the average jury has little appreciation of the careful study and investigation that the formation of a correct opinion by juxtaposition of writings often involves.\textsuperscript{23} Almost as well test the ability of a medical expert by his ability to diagnose the ailments and ascertain the nature and extent of the injuries of a group of miscellaneous invalids and cripples by a hasty physical examination of them in open court. A competent expert may well err as to the genuineness of a signature made twenty years prior to the questioned one,\textsuperscript{24} or during

\textsuperscript{22a} 14 Wis. 10. The lengths to which trial courts have sometimes permitted cross-examiners to go find further illustration in \textit{Fourth Nat. Bank v. McArthur}, supra, and \textit{Travelers Ins. Co. v. Sheppard}, 85 Ga. 751, 12 S.E. 18.

\textsuperscript{22a} \textit{Young v. Honner}, 2 M. & Rob. (Eng.) 536. See also \textit{Bevan v. Atlanta Nat. Bank} 142 Ill. 302, 31 N.E. 679.

\textsuperscript{23} See the sensible remarks of the trial judge in \textit{Colbert v. State}, 125 Wis. 433, 101 N.W. 423.

\textsuperscript{24} See \textit{Colbert v. State}, supra. The age of a writing has been held not to affect its competency as a standard but only the weight of the testimony based thereon. \textit{Butman v. Christey}, 197 Ia. 661, 198 N.W. 314. Compare \textit{Williams v. Riches}, 77 Wis. 569. It may be interesting to note that the selection by a forger of a model of too early or too late a period, is sometimes his undoing as the investigation of the chronology of the hands of certain writers sometimes shows quite marked changes, particularly in their signatures. See \textit{Marble v. Marbel's Est.}, 223 Ill. App. 524, 304 Ill. 231, 136 N.E. 589.
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exhausting illness, or under unusual external conditions, or while the writer was under the influence of alcohol or drugs. Competent experts decline to give positive opinions even in the first instance unless they have sufficient proper standards and sufficient time for examination to warrant a reasonably safe opinion that can be fairly demonstrated. Since rulings and statutes in nearly all states now give both parties to a handwriting controversy a practically unlimited right to bring in and prove standards of comparison, the need of extrinsic writings to test the opinions of witnesses on cross-examination is considerably diminished.

There is considerable conflict and uncertainty elsewhere as to the competency of writings otherwise irrelevant and not proved or admitted to be genuine, for the sole purpose of testing the knowledge, skill and credibility of a handwriting witness on cross-examination. The great weight of authority seems clearly against it both at common law and under decisions or statutes permitting the comparison of disputed writings with those admitted to be genuine or proved genuine to the satisfaction of the court. In other words comparison may be made, even under statutes of this common type, only with writings shown or admitted to be genuine, and no distinction is usually made between lay witnesses and experts. While it would be interesting to examine in detail the authorities sustaining this view, their full discussion would unduly extend this paper. We must be content, therefore, to call special attention to McArthur v. Citizens' Bank of Norfolk, and to the able and quite exhaustive discussion in Fourth National Bank v. McArthur, both of which sustain the view evidently taken by our Supreme

25 See In re Gordon's Case 50 N.J. Eq. 397, 26 Atl. 268.
26 This matter is considered by states in 4 Wigm. Ev. (2nd Ed.) sec. 2016. See also Id., sec. 2008. Aside from writings post litem mortam the extent of the court's power to exclude or limit proved standards is not subject to any definite rule. As to subpoena or discovery to reach standards in hands of adversary, see infra note 64.
27 See infra, notes 36 et seq.
29 223 Fed. 1004, 139 C.C.A. 380. It was held in this same case that it was not error to refuse to permit a skilled engraver to reproduce defendant's signature in the presence of the jury to show how easily it could be forged. See also Thomas v. State, 18 Tex. App. 313; Holmes v. Goldsmith, 147 U.S. 150, 13 Sup. Ct. 288, 37 L. Ed. 118.
30 168 N.C. 48, 84 S.E. 39, Ann. Cas. 1917 B. 1054. This case, as we have said, well shows the lengths to which trial courts have sometimes permitted cross-examiners to go in dealing with handwriting witnesses. There evidently were both lay and expert witnesses and the trial court permitted them to be interrogated on cross-examination as to certain signatures not in the
Court in *Alesch v. Haave* that statutes substantially like our own exclude by implication all but genuine writings as a basis of comparison with the questioned writing throughout the trial, as well upon cross-examination as upon examination in chief. Many other authorities are given below more or less clearly sustaining the view that extraneous writings, or those not in the case as genuine either at common law, or under statutes or decisions permitting proof of genuineness for the sole purpose of establishing standards of comparison, cannot be used in the cross-examination of handwriting witnesses.\(^{31}\)

case as genuine either incidentally or as proved standards under a statute similar to our own. They were in fact prepared for the occasion by one Lester, an engraver. The Supreme Court said: "Our opinion is that there was error in permitting the witnesses of the plaintiff to be cross-examined with regard to the signatures which were written or engraved by Mr. Lester and exhibited to them through the aperture made in the envelope, without showing them the rest of the paper in which the signature was written it being called in this case, rather facetiously, though not inappropriately, the "cat-hole test." These papers should not have been admitted at all. (The italics are ours.) They tended to introduce collateral questions; to multiply the issues, in fact, though perhaps not in form; to divert the minds of the jurors from the real and only question to be decided; to confuse them in their deliberations and to put the witnesses to an unfair disadvantage and to entrap them unwarily; and also to take the plaintiff by surprise and deprive him of a fair opportunity to know the general nature of the evidence, so that he may prepare to meet it. It tends more to muddy the waters like the cuttlefish, than to advance the purpose for which all judicial procedure is adopted, and that is to conduct the trial so as to establish the truth and to adjudicate rights according to the pertinent and determinative facts, and also to adhere closely to the issue upon which the decision should turn.

\(^{178}\) Wis. 19, 189 N.W. 155. That statutes of this kind are in derogation of the common law and hence to be strictly construed, see supra, note 19.

\(^{31}\) Since it is interesting and may be important to know whether the witness was lay or expert, or was one testifying as to his own hand, the fact as to this is indicated. See *Tyler v. Todd*, 36 Conn. 218 (expert); *State v. Griswold*, 67 Conn. 290, 34 Atl. 1046, 33 L.R.A. 227 (expert), with which compare *Brown v. Woodward*, 75 Conn. 254, 53 Atl. 112, (witness as to own hand); *Wooldridge v. State*, 40 Fla. 137, 38 So. 3 (lay but decision not squarely in point); *Massey v. Farmers' Nat. Bank*, 104 Ill. 327, (lay); *Gaunt v. Harkness*, 53 Kan. 111, 116 Pac. 361 (expert); *Loving v. Warren County*, 1 Ky. L. Rep. 340 (lay); *Andrews v. Hayden*, 88 Ky. 455, 11 S.W. 428 (lay); *Bacon v. Williams*, 13 Gray (Mass.) 525; *King v. Donahue*, 110 Mass. 155, 14 Am. Rep. 489 (lay); *Howard v. Patrick*, 43 Mich. 121, 5 N.W. 84 (lay), with which compare *Johnston Harvester Co. v. Miller*, 72 Mich. 365, 40 N.W. 429, 16 Am. St. 536, (expert); *Rose v. First National Bank*, 91 Mo. 399, 3 S.W. 876, 60 Am. Rep. 258, (declaring rule of exclusion applicable to both kinds of witnesses); *State v. Minton*, 116 Mo. 614, 22 S.W. 808 (lay); *Hilsley v. Palmer*, 32 Hun (N.Y.) 472 (expert); *VanWyck v. McIntosh*, 14 N.Y. 439, (lay); *People v. Murphy*, 135 N.Y. 455 (expert); *People v. Patrick*, 182 N.Y. 175, 74 N.E. 843 (lay),
Among the cases taking a different view of the competency of extraneous writings the genuineness of which had not been admitted or proved, for the purpose of testing a handwriting witness, a leading one is Browning v. Gosnell, decided by one of the courts that appear to put an unjustly low appraisal upon the value of the testimony of handwriting experts, if not upon the testimony of experts generally, or with which compare Hoag v. Wright 174 N.Y. 36, 66 N.E. 579-63 L.R.A. 163 (expert); Fogg v. Dennis, 3 Humph. Tenn. 47 (lay); Thomas v. State, 18 Tex. App. 213 (lay); Sanderson v. Osgood, 52 Vt. 309 (lay?); Wilmington Sav. Bank v. Waste, 76 Vt. 331, 57 Atl. 241 (lay, but same rule declared applicable to expert); First Nat. Bank v. Barker, 75 W.Va., 344 (lay); Alesch v. Haave, 178 Wis. 19, 189 N.W. 155 (lay) Pierce v. Northey, 14 Wis. 10 (lay); U. S. v. Chamberlain, 12 Blatchf. (U. S.) 300. See Hickory v. U. S. 151 U. S. 303, 14 Sup. Ct. 334, 38 L. Ed. 170.

See also Schreiner v. Shanahan, 105 Neb. 525, 181 N.W. 536, excluding extrinsic writings on cross-examination under Rev. Stat. 1913 permitting comparison by experts with standards proved genuine.

The rule in Alabama seems uncertain. In Kirksey v. Kirksey, 41 Ala. 636 apparently affirming the general rule against extrinsic writings, the witness (evidently lay) was shown only part of a signature and asked whose writing it was. The specific objection was not to the writing, but to the disclosure of only part of it. This method of cross-examination was approved, under the specific objection made, though it would seem particularly indefensible. See also First Nat. Bank v. Allen, 100 Ala. 476, 14 So. 335, 46 Am. St. R. 80, 27 L.R.A. 426, where the witness testified to the forgery of his own signature and was tested by other papers (checks) found on the person of the alleged forger purporting to be signed by the witness. Both these cases were prior to the statute permitting extrinsic writings as a basis of comparison. See N.Y. Mut. Life Ins. Co. v. Witte, 190 Ala. 327, 67 So. 263; H. Griffin v. Working-Women’s Home Assn., 151 Ala. 597, 44 So. 536; U. S. v. Chamberlain, 12 Blatchf. (U. S.) 300. See also Schreiner v. Shanahan, 105 Neb. 525, 181 N.W. 536, excluding extrinsic writings on cross-examination under Rev. Stat. 1913 permitting comparison by experts with standards proved genuine.

For the English cases and a review of the American cases see the quite elaborate note to Fourth Nat. Bank v. McArthur, Ann. Cas. 1917B, 1061. See Royal Canadian Bank v. Brown, 27 U.C.Q.B. 41 apparently sanctioning extrinsic tests. A lay witness pronounced signatures forged which were subsequently shown to be genuine. See Griffith v. Ivory, 11 Ad. & E. 322 excluding extrinsic writings on cross-examination. Compare Young v. Howner, 2 M. & Rob. 536 involving peculiar habit as to given name or initials in signature.

91 Ia. 448, 59 N.W. 340.


With such expressions as that the testimony of handwriting witnesses based on comparison "is of the lowest order," (Browning v. Gosnell, supra) or "weak and unsatisfactory," (Patton v. Lund, supra) and the like. (See 22 Corp. Jur. 786, 787) the experts themselves have no quarrel where they are confined to mere unreasoned and undemonstrated opinions. In other cases, however, the testimony of such witnesses when rightly viewed should be deemed to depend for its weight, in general, upon the number and character of the writings examined and compared, and the clearness and cogency with which
more opinion testimony as it is often erroneously called under certain circumstances, by courts taking this unreasonably hostile attitude. 34

their differences, similarities, and peculiarities are pointed out and explained. In many cases the testimony of the expert may amount to such practical demonstration of the facts as must be absolutely decisive of the case. In this connection see Green v. Tervilliger, 56 Fed. 384; Gordon's Case, 50 N.J. Eq. 397; Coleman v. Adair, 75 Miss. 660; Reed v. Warner, 17 L.C. Rep. 491; Boyd v. Gosser, 78 Fla. 64, 82, So. 758; In re O'Connor's Est., 105 Neb. 88, 179 N.W. 401; Fekete v. Fekete, 323 Ill. 468, 154 N.E. 209. In the case last cited it is said: "While opinion evidence based upon hypothesis has been held to be of little value, the opinion of an expert may be of great value where it calls the attention of the court to facts which are capable of verification by the court, which the court otherwise would have overlooked, and the opinion of the expert is based upon such facts and is in harmony therewith." See also the recent valuable opinion in In re Creger's Est. (Okla. Jan. 1929) 274 Pac. 30.

Strange as it may seem to the uninitiated, many cases in which the facts discovered and elucidated by experts have amounted to absolute demonstration, involved typewriting. See People v. Storrs, 207 N.Y. 147, 45 L.R.A. (N.S.) 860, Ann. Cas. 1914C, 196; Gamble v. Second Nat. Bank (Est. of Burt) Mich. Bar Jour. and Mich. L. Jour. Vol. VI. No. 8. No typewritten document dated prior to the middle seventies bears authentic date, and the same is true of any document dated prior to the manufacture of a machine bearing the distinctive type forms appearing therein. Whole pages have been inserted or substituted in typed documents which were plainly the work of a machine not in existence when the original document was written and dated. Broken or otherwise defective type, or other defects in the work have often revealed the very machine upon which a particular document was prepared. See Osb. Prob. of Proof, (2nd Ed.) Chap. XXV. See also Levy v. Rust, (N.J. Eq.) 49 Atl. 1017; State v. Freshwater, 50 Utah. 442, 85 Pac. 447, 116 Am., St. R. 853; Lyon v. Oliver, 316 Ill. 292, 147 N.E. 251 and Dean Wigmore's comments thereon in Ill. L. Rev. for Nov. 1926. In fact an old typewriter is as apt to develop as many identifying characteristics as an old lady or a Ford. See Grant v. Jack, 116 Me. 342, 102 Atl. 38 and the note to Baird v. Shaffer L.R.A. 1918D, 652.

We add from our own experience and for the special benefit of the amateur detective and the short story writer, that a little careful use of proper tools will create such peculiarities in a typewriter as will clearly identify its future work.

34 Our own Supreme Court has had little to say as to the weight to be accorded the testimony of handwriting experts. In Est. of Johnson, 170 Wis. 436, it admits that the battle of the experts was interesting, but adopts the opinion of the court below that the testimony of eye witnesses not otherwise assailed was not to be impeached by the testimony of handwriting witnesses who express opinions only. While the testimony of eye witnesses is entitled to great weight, there is no rule that their testimony, even where they are attesting witnesses, cannot be overcome by that of experts, testifying to facts and giving reasons so significant as to amount to practical demonstration or fall little short of it. An examination of this case including the apparently reliable pictures printed in the report, leaves a feeling of dissatisfaction with the result. For the further history of this case see 183 N.W. 888, 175 Wis. 1.
Here the witnesses were experts and the extraneous writings submitted to them on cross-examination were both genuine and spurious signatures which they were asked to distinguish. They were held competent chiefly upon the authority of Johnston Harvester Co. v. Miller and Traveler's Insurance Co. v. Sheppard. In both of these latter cases the testimony of experts was involved, and in both of them both spurious and genuine writings were admitted as tests on cross-examination. A few other courts have sanctioned similar procedure on the apparent ground that handwriting experts as a class are peculiarly unreliable and that their ability should be searchingly and rigidly tested, through the allowance of great latitude to that end. Even in states where cross-examination by the use of extrinsic and unproved standards is permitted, however, serious peril to the cross-examiner may be involved in its employment. If the witness answers correctly, he invariably strengthens his testimony in chief. Even where his answers are incorrect in whole or in part, methods of this kind may give an impression of unfairness and trickery prejudicial to the cross-examiner, particularly where it appears that the writings used were specially fabricated or disguised for the occasion. "Cat-hole" and peek-a-boo methods with an apparently frank, honest, and intelligent witness are especially apt to create an impression of pettifogging even where they do not otherwise end in the discomfiture of the cross-examiner. Where the spurious writings used are produced by some process of drawing or tracing, a competent expert is quite likely to identify or characterize them quite promptly unless they are very skillfully prepared in spite of the fact that to the ordinary observer they are the

In Ninoff v. Hazel Green St. Bank, 174 Wis. 560, 183 N.W. 673 it was held that while the testimony of expert witnesses is entitled to full fair consideration by the jury, it is, except in a very limited class of cases not bound thereby. Further as to this case see supra, note 15.

72 Mich. 265, 40 N.W. 429, 16 Am. St. R. 536 (Experts.) The papers shown seems to have been already in the case though one of them was written by a third person whose signature was not in issue.

85 Ga. 751, 12 S.E. 18. The syllabus, which accurately reflects the ruling in this case, is as follows: "Witnesses who have testified as experts in handwriting may be cross-examined in any appropriate way, to test their skill. Writings and parts of writings, no matter by whom written, may be exhibited to them for their opinion as to the identity of the handwriting with that in question, and neither the witness nor the opposite counsel is entitled to know what writings will be used for this purpose, or whether they are genuine or not, or by whom they were written."

See Travelers Ins. Co. v. Sheppard, supra; Thomas v. State, 103 Ind. 419, 2 N.E. 808 (expert); First Nat. Bank v. Allen, 100 Ala. 476, 14 So. 335, 46 Am. St. R. 80, 27 L.R.A. 426, party. See as party testifying as to own hand supra, note 49. See also Kirksey v. Kirksey, 41 Ala. 626 where only part of a signature was shown to a lay witness.
genuine writings of the one whose hand is in dispute. However, if the generally prevailing rule that extrinsic or unproved writings are incompetent on cross-examination is to be relaxed, it should be as against the expert rather than the layman under ordinary circumstances. Some of the cases that appear to be otherwise indistinguishable, may be reconciled by reference to the expert or non-expert character of the witness. Relaxation of the rule, even against the expert, however, can apparently be justified solely on the basis of the general rule that in testing the qualifications and reliability of experts, and particularly handwriting experts, much latitude of cross-examination should be allowed. However, the method of cross-examination in question,

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38 See Osb. Ques. Doc. (2nd Ed.) Chapters XVII and XIX as to simulated or copied forgeries and traced forgeries. See particularly Boyd v. Gosser, 78 Fla. 64, 82 So. 758 as to traced forgeries. See also 3 Jones, Ev. (Horwitz Ed.) sec. 553 as to absolute as distinguished from characteristic identity as indicating traced forgery.

39 In Andrews v. Hayden's Admr. 88 Ky. 455, 11 S.W. 428 where writings prepared by an experienced expert were presented to test a lay witness on cross-examination it was said: "They were executed with such skill as to deceive any ordinary observer, or those having no other experience than their familiarity with their neighbor and his handwriting. Such writings should have been excluded, because tending to obstruct the proper administration of the law, and deceiving, by skill of their execution, the minds of honest men." See also Wilmington Sav. Bank v. Waste, 76 Vt. 331, 57 Atl. 241 and cases cited, in the next note below.

There may be some doubt as to who should be classed as lay witnesses, or as experts. It has been held, however, that experienced bankers, testifying from just position are experts as to whom wide latitude of cross-examination should be allowed. Adams v. Ristine, 138 Va. 173, 122 S.E. 126, 31 A.L.R. 1413. This case apparently makes no distinction in this respect between the so-called practical expert and the scientific expert or professional document examined. The former is rather more prone than the latter to give offhand opinions. See also In re Creger's Est. (Okla. 1920).


For conflicting decisions in New York prior to the above, see the note to Ann. Cas. 1917B, 1073. See also infra., note 49.


41 2 Jones, Ev. (Horwitz Ed.) sec. 338; Hoag v. Wright, supra, Adams v. Ristine, supra, containing valuable suggestions as to the scope of cross-examina-
even with an expert in the strict sense, involves all the dangers and evils of multiplication, obscuration, and befuddlement of the main issues that exist where the witness is a layman since this mode of cross-examination would clearly avail nothing unless evidence of the authenticity or otherwise of the extrinsic writing is admitted to show that the witness made a mistake. Indeed it is the very multiplication, obscuration, and befuddlement that counsel employing this method seek to create, particularly in a desperate case. The dominant idea is not to test the witness but raise a smoke screen between the jury and the facts. Even where cross-examination by the use of extrinsic writings is permitted the court should have considerable latitude as to the extent to which it shall be carried and the manner in which it shall be exercised. The witness, if an expert, should be given such reasonable time and opportunity to examine and compare the extrinsic writings with the other writings in the case as the exigencies of the trial will permit, though a mere request for it may tend to weaken his honest, well-reasoned and really correct opinion in the minds of the jurors, who frequently have little appreciation of the painstaking and sometimes laborious processes whereby competent experts reach their conclusions in all but very plain cases. If reasonable time is requested but cannot be allowed, the witness should not ordinarily be compelled to answer at all.

Another apparently valid objection to the competency of extrinsic unproved writings on cross-examination is, that the party whose writing is in dispute may make the test writings himself in a purposely disguised or unnatural hand, and then, if the witness pronounces them spurious and does not admit his error, prove their genuineness by other testimony and thus get them before the jury as genuine, writings made post litem motam, in spite of the generally recognized and highly reasonable view that such writings are apt to be self serving and not a true reflection of the writer's real habits they are not admissible as standards of comparison unless offered or elicited by the opposite side. See also Brown v. Woodward, and other cases cited infra., note 49.


We believe that the rule adopted in *Alesch v. Haave* is on the whole the safer and better one regardless of the fact that it is supported by the great weight of authority, and in spite of the apparently contrary view of Dean Wigmore, in spite of the fact that in some special cases a greater latitude of cross-examination seems quite desirable. Usually these will be cases where the so-called expert expressly or impliedly asserts ability to do more than seems reasonably or humanly possible, as to make identifications or distinguish the spurious offhand or practically instanter in much the manner of a bank teller dealing with the checks of a depositor, to determine more than relatively in most cases the age of ink upon the paper, or where he declines or is unable to give any reasonable grounds for his opinion. That a witness qualifies in the ordinary manner of an expert, however, or that his expert qualifications are admitted, should of course not be taken as an implied assertion of extraordinary powers distinguishing him from the generality of his kind. The graphologist, or one who claims to be able to tell from the character of a handwriting alone whether a given penman is characterized by benevolence or avarice, or has chronic trouble with his bowels, seems not yet to have invaded our courts. However “the world do move,” and graphology, like the bottle high up and away back on the Deacon’s closet shelf, may possibly have “a little something in it.”

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*Nat. Bank*, 104 Ill. 327, quoting 1 Whart. Ev. sec. 715; *Wilmington Sav. Bank v. Waste*, 76 Vt. 331, 57 Atl. 241. Even where such writings must come in, it would seem that the court should have power to keep them out of the hands of the jury. See, however, *Royal Canadian Bank v. Brown*, 27 U.C. 2. B. 41. See also the note to *Grabibrill v. Schooley*, 63 L.R.A. 441.

*4 Ev. (2nd Ed.) sec. 2015.

*“See Groff v. Groff*, 309 Pa. 603, 59 Atl. 65 where this mode of cross-examination was sanctioned with a lay witness asserting powers of positive identification. See also Osb. Ques. Doc. (1st Ed.) 28.

*“See *In re Bromley’s Est.*, 219 N.Y.S. 701. While the extrinsic papers used here would perhaps have been competent under *Hoag v. Wright*, 174 N.Y. 35, 66 N.E. 57063 L.R.A. 163, they would doubtless be regarded as competent even in states where extrinsic writings are generally excluded. They were court records of known age presented to the witness, not to test his ability to identify or distinguish writings by comparison of hands, but to test his asserted ability to determine the age of ink with respect to the several signatures upon a questioned will. The witness refused to give an opinion when confronted with this test.

*“See Ost. Ques. Doc. (2nd Ed.) XXIV. The true expert recognizes that even the matter of sex cannot in many cases be determined with much certainty by the character of handwriting alone. Speaking very generally, however, the writing of anonymous letters is a feminine rather than a masculine trick, particularly where they have a sexual coloring or background. Those of the really threatening or Black Hand type are more apt to have masculine origin.
A number of cases hold that a witness testifying as to his own writing may be tested by extrinsic writings, and the airy nonchalance with which some witnesses positively deny their own signatures, particularly where their personal interests are at stake, often renders extrinsic tests of their ability to identify their own writing quite desirable.

All, or nearly all, the cases in which cross-examination by the use of extrinsic unproved writings has been sanctioned are cases where it was permitted at the trial. Had their use been denied, it is fair to assume that reversal would not have ensued for that reason unless it appeared that there was a plain abuse of discretion.\textsuperscript{49a}

\textit{Alesch v. Haave}\textsuperscript{50} seems quite clearly to establish the same rule of cross-examination for experts as well as lay witnesses, since it cites with evident disapproval \textit{Browning v. Gosnell},\textsuperscript{51} decided by court in which the poor unfortunate handwriting expert seems utterly without judicial friends.\textsuperscript{52} In \textit{Colbert v. State},\textsuperscript{53} miscellaneous unproved writings were presented on cross-examination to an expert, Mr. Tyrrell, called by the state. He very properly declined to express an opinion as to them unless given time for their careful examination. The trial court sustained him. This case is not in conflict with \textit{Alesch v. Haave}, since no objection was made to the use of the writings themselves, but only to the way in which the defendant insisted that the witness should deal with them.

We take advantage of this opportunity to touch upon a few additional matters not germane to the principal purpose of this article principally for the purpose of covering such decisions of our Supreme Court as have not been noticed in the preceding pages or in the earlier article in the \textit{Review}.

In \textit{Ninoff v. Hazel Green St. Bank}, the Supreme Court, examined

\textsuperscript{49a} As to anonymous letters generally, see Osb. Prob. of Proof, (2nd Ed.) Chap. XXVI, Osb. Ques. Doc. (2nd Ed.) Chap. XXIII.


\textsuperscript{52} See supra, note 33.

\textsuperscript{53} \textit{Colbert v. State}, 125 Wis. 423, 104 N.W. 61.
for itself the writings involved to ascertain whether a judgment upon a verdict should stand. This case is further considered above.49a

Magnuson v. State44 affirms the generally accepted rule that the handwriting expert may give reasons for his conclusions. Whether he gives them or not, he may undoubtedly be fully cross-examined with respect to them.55

In Fenelon v. State56 the expert was permitted to testify from a photograph of a will, after it was shown to be a true and reliable reproduction, the original will having been subsequently lost, or else abstracted from the files, and probably destroyed. This case contains some general discussion of the admissibility of photographs in questioned document cases, and quite clearly indicates that the future attitude of our own courts will be liberal respecting them in view of the present high state of the photographic art.57

54 187 Wis. 122, 203 N.W. 749. This case has unusual interest as showing what science can do in the detection and proof of crime, through the discovery and elucidation of physical facts. Further as to this case see the valuable paper by Prof. J. H. Matthews in the Report of the Wisconsin State Bar Association, June 1924. Further as to this case see supra, notes 13, 15.

55 In addition to the cases cited in the Magnuson case see 22 Corp. Jur. 786; 1 MARQUETTE LAW REVIEW 139, note 82. In Venuto v. Lizzo, 148 App. Div. 164, 32 N.Y. Supp. 1066, judgment was reversed because the expert, though permitted to give his reasons, was so harassed and bedeviled by opposing counsel that he was unable to do so in a clear and continuous manner. See also Johnson Service Co. v. McLernon, 127 N.Y. Supp. 432, 142 App. Div. 667 and the notes to 63 L.R.A. 166 and L.R.A. 1919D, 647.

56 195 Wis. 416, 217 N.W. 711. See note to 31 A.L.R. 143 as to photographs of inaccessible writings. See also Brown v. McKelvey, 59 Wash. 115, 109 Pac. 337, where experts were permitted to testify from comparison of genuine signature with their recollection of the alleged forgery, where the adverse party failed to produce it. See also Murphy v. Murphy, 146 Ia. 255, 125 N.W. 191.

57 In view of the high perfection of the modern photographic art, there is now comparatively little controversy as to the admissibility of photographs, enlarged, grouped or otherwise, provided their accuracy and fairness is proved to the satisfaction of the court, to aid the expert in disclosing and illustrating the facts with respect to the writings involved, such writings being actually before the court. Further on the subject of photographs generally see Osb. Ques. Doc. by reference to the index titles and the valuables case of Adams v. Ristine, 138 Va. 273, 122 S.E. 126, (19) and the note thereto in 31 A.L.R. 1436; 2 Wigm. Ev. (2nd Ed.) p. 106; MARQUETTE LAW REVIEW 125.

The Fenelon case shows quite clearly at least one of several cogent reasons why a document, the moment it is questioned, or is likely to be questioned, should be promptly and properly photographed. See Osb. Prob. of Proof, index title, Photographs; Osb. Ques. Doc. (2nd Ed.) Chap. VI.

In the Magnuson case, no question was raised above as to the use of enlarged photographs. These were in fact quite freely used at the trial.

There seems occasionally to be a little professional or quasi professional folderol in the use of instruments and enlarged photographs in document cases,
Further advantage is taken of this opportunity to say that the great service that a competent document examiner may render to individuals and the community is not wholly appreciated by some of the legal profession, and not always by the courts. The very knowledge that such a person has been employed often leads to the compromise or withdrawal of fraudulent or other unfounded claims, or stops the flow of obscene, threatening, or otherwise objectionable writings that scandalize or terrorize individuals or even entire communities. His findings may point out, even though they may not directly convict, the guilty party, or relieve the innocent from suspicions that might otherwise involve loss of reputation or employment or the disruption of the dearest social and domestic ties. No honest lawyer wishes to prosecute or defend contrary to justice and right; and the timely employment of an expert often saves him the mortification of so doing. Nor is there the almost

since the essential facts often lie practically upon the surface, so that their employment seems much like using a microscope to discover and reveal the bare fact that there are holes in Sweitzerkae. Still, the use of such things is often necessary, not merely to discover the facts in the first instance, but as aids to the sight and understanding, particularly in jury trials. The time seems near, even if it has not arrived, where the exclusion of photographs fairly necessary to a proper presentation of the case will constitute reversible error as being tantamount to a refusal to permit the witness to give reasons for his opinion or present the actual physical facts. In the present high state of the photographic art the older cases excluding photographs in document cases should be relied upon with great caution. Many of them go upon failure to adequately prove the reliability and accuracy of the pictures offered, rather than upon the incompetency of photographs generally. For a liberal citation of older authorities see Fourth Nat. Bank v. McArthur, cited supra, note 29. See also 2 Wigm. Ev. (2nd Ed.) sec. 797; 31 A.L.R. 1436, and note reviewing the cases.

As sanctioning use of chart or blackboard by an expert to illustrate and explain his testimony, see McKay v. Lasher, 121 N.Y. 477 24 N.E. 711; Johnson Service Co. v. McLernon, supra; State v. Ryno, 68 Kan. 348, 74 Pac. 114, 64 L.R.A. 303. But see Groff v. Groff, 209 Pa. 603, 59 Atl. 65.

Anonymous letters are sometimes found to be the work of mere children, or of practical jokers or other nit-wits or of the insane. In other cases they are not only of very serious purport but of very ominous import as being the forerunners of the gravest crimes or attempts. As a general rule it is not well to destroy anonymous letters, at least where anything serious may be involved, since one anonymous writing may be followed by others, and it is usually much easier to trace and identify the author of a series of such writings where all of them are available.

As to the early employment of an expert, see 1 Marquette Law Review 141, quoting 3 Wigm. Ev. sec. 2011. See also Osb. Prob. of Proof, particularly chapters I, II, IX. Equally important in most cases is the procurement of proper standards of comparison. This may be a difficult and sometimes a very delicate task as to which the suggestions of a competent expert may be of great value. Often questioned writings are submitted almost on the eve of trial
invariable conflict between the findings or opinions of document experts that is supposed to exist by those who gather their impressions from newspaper accounts of some close, doubtful, sharply contested, and ill-reported case. Many cases never reach the courts because of the absolute concurrence of experts themselves even where they are employed by opposite sides, and many a forger or other offender has plead guilty, absconded, or stood practically undefended, for the want of expert aid as against the facts. Document experts stand in no greater need of the administration of “truth telling serum” or of being “put under the rule” than do experts of any other class. Unlike the alienists and psychopathists commonly, or the ordinary medical witness in many cases, the document expert does not usually testify hypothetically in the ordinary or usual sense, but from examination and comparison of things physically before the court, the facts as to which are usually capable of complete verification in detail. In many cases it is both illogical and dangerous to assign his testimony to the category of “mere opinion.” Frequently there is little or no hope of proving the actual facts save by the aid of experts. The hostile attitude that a few courts still show toward them tends to impede or obstruct justice as against the forger and his ally, the perjurer, who often work together as harmoniously as the fingers of the same mischievous hand in the perpetration of the grossest frauds or other public outrages or private wrongs. The courts are increasingly inclined to reclassify and reappraise the testimony of document experts, assigning it in proper cases to the category of fact testimony, or perhaps more properly to the category of testimony revealing the unalterable physical facts which

accompanies by standards that are so deficient in number and unsuitable in kind that it is impossible to base a safe opinion thereon, or to demonstrate any opinion that may be formed, even were sufficient time available for proper study and examination. See the remarks at the close of the opinion in Plymouth Sav. and Loan Assn. v. Kassing (2nd App.), 125 N.E. 488.

See State v. Hudson, (Mo.) 289 S.W. 920 where the court is wittily skeptical as to the existence of any well or fountain from which this remarkable and much needed serum can be drawn. If it has the virtues claimed for it some people ought to carry it on the hip.

“The most silent and at the same time the most vociferous evidence proves to be the tail of a comma. . . . Silent circumstances without power to change their attitude, or to make explanations, or to commit perjury, speak more powerfully and truthfully in court than animate witness.” In re Oliver’s Will, 214 N.Y. Supp., 154 (1926).

This case will be found highly interesting even to those in search of mere entertainment. Probate of the will was refused in Feb., 1926. Wm. A. Weeks, a witness, confessed after conviction of forgery, implicating the other witness, Nellie Drummond, and Cowles, the chief beneficiary. Sentence suspended for the others. Cowles pleaded guilty. Eight to fifteen years in Sing Sing.
courts and juries without their aid would be unlikely or powerless to
discover, but which, when properly shown, speaks truthfully a lan-
guage that all can understand. Contrary to the spirit and pronounce-
ments many of the older authorities, such expressions as "comparison
of hands," or, "mere opinion based on comparison of hands," are no
longer generally used as a sort of dignified legal kuss phrases judicially
employed to express somewhat the same degree of pain, disgust, and
annoyance as "Oh, sugar!" when erupted by a Sabbath-school super-
intendent who has seated himself on a tack. Some of this impatience
of expert handwriting testimony, however, is still occasionally dis-
played. However, it is not the purpose of this article even incidentally to sing the orisons of the document experts or shower them
with confetti, but to ask, incidentally at least, that they be accorded
fair and rational treatment. The honest and able among them will
take care of themselves, while the others will usually be adequately
dealt with by the sometimes tardy operation of that law which decrees
the survival of the fittest.

In conclusion attention is called to section 327.22 of our statutes. If
properly invoked this may cast upon a party who denies or refuses to
admit the facts with respect to a document the expense of proving
them, and also to our discovery statutes which it may sometimes be
necessary to invoke in handwriting cases.

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See the summary to the notes to Baird v. Shaffer, in L.R.A. 1916D, and
supra, note 33.

578 and Iowa cases and Springer v. Hall, 83 Mo. 693. There is nothing in the
opinion to indicate how far the attitude of the court may have been justified.

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See the recent case of In re Creger's Est. (Okla. 1929), where the court goes
as far as seems necessary in this direction, distinguishing pretty clearly between
the practical expert who is often a bank teller or small town banker, and the
scientific expert.

The adverse party may be compelled to bring in standards of comparison
by subpoena duces tecum. See Hancock v. Snyder, 101 W. Va. 536, 133 S.E.
131.

It sometimes happens that the only available or reliable standards are in the
hands of the adverse party, or that having possession and control of standards,
he may produce only such of them as serve his own case. It is also highly
important that study and comparison be made before trial. Discovery and
inspection of standards as well as the disputed writing itself may usually be
compelled before trial in probably all the states. See Wis. Stat. secs. 326, 12, 327
21. The section of the New York statutes corresponding to sec. 327. 21 expressly
sanctions the taking of photographs. See also special statutes in Georgia and
Illinois as to inspection of standards in questioned document cases.