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Excerpts and Comments on Testimony by Document Examiners in Regard to *State of New Jersey v. Bruno Richard Hauptmann*

REFERENCE: Osborn, P. A., **"Excerpts and Comments on Testimony by Document Examiners in Regard to *State of New Jersey v. Bruno Richard Hauptmann,*"** *Journal of Forensic Sciences*, JFSCA, Vol. 28, No. 4, Oct. 1983, pp. 1049-1070.

ABSTRACT: Eight questioned document examiners from different parts of the country conducted individual studies and comparisons of questioned writing and printing on fourteen anonymous ransom notes with known specimens of writing by the defendant Bruno Richard Hauptmann. Testimony was given at the Lindbergh kidnapping trial, held in Flemington, NJ in 1935, identifying the notes as having been written by the same person and that that person was the defendant. No other case in the history of the country had produced so many individuals who testified on the identification of handwriting. The international publicity of the trial and the importance of the identification of the ransom notes also made this case one of the milestones in the history of forensic document examination. This paper describes certain highlights of the testimony rendered by the eight document examiners. Without delving into the evidence itself, it illustrates and compares the procedures, methods, and terminology of the different witnesses on both direct and cross-examination. It shows the high degree of skill and preparedness by well-qualified document examiners and should be an inspiration to experienced practitioners as well as an education to students in the field of questioned documents today.

KEYWORDS: plenary session, criminalistics, Lindbergh kidnapping case, testimony

On 5 Jan. 1935, a trial began in Flemington, NJ that the entire nation and, undoubtedly most of the world, followed with intensity and fascination seldom, if ever, paralleled. It was a trial resulting from a heinous crime committed upon a young man and his family. Atrocious as the crime was, the sadness and disgust it evoked from the nation was magnified a hundredfold, as the child-victim's father had just a few years previously become a tremendously popular national and world hero. Such was the situation when Bruno Richard Hauptmann was brought to trial for the kidnapping and murder of the infant son of Charles A. Lindbergh.

During the course of this trial, eight examiners of questioned documents testified for the prosecution. Each of these men rendered a definite opinion that one, the fourteen questioned ransom notes were written by the same individual and two, that all the handwriting was that of the defendant.

Certainly, no single case in the history of the country had ever produced so much testimony, by so many individuals, on the identification of handwriting. The importance of the identifications, as part of the state's case, was perhaps best described by the defendant

Presented at the Plenary Session, 35th Annual Meeting of the American Academy of Forensic Sciences, Cincinnati, OH, 15-19 Feb. 1983.

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Hauptmann himself, who at one point during the trial said, "Dot handwriting is the worstest thing against me."

The eight document examiners were men from different parts of the country bearing high qualifications and recognized as authorities in this scientific field (Fig. 1).[2] However, the problem of identifying the handwriting was a difficult one and their position was under careful scrutiny. At that time, many more people than today had never heard of a handwriting expert. In all probability, this was equally true of the twelve jurors hearing the case.

Furthermore, it is only natural for two people to interpret most things in varying degrees and to express their reasoning for an opinion in different ways. Another difficulty here was a problem having many ramifications which eight different people were going to interpret and explain in their own manner. Certainly, on direct examination and even more so under astute cross-examination, one would expect contradictions and differences of interpretation on particular aspects of the problem. Of course, such differences would expectedly be magnified by the defense and termed as inconsistent testimony by biased, paid witnesses.

It was clearly apparent that the regard toward this relatively little known profession would be greatly influenced by the excellent or poor testimony of the document examiners at this trial. Their efforts could either be applauded as convincing demonstrations of factual proof, or else set recognition of the science back to the way it was regarded 30 years before this time.

Even if these witnesses for the prosecution did well, there was still another serious aspect concerning testimony on the ransom notes. What would be the reaction of the public and the legal profession to this science after the defense had 14 "expert" witnesses on handwriting identification also testify, giving diametrically opposite conclusions? The document examiners for the prosecution were well aware that the defense did have no less than 14 such witnesses on hand. Naturally, they were deeply concerned over the possible repercussions that could develop toward the profession as a whole if so many experts could disagree on the same matter.

The record of the trial is the best testimonial to the document examiners who appeared for the state. Greater recognition of the science and its continued progress since this case are in no small way directly a result of the ability displayed by the prosecution's eight document examiners. When one studies and compares the testimony of each of these witnesses, it is an education and instruction in itself on how a handwriting expert should present evidence to a court. It beautifully illustrates preparedness for expected and unexpected examination questions, and testimony rendered in a most convincing yet unbiased manner.

The testimony of all eight document examiners is an exemplification of parallel competentness. Yet, it is naturally quite varied in personal means of expression and methods of description toward persuading the jury to interpret correctly the evidence. The witnesses' expressed reasons for opinion were quite parallel even though their personalities were obviously different. Furthermore, the closely similar attitudes and alertness of each witness to various situations ... and to the jury ... is inspiring to anyone who is aware of what is commonly described as "courtroom tactics."

The purpose of this article is to comment on a number of the highlights in the testimony of these document examiners. An attempt has also been made to illustrate and compare differences in direct and cross-examination techniques on the part of the witnesses. Little comment has been made concerning the intricacies of proof or photographic illustrations that were produced.

Stating the Opinion

After describing their qualifications, each document examiner expressed the definite opinion that all 14 ransom notes were written by one individual. This was the first part of the

[2]In order of their appearance: Albert S. Osborn, New York City; Elbridge W. Stein, New York City; John F. Tyrrell, Milwaukee, WI; Herbert J. Walter, Chicago; Harry E. Cassidy, Richmond, VA; Wilmer Souder, Washington, DC; Albert D. Osborn, New York, NY; and Clark Sellers, Los Angeles, CA.

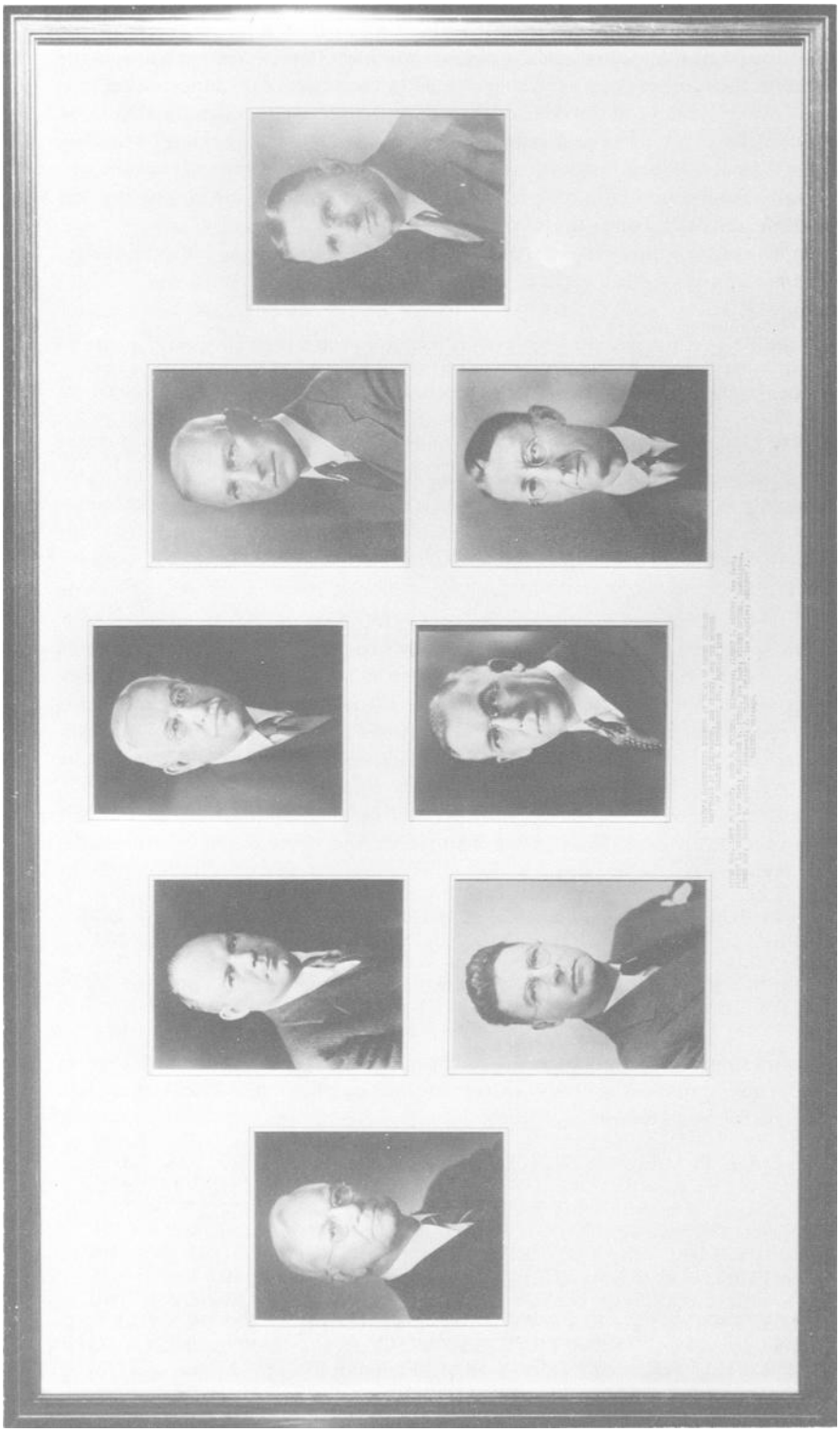

FIG. 1—*Examiners of questioned documents who testified on behalf of the State of New Jersey in* State of New Jersey v. Bruno Richard Hauptmann. *From left to right, top row: John F. Tyrrell, Albert D. Osborn, Albert S. Osborn, Elbridge W. Stein, and Wilmer Souder. From left to right, bottom row: Harry E. Cassidy, Clark Sellers, and Herbert J. Walter.*

problem they were asked to determine, if possible. Secondly, each testified that in his opinion this unknown handwriting could be definitely identified as that of the defendant.

It should be mentioned that each of the document examiners first expressly identified the unknown writing in the ransom notes as "being written by the writer of the known standards (or specimens)." They did not call the defendant by name in making the identification. The purpose, of course, for this kind of answer is to negate any thoughts on the part of the jury that the witness is biased toward the particular defendant. It indicates instead that the witness is emotionally unconcerned with the particular defendant or crime, but is simply giving the results of technical studies on material presented to him.

A good example was the opinion expressed by Mr. Harry Cassidy who, by his terminology, no one could consider a prejudiced witness.

Q. Who in your opinion is the writer?
A. THE SAME PERSON WHO WROTE THOSE REQUEST WRITINGS AND THOSE STANDARD, OR CONCEDED WRITINGS, I BELIEVE YOU CALLED THEM HERE IN THE COURTROOM, IS THE SAME PERSON WHO WROTE ALL THOSE RANSOM NOTES.
Q. If Bruno Richard Hauptmann wrote the request writings and the genuine writings, your opinion of the writer of the ransom notes is whom?
A. IF MR. HAUPTMANN WROTE THE REQUEST WRITINGS AND THE STANDARD WRITINGS, I *FEEL COMPELLED*[3] TO SAY THAT HE WROTE THOSE RANSOM NOTES.

Opening Statements

The beginning statements of each witness's testimony varied considerably. However, this was greatly a result of the different circumstances under which they were testifying. The first document examiners to appear before the jury gave detailed, objective opening statements concerning their particular reasons for the opinion expressed. This was also true of the testimony of Mr. Clark Sellers who was the eighth and final document examiner to appear for the prosecution.

Mr. Sellers' testimony can be described in no other way but magnificent in completing this episode of the prosecutor's case. After giving his opinion and being asked to express the reasons for his opinion, Mr. Sellers began:

> THE COMBINATION OF IDENTIFYING SIMILARITIES THAT I FOUND IN THE DESIGN OF THE LETTERS IN THESE DOCUMENTS, AND IN THE USE OF RARE AND ODD FORMS, AND IN THE MANNER OF WRITING, WITH NO FUNDAMENTAL DIFFERENCES, ARE OF SUCH A NATURE THAT I AM IRRESISTIBLY LEAD TO A POSITIVE CONCLUSION IN THIS CASE.

Some of the writing in the ransom notes showed obvious attempts at disguise. Mr. Sellers completed his opening statement in giving the reasons for his opinion by a brief explanation of disguised handwriting, as follows:

> ... IN THE FIRST PLACE, THE WRITER, TO DISGUISE HIS WRITINGS, MUST HAVE A THOROUGH KNOWLEDGE OF HIS PECULIAR HANDWRITING CHARACTERISTICS, AND IT HAS BEEN MY EXPERIENCE THAT MOST PEOPLE DO NOT HAVE A KNOWLEDGE, A THOROUGH KNOWLEDGE, EVEN OF THEIR OWN PECULIAR HANDWRITING CHARACTERISTICS. AND IN WRITING, THE PERSON WHO ATTEMPTS TO DISGUISE HIS WRITING, TO GET RID OF HIS OWN PERSONALITIES AND PECULIARITIES, IS LIMITED TO HIS OWN HANDWRITING ABILITY. HE IS LIMITED TO HIS OWN MENTAL CONCEPT OF HIS OWN HANDWRITING HABITS. AND, I THINK THAT IS EXACTLY WHAT HAPPENED IN THIS CASE; I THINK THAT MR. HAUPTMANN STARTED OUT IN THIS FIRST LETTER

[3]Author's underline.

TO LABORIOUSLY DISGUISE HIS HANDWRITING AND, AS HE PROGRESSED FURTHER IN THAT LETTER AND ALSO WITH THE OTHER LETTERS, HE DISGUISED HIS HANDWRITING (in various amounts). BUT MANY TIMES HE LET DOWN, SO THAT I AM CONVINCED THAT HE DID INCORPORATE MANY OF HIS OWN PECULIAR HANDWRITING CHARACTERISTICS IN THESE RANSOM NOTES TO SUCH AN EXTENT THAT THERE IS NO DOUBT BUT THAT HE WROTE THEM.

This opening statement was given without any reference to prepared photographic charts. Mr. Sellers then continued his testimony, after photographic comparisons had been admitted into evidence, by stating:

I WOULD LIKE TO SAY, YOUR HONOR, THAT THESE PHOTOGRAPHS THAT I HAVE HERE DO NOT PURPORT TO GIVE ALL OF THE REASONS FOR MY CONCLUSION BUT MERELY MY METHOD OF REASONING IN REACHING THE CONCLUSION.

OF COURSE, THE IDENTIFYING CHARACTERISTICS IN HANDWRITING ARE THE SAME AS THEY ARE IN A PERSON OR IN AN AUTOMOBILE OR A FINGERPRINT; COMPOSED OF THE INDIVIDUALITIES, AND OF COURSE IF PEOPLE WROTE A PERFECT HANDWRITING WE WOULD ALL WRITE ALIKE.

BUT THE EXTENT TO WHICH EACH ONE OF US VARIES FROM A COPY-BOOK OR A STANDARD OF PERFECTION, TO THAT EXTENT OUR HANDWRITING BECOMES INDIVIDUAL. AND THE MORE IT VARIES FROM A COPY-BOOK STANDARD, THE MORE PECULIAR IT BECOMES AND THE MORE INDIVIDUAL IT BECOMES. AND THIS HANDWRITING OF MR. HAUPTMANN AND HIS HANDWRITING IN THESE ANONYMOUS DOCUMENTS ABOUND IN VARIATIONS AND DIFFERENCES FROM THE COPY-BOOK STANDARD OF WRITING ... TO SUCH AN EXTENT THAT VERY OFTEN IN THE HANDWRITING OF MR. HAUPTMANN, AS THE LETTER STANDS ALONE, I AM FREQUENTLY UNABLE TO READ THE LETTER, AS THIS LETTER "t" AS IN THE WORD ... (etc.)

Naturally, all of the document examiners did not present the introduction of their reasons for opinion in just the same manner. In fact, several of the witnesses were not given the opportunity to make a detailed opening statement. In contrast to Mr. Sellers' beginning was the testimony of Mr. Harry E. Cassidy. Mr. Cassidy, on the eleventh day of the trial, was the fifth document examiner to appear before the jury and testify on this same technical subject. The jurors were undoubtedly well saturated at this point with unfamiliar handwriting identification terms, with the basis for identifications, with logical reasonings of experts, and so forth.

Attorney General David T. Wilentz, Acting Prosecutor, could not have used a better witness at this point of the trial. Mr. Cassidy, a man whose wit and humor were often paralleled by his associates and friends to that of Will Rogers, was obviously aware of what must have been a tiring attitude of the jury towards document examiners. Mr. Cassidy gave his opinion concerning the identification of handwriting in the ransom notes, and after being asked to give his reasons for opinion, using whatever illustrations he had prepared for this purpose, began as follows:

THERE WON'T BE A THING THAT I CAN SHOW THAT HASN'T ALREADY BEEN SHOWN. I HAVE BEEN IN THE COURTROOM PART OF THE TIME AND MY EVIDENCE HAS BEEN SHOT ALL TO PIECES; IT HAS BEEN ABSORBED!

There are few men in any profession who have the ability to understand an unusual situation and forego their own personal efforts and attention on themselves in the manner that Mr. Cassidy began to do at this trial. Yet, his testimony that followed this opening statement, although brief, was undoubtedly highly influential to the jury. Mr. Cassidy, in the plainest language, made certain identifications in such an irresistable manner it was practi-

cally useless to try and contradict them on cross-examination. But, Mr. Cassidy was diligently cross-examined. Many of his answers (the highlights of which will be described in this article), I am sure only more deeply imbedded in the minds of the jury his reasons for the identification given on direct examination.

Concluding Statements of Direct Testimony

A very important part of a document examiner's direct testimony, or for that matter any testimony that calls for a detailed, continuous explanation, is the manner in which it is finished. It should be a completion of the entire thought or reasoning, tying together all the individual circumstances and evidences that were previously expressed in separate detail. In such a way, each juror reflects back to the preceding testimony, and *in his own mind* combines all these individual facets toward the identity, thus recognizing the strength of reasoning supporting the identity.

Mr. Elbridge W. Stein, who was the second document examiner to appear for the prosecution, went into a detailed concluding statement that covered not only the identities, but also an explanation of what could be expected of disguised writing and what could be expected of imitated writing. Plainly, the reason for this was because Mr. A. S. Osborn had been closely questioned on cross-examination regarding the possibility that either the ransom notes were disguised beyond detection or that they could be clever imitations of the defendant's handwriting.

Mr. Stein completed his direct examination in the following manner.

> ... NOW, THESE VARIOUS MODIFICATIONS OF ALL THESE LETTERS TO WHICH I HAVE CALLED ATTENTION, IN MY JUDGMENT ARE MORE SIGNIFICANT AS CONNECTING THE WRITING IN THE HAUPTMANN WRITING AND THE WRITING IN THE RANSOM NOTES THAN IF THEY WERE JUST ONE PECULIAR FORM. IN ADDITION TO THAT, THESE MODIFICATIONS OF ALL OF THESE VARIOUS LETTERS, AND MODIFICATIONS OF PECULIARLY MADE LETTERS, IN MY JUDGMENT, REMOVE STILL FURTHER AWAY THE POSSIBILITY OF AN IMITATED WRITING. WHEN ALL OF THESE THINGS ARE CONSIDERED IN THEIR ACCUMULATED EFFECT, AND IN MY JUDGMENT GIVEN THEIR PROPER INTERPRETATION, I AM *FORCED TO CONCLUDE*[4] QUITE POSITIVELY THAT THE WRITER OF THE HAUPTMANN WRITING WAS THE WRITER OF THE RANSOM NOTES.

Mr. Herbert J. Walter, on the third continuous day the jury heard testimony of document examiners, quite obviously shortened his testimony on direct examination. His concluding statements were as follows:

> ... AND, IN COMING TO A CONCLUSION I HAVE ENDEAVORED TO DISCOVER WHETHER THE SIMILARITIES THAT I FOUND WERE SUFFICIENT ON WHICH TO BASE A CONCLUSION. I HAVE BEEN *FORCED TO CONCLUDE*[4] (notice the repetition of these words and their significance) THAT THEY WERE. I HAVE KEPT IN MIND THAT HANDWRITING WILL VARY AND THAT HANDWRITING MAY BE DISGUISED, BUT I FIND IN THE HANDWRITING OF MR. HAUPTMANN, IN THE CONCEDED WRITING AND IN THE REQUEST WRITINGS, WHEN COMPARED WITH THE HANDWRITING IN THE RANSOM NOTES, AN AMOUNT OF SIMILARITY THAT FORCES ME TO REACH A DEFINITE CONCLUSION THAT ONE AND THE SAME PERSON WROTE ALL OF THE RANSOM NOTES, THE REQUEST WRITINGS AND THE CONCEDED WRITINGS.

It is difficult to believe any juror could consider the above statements as those of a biased witness.

[4]Author's underline.

Mr. Albert S. Osborn, the first examiner of questioned documents to testify for the prosecution, concluded his direct examination with this final sentence:

> ... IN MY OPINION THE PHYSICAL EVIDENCE OF CONNECTION BETWEEN THE ADMITTED WRITINGS AND THE RANSOM NOTES, AND THE REQUEST WRITINGS AND THE RANSOM NOTES, THE PHYSICAL CONNECTION BETWEEN THESE WRITINGS, IN MY OPINION IS *IRRESISTIBLE, UNANSWERABLE AND OVERWHELMING.*[5]

How could an identification be more forcefully concluded without using the word "impossible"?

Mr. Cassidy, the fifth expert on handwriting identification as previously described, was obviously aware of some repetition on the part of the preceding witnesses and the time being spent on the identification of the ransom notes. He completed his direct testimony in this unusual manner:

> I HAVE GIVEN CAREFUL CONSIDERATION TO ALL THESE THINGS, WEIGHED THEM INDIVIDUALLY AND WEIGHED THEM COLLECTIVELY, AND I HAVE WEIGHED THEM IN CONNECTION WITH EACH OTHER. REGARDLESS OF THE SERIOUSNESS OF THIS CHARGE, I FEEL THAT *I AM OBLIGED TO SAY*[5] THAT THE PERSON THAT WROTE THOSE REQUEST WRITINGS OR STANDARD WRITINGS, OR CONCEDED WRITINGS AS THEY CALL THEM, IS THE SAME PERSON WHO WROTE ALL THOSE RANSOM NOTES.
>
> NOW, I DON'T FEEL THAT THIS JURY IS REQUIRED TO HAVE THE PATIENCE TO LISTEN TO ME ANY FURTHER.

Mr. Albert D. Osborn was the seventh handwriting expert and had also drastically cut down his prepared testimony on direct examination. Being interrupted by the prosecutor, he finished his testimony without a final statement, but his completion on direct examination was nevertheless equally convincing to the jury, as follows:

Q. Does the word "New York" appear there?
A. YES, "NEW YORK" APPEARS IN THE FOURTH LINE WITH IT'S HYPHEN (between the words); ALSO WITH THE "N" MADE IN THE WRONG DIRECTION.
Q. Illustrate that, please.
A. WELL, IT IS RIGHT HERE (indicating). I DON'T THINK—IT HAS BEEN POINTED OUT SO MANY TIMES; IT IS OBVIOUS.
Q. Mr. Osborn, how many charts or illustrations have you made?
A. OH, I HAVE MADE ABOUT TWELVE BUT I AM NOT GOING TO TRY TO USE THEM HERE.
Q. But, these two (photographic comparison charts) are illustrative of the remaining charts?
A. TO SOME EXTENT.
Q. In other words, they bring out the opinion which you have expressed on the witness stand?
A. YES SIR.

Mr. Clark Sellers, whom the author cannot help but parallel to an "anchor man" on a track relay team, completed his direct testimony with the following statements:

> ... STANDING ALONE, I WOULD SAY THAT (in regards to one handwriting identity) IT WOULD NOT BE SUFFICIENT TO IDENTIFY (the writer). AND, I MIGHT SAY FURTHER THAT IF SOMEONE THAT I WAS WELL-KNOWN TO, THAT I KNEW VERY WELL, AND PART OF HIS FACE WAS COVERED UP AND I WAS ONLY SHOWN MAYBE THE LOBE OF HIS EAR OR THE TIP OF HIS NOSE AND (it was) SAID, 'WELL, CAN YOU IDENTIFY THE MAN FROM ONLY THOSE THINGS?' I WOULD SAY "NO." BUT, IT IS THE COMBINATION OF THINGS TAKEN INTO CONSIDERATION AT ONE AND THE SAME TIME THAT LEAD TO ANY CORRECT IDENTIFICATION BY ANY METHOD THAT I KNOW OF.

This use of paralleling basic requirements for identifying a person to basic requirements for identifying handwriting was a means of illustration that had not been used to any extent

[5]Author's underline.

by the preceding document examiners. It was highly persuasive and understandable to the jurors, to be sure.

Mr. Sellers continued:

> IN EXAMINING THESE DOCUMENTS, I HAVE ALSO KEPT IN MIND AN IMPORTANT THING ... AND THAT IS THE DANGERS OF ERROR; WHAT MIGHT LEAD TO ERROR, SUCH AS MISTAKING A NATURAL CHARACTERISTIC FOR AN INDIVIDUAL CHARACTERISTIC; SUCH AS COMING TO A CONCLUSION ON TOO FEW STANDARDS OR TOO SMALL AN AMOUNT OF DISPUTED WRITING.
>
> THE CHARACTER OF THE WRITING, THE MANNER IN WHICH IT WAS WRITTEN, HAVE BEEN TAKEN INTO CONSIDERATION, HAVING IN MIND MANY OTHER THINGS BESIDES THOSE WHICH I HAVE MENTIONED HERE. AND, I BELIEVE THIS COMBINATION OF CHARACTERISTICS, SOME OF WHICH HAVE BEEN MENTIONED, OTHERS NOT MENTIONED ... BUT IN ORDER TO SAVE TIME I WILL MAKE THIS GENERAL STATEMENT ... THAT A COMBINATION OF CHARACTERISTICS IN MR. HAUPTMANN'S WRITING, MAY JUST AS TRULY IDENTIFY HIM AS A COMBINATION OF SCARS, MOLES AND BIRTHMARKS, OR WHORLS AND LOOPS IN COMBINATION MAY IDENTIFY A MAN BY HIS FINGERPRINTS. SO CONVINCING TO MY MIND THAT MR. HAUPTMANN WROTE EACH AND EVERY ONE OF THESE RANSOM NOTES—*IT IS, I SAY, SO CONVINCING TO MY MIND, THAT HE MIGHT JUST AS WELL HAVE SIGNED EACH AND EVERY ONE OF THEM.* (see Fig. 2)[6]

Cross-Examination

On direct examination the handwriting experts for the prosecution attempted to prove that all 14 ransom notes were written by the same individual, and even though it was partially disguised writing, it could be definitely identified as that of the defendant. The purpose in cross-examining these witnesses was not so much to discredit them or the profession (although this was attempted, too), but to bring about an admission to one or more of three objectives. Briefly, these were: one, that all of the notes were not written by one individual; two, that the notes could easily be imitations of the handwriting of the defendant by someone else; and three, the disguise throughout the ransom notes prevented any definite identification of the writer.

The defense counsels' objectives were well planned. It was a good plan, for in the disguised handwriting of 14 ransom notes, there were certainly some individual letterforms and writing features quite unlike those in the specimens obtained. Parts of some ransom notes were much more carefully disguised than other parts. This gave the defense many opportunities to show differences that were difficult to explain to a jury hearing evidence on handwriting identification for the first time.

Also, on the allegation that these were imitations of the defendant's handwriting, the partial disguise gave the defense many opportunities to suggest that each unusual form, misspelling, and so forth was not in fact because of disguise, but was the handprinting habit of some other individual who attempted to copy those of the defendant.

Thirdly, if these notes were so well disguised, it was the defense's contention that they could not then be definitely identified as entirely in the handwriting of the defendant.

Each of these attacks had important meaning. Even if the jury was satisfied some of the writing or most of it was in the hand of the defendant, if any one ransom note, or any part of one, could not be satisfactorily proven as the writing of the defendant, it would be evidence that there was an accomplice to the crime. If the defendant had an accomplice, then how could the jury conclude that Bruno Richard Hauptmann, and not his unknown accomplice or accomplices, was the one who actually murdered the kidnapped victim?

[6]Author's underline.

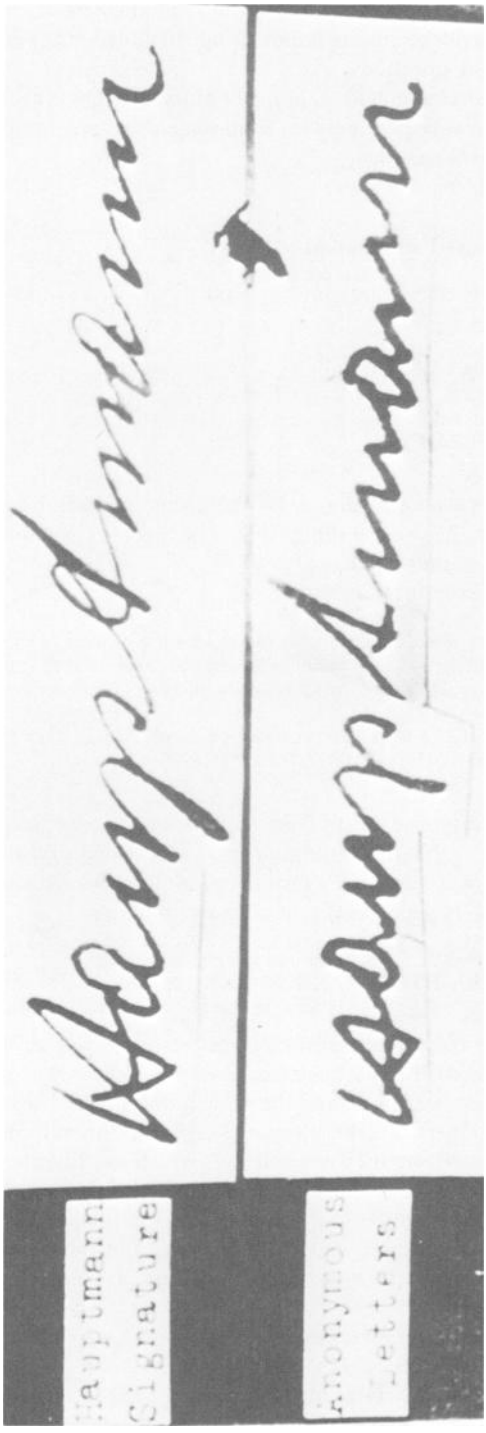

FIG. 2—*Chart prepared by Clark Sellers illustrating surname of defendant's signature at the top and composite of corresponding letters from ransom notes at the bottom.*

The cross-examination techniques included many features. There were partial attacks on the qualifications of some witnesses and on the fundamentals of the science besides those attacks on the actual evidence in the handwriting. Included in the cross-examinations were many sarcastic, goading questions.

The testimony on cross-examination, as might be expected, was excellent for the most part. A few questions did provoke poor answers from some witnesses, insofar as the literal translation of the testimony was recorded.

Poor Testimony on Cross-Examination

Two examples of poor testimony on cross-examination, in this writer's opinion, are as follows:

Q. You cannot see that, can you?
A. YES.
Q. Your eyes are better than mine.
A. THEY ARE EXPERT EYES.

The last answer was a poor response. By the document examiner saying he has "expert eyes," he is insinuating he can see things that other people (including the jury) cannot see. Equally important, it sounds egotistical.

Another document examiner's response:

Q. Then, with the knowledge that one of the examining officers (who was present when the defendant wrote the requested specimens) knew the contents of the ransom note, do you still say that it is so very significant the spelling was incorrect in the request writings (as it was in the ransom notes)?
A. I'D SAY AS WAS JUST SAID BY (a previous witness) HERE. THAT ONE POINT ALONE IS ALMOST ENOUGH TO SHOW THAT THIS IS THE GUILTY MAN.

The essence of this response was understandable, but the document examiner should not have used the term, "... that this is the guilty man." It strongly insinuates a personal feeling that should not be part of an expert's testimony resulting from a study of physical factors.

Still another seemingly poor answer on cross-examination:

Q. Now, about the final "x," is that an unusual characteristic?
A. I THINK YOU OUGHT TO THINK SO BY NOW.

It would seem from the literal translation this response was an unprovoked slap at the counsellor after he asked a proper question. However, this answer was given by one of the last handwriting experts to appear, and the same question had been put to each of the preceding document examiners. Furthermore, the characteristic referred to was indeed a very distinctive, unusual letterform (of the small "x") which any literate juror could realize.

Of course, the transcript of testimony gives the reader little idea of what might have been the situation, or the circumstances at the time the questions and answers were given. Tone of voice, sarcasm, physical gestures, facial expressions, and the speed of the questions and answers by the attorney and witness are not recorded and are important considerations in the interpretation of testimony.

However, the transcripts do reveal many questions that were obviously tricky, disarming, and sarcastic. A good number of these were answered so adroitly and correctly by the first handwriting expert, Albert S. Osborn, they were not asked again to the other witnesses. Furthermore, the following answers by Mr. Osborn are an excellant illustration on how a document examiner, by his responses, can actually direct the questions of a cross-examining attorney for a short period of time.

Cross-Examination Concerning Remuneration

Q. May I ask you now—how much a day you are being paid for your services?
MR. LANIGAN: We object to that (question).
MR. OSBORN: I WOULD JUST AS SOON ANSWER.
Q. Well, it is the number of days he worked on (the case). I will withdraw the money part, and ask how many days you have worked on this.
A. I DON'T KNOW.
Q. How many months?
A. I HAVE GIVEN ATTENTION TO THIS CASE FOR TWO YEARS AND A HALF, BUT I HAVEN'T COUNTED UP THE DAYS AND I DON'T KNOW WHETHER I AM GOING TO BE PAID FOR THEM OR NOT. NOT ALL OF THEM. THERE HAS BEEN NO ARRANGEMENT WHATEVER ABOUT COMPENSATION.
Q. You know you are going to be paid by the state of New Jersey?
A. I DON'T KNOW THAT EVEN, ALTHOUGH I HAVE CONFIDENCE IN THE STATE OF NEW JERSEY (laughter).

Mr. Osborn's reply concerning his confidence in the State of New Jersey could not have been given unless the specific question about the source of his remuneration was first asked. See how his preceding answers (even after the prosecutor's objection) actually guided the cross-examination on this point! In all probability, the defense attorney would not have asked the question about the source of remuneration had Mr. Osborn not said in his previous answer, "There has been no arrangement whatever about compensation." It is obvious Mr. Osborn "guided" the cross-examiner to the point reached, so his humorous final response would take away the "sting" of counsellor's inference he was a "paid witness" and therefore could not be relied upon by the jury.

Cross-Examination Concerning Other Experts

Mr. Osborn was asked a number of questions about other men related to the field of questioned documents. Apparently the purpose was to show he was not the only recognized authority on the subject.

Q. Now let's get back to these books. Other people have written books on the same question and subject, haven't they?
A. OH, YES.
Q. Are you familiar with Ames on Forgery?
A. I AM. I KNEW HIM PERSONALLY.
Q. And Melcher's book?
A. MELCHER?
Q. Of Philadelphia, yes.
A. OH, HE HAS WRITTEN SOME PAMPHLETS, THAT IS ALL (laughter). HE IS DEAD NOW.
Q. Well, how about Frazier of Philadelphia?
A. YES, I KNEW HIM, TOO. I KNOW HIS BOOK.
Q. And Hagen of Troy, New York, wrote a book?
A. YES, I KNEW HIM, TOO, AND I AM FAMILIAR WITH HIS BOOK.
Q. And Woods of Detroit wrote a book?
A. WELL YOU WOULD HARDLY CALL IT A BOOK. IT IS AN ADVERTISING—
Q. —Another pamphlet?
A. NO. IT WAS AN ADVERTISING CIRCULAR (laughter).
THE COURT: Now that must stop. We do not care to be interrupted in that fashion. Proceed, counsel.
Q. And Amesworth of London?
A. YOUR HONOR, I DIDN'T INTEND THAT FOR A JOKE.
THE COURT: It is no fault of yours.
THE WITNESS: I AM TRYING TO RESTRAIN MYSELF.
Q. Did Ainsworth of London write a book?
A. WHO?

Q. Ainsworth of London, did he write a book?
A. NO AINSWORTH MITCHELL WROTE A BOOK. HIS NAME IS MITCHELL, NOT AINSWORTH.
Q. Ainsworth Mitchell?
A. YES.
Q. Well, I have it Mitchell Ainsworth. I thought Mitchell was his first name, my error. Ainsworth Mitchell.
A. THAT IS HIS NAME—W. AINSWORTH MITCHELL IS THE EDITOR OF THE LONDON ANALYST. HE HAS WRITTEN SEVERAL BOOKS.
Q. And they are all authorities?
A. ARE THEY ALL?
Q. Yes.
A. WELL, VARYING DEGREES OF AUTHORITY. I WOULD SAY MITCHELL IS AN AUTHORITY. SOME OF THOSE THAT YOU HAVE MENTIONED ARE NOT.
Q. Well, the writers considered them authorities, didn't they?
A. I AM AFRAID THEY DID.
Q. Yes, and you consider yourself an authority?
A. I DON'T SAY THAT.
Q. You leave it to the world to judge?
A. I LET OTHER PEOPLE SAY IT.

This is another example of the witness briefly guiding the cross-examiner's questions. If, after the question, "And you consider yourself an authority?" Mr. Osborn had simply said "Yes," the last question would not have been asked. He knew his last answer would be more appreciated for its modesty.

Further cross-examination concerning other experts and their works went as follows:

Q. Do you know Colonel Malone of Baltimore?
A. I KNOW A MR. MALONE. I DIDN'T KNOW HE WAS A COLONEL.
Q. They are all colonels south of the Mason-Dixon line when they get that old.
A. YES.
Q. You knew him?
A. HE IS AN ENGROSSER, HE MAKES PENMANSHIP EXHIBITS.
Q. Do you consider him an authority?
A. NO.
Q. You don't?
A. I CONSIDER HIM A WITNESS WHO TESTIFIED ON THE SUBJECT.

Cross-Examination Concerning Appearances in Cases That Were Lost

The rather common line of cross-examination concerning past errors and mistakes on the part of the expert witness was also put to Mr. Albert S. Osborn. His answers to the following questions could hardly be improved upon.

Q. Well, Doctor, or Mr. Osborn, you have been mistaken many times, have you not, in your diagnosis and your opinions on handwriting?
A. I WOULDN'T SAY MANY TIMES. *I DON'T PRETEND TO BE INFALLIBLE, BUT I INTEND TO BE CAREFUL.*[7]
Q. But you have been found to be mistaken, have you not, many times?
A. NO, I WON'T SAY THAT. WHEN YOU SAY "MANY TIMES"—OF COURSE, WE HAVE ALL KINDS OF QUESTIONS, MR. REILLY; SOME OF THEM ARE DIFFICULT, SOME OF THEM IT IS IMPOSSIBLE TO GIVE ANY ANSWER TO AT ALL; SOME OF THEM WHERE THE EVIDENCE IS SOMEWHAT CLOSELY BALANCED. *NOW IN THOSE CASES, OF COURSE, IT MIGHT BE POSSIBLE TO MAKE AN ERROR, BUT IN THIS CASE THE EVIDENCE IS VERY, VERY EXTENDED.*[7]

The following question came after a long series of inquiries about past cases in which Mr. Osborn was allegedly a witness. It was Mr. Reilly's intention, of course, to have the witness admit that in past cases, juries had disagreed with his findings.

[7]Author's underline.

Q. Well, any cases you testified as to ink (which were lost)?
A. IF YOU WANT TO KNOW IF CASES HAVE BEEN DECIDED AGAINST MY VIEW, I DON'T HESITATE TO SAY THAT THEY HAVE.

Mr. Reilly could not believe his ears! He practically gasped at this free admission. After failing to name even one specific case in which the witness appeared that was lost, here was the witness himself volunteering the fact that cases he appeared in had been decided against his view. However, after the next two questions, an abrupt end came to this line of cross-examination.

Q. How many (of the cases you appeared in were lost)?
A. WHAT?
Q. How many?
A. WELL, I WOULD SAY OCCASIONAL. IT OCCURS SO INFREQUENTLY THAT IT ALWAYS GIVES ME A SHOCK. I THINK MAYBE ONE IN TWENTY, OR SOMETHING LIKE THAT, BY PERCENT, OR SO. THERE ARE ALL KINDS OF CASES, SOME OF THEM ARE VERY DIFFICULT, AND YET IT IS NECESSARY THAT YOU GIVE AN OPINION IN IT, AND *OTHERS ARE VERY PLAIN IN WHICH A DIFFERENCE OF OPINION CAN BE ACCOUNTED FOR ONLY ON THE GROUND OF INDIFFERENCE OR DISHONESTY.*[7]

Reference to Graphology

One of the most important parts of Mr. Albert S. Osborn's testimony was on direct examination regarding graphology and the difference between graphology and the work of the document examiner. As stated, it was well known that the defense had gathered no less than 14 witnesses who were prepared to testify about the handwriting in the ransom notes. A number of these witnesses were better known for their work as graphologists than as examiners of questioned documents. It was extremely important to the prosecution that the jury be well aware of the difference between the two fields, if the court were to allow testimony on the part of these graphologists for the defense.

When Mr. Osborn was first asked to explain graphology on direct examination, defense counsel objected. The objections were overruled when the prosecutor argued that it was a matter of importance for the jury to understand the meaning of graphology and how it differed from the field of identification that Mr. Osborn was in. Following is Mr. Osborn's answer to the question, "Will you explain briefly, please, just what graphology is?"

GRAPHOLOGY IN AMERICA, IN THIS COUNTRY, AND IN ENGLAND IS UNDERSTOOD AS DETERMINING FROM HANDWRITING THE CHARACTER OF THE WRITER, AS DISTINGUISHED FROM THE STUDENTS OF HANDWRITING, DOCUMENT EXAMINERS AND SO FORTH WHO EXAMINE WRITING FOR THE PURPOSE OF DETERMINING WHETHER IT IS GENUINE OR NOT, THAT IS; THE QUESTION OF FORGERY AND ALSO EXAMINING WRITING FOR THE PURPOSE OF DETERMINING WHETHER IT CAN BE IDENTIFIED AS THE WRITING OF A CERTAIN INDIVIDUAL.

THERE ARE TWO CLASSES OF HANDWRITING EXAMINERS. ONE CLASS EXAMINES WRITING FOR THE PURPOSE OF DETERMINING WHETHER IT IS GENUINE OR NOT AND WHETHER IT CAN BE IDENTIFIED. THE OTHER CLASS EXAMINES HANDWRITING FOR THE PURPOSE OF DETERMINING WHETHER IT INDICATES THE CHARACTER OF THE INDIVIDUAL WHO DID THE WRITING. AND THE QUESTIONS ARE ENTIRELY DIFFERENT. IN ONE CASE, IT IS A QUESTION OF GENUINENESS AND THE QUESTION OF IDENTITY. THE OTHER CASE IS A QUESTION OF—OH, ALL KINDS OF PROBLEMS: WHETHER THE WRITER IS HONEST, WHETHER THE WRITER WOULD BE A GOOD HUSBAND OR WIFE; WHETHER THE WRITER LIKES CHILDREN AND DOGS ... ANY KIND OF QUESTION. AND THE GRAPHOLOGISTS GO FURTHER THAN THAT, SOME OF THEM ... TO DETERMINE DISEASE FROM HANDWRITING ... DIAGNOSING DISEASE. THE TWO CLASSES OF EXAMINERS ARE ENTIRELY DIFFERENT.

The subject was nicely completed by the following question and answer:

Q. In your experience have you been opposed in any case by graphologists?
A. NOT WHO TESTIFIED AS GRAPHOLOGISTS.

Surely, this testimony of Mr. Albert S. Osborn must have been partly instrumental toward the fact that of the 14 witnesses prepared to appear for the defense, only one actually took the stand and testified concerning the ransom notes. Following Mr. Osborn's testimony describing graphology, a number of humorous articles and cartoons on the subject appeared in the newspapers covering the trial. This, too, must have had a discouraging affect on those graphologists who were waiting to appear for the defense.

Tricky Cross-Examination Questions

A good part of the cross-examination of the handwriting experts was not on the actual identities in the ransom notes. Some questions were aimed to show the jury the witnesses were biased, some to show they were often mistaken in their work and some to show that the opinions of the eight document examiners disagreed with one another.

Following are a few excerpts of such questions and the answers given by the named experts.

(DR. WILMER SOUDER)

Q. Doctor, I show you a piece of paper here (which the witness had never seen before). Would you mind looking at that. Tell me whether that was written by one person or two persons, or more.
A. I AM UNABLE TO SAY, JUST SNAP JUDGMENT ON IT. THERE ARE DIFFERENCES.
Q. You mean you would have to make an examination and study of it?
A. IT WOULD TAKE A LONG STUDY. THERE ARE THREE ANSWERS POSSIBLE ... YES; NO; I DO NOT KNOW. IN MANY CASES WE ANSWER "I DO NOT KNOW." IT IS POSSIBLE.

...

Q. You were employed in this case to identify the writer of the ransom notes as the writer of the request writings, were you not?
A. THAT WAS NOT MY INSTRUCTION. I WAS NOT ORDERED TO IDENTIFY ANYONE.
Q. No, but you understood that that was what you were expected to do, didn't you?
A. NO, SIR. I WAS EXPECTED TO EXAMINE THE DOCUMENTS AND REPORT.

...

(MR. ELBRIDGE W. STEIN)

Q. So that you say then that it is impossible to get away from the influence of the first impression entirely (in a questioned document problem)?
A. NO, I DON'T SAY THAT, NOT EXCLUSIVELY.
Q. Oh, not exclusively ... of course not.
A. NO.
Q. "Entirely" is the word used, sir.
A. WELL, I THINK MANY TIMES I GET AWAY ENTIRELY FROM FIRST IMPRESSIONS; I FIND FIRST IMPRESSIONS ARE WRONG.
Q. I see. And to that extent you disagree with Mr. Osborn (referring to his book, *Questioned Documents*)?
A. NO. I DON'T DISAGREE WITH HIM AT ALL, BECAUSE HE SAYS EXACTLY THE RIGHT THING THERE.

...

(MR. JOHN F. TYRRELL)

Q. Would you say from your examination of the ransom note that it was written by the writer with his left hand or with his right hand?
A. I COULDN'T SAY.
Q. Did you attempt to find out?
A. OF WHOM WOULD I ASK?

...

Q. (In describing the form of a particular letter) . . . now, that is unlike any of the others, isn't it?
A. NO.
Q. You don't think so, eh?
A. (no answer)
Q. You don't think so?
A. WELL, UNLIKE IS A LARGE AND RATHER COMPREHENSIVE TERM.
Q. Well, I will say dissimilar, then.
A. IN RESPECTS, YES.

. . .

(MR. ALBERT D. OSBORN)
Q. Did you ever testify in a case where your father was on the other side?
A. NOT YET.
Q. Not yet. So to that extent you work along pretty evenly, don't you?
A. WHY, NO, I DON'T KNOW ANYTHING ABOUT MOST OF HIS CASES. OCCASIONALLY IF IT IS AN INTERESTING QUESTION HE MAY SHOW IT TO ME. THE SAME WITH MYSELF.

. . .

Q. But, in view of your statement that the best time to take the (requested) specimen is as quickly as possible, would you think that a period of 15 to 36 hours after apprehension would be the best time to take the specimen writings?
A. WHY, I CAN'T SAY. IT DEPENDS ON THE INDIVIDUAL.
Q. Well . . .
A. . . . IF HE IS EASILY EXCITED IT MIGHT MAKE A DIFFERENCE. IF HE IS A STOLID SORT OF PERSON IT PROBABLY WOULDN'T MAKE ANY DIFFERENCE AT ALL. (Many descriptions of the defendant had contained the word "stolid").

. . .

A brief explanation is necessary before the following questions and answers. Mr. Albert D. Osborn was the seventh document examiner to appear for the prosecution, and it was the fourth continuous day that the jury had listened to the experts and their reasonings. Many individual subjects had been thoroughly gone over and discussed on more than one occasion. Mr. Osborn, as the other document examiners had done after the third witness, condensed and eliminated a great part of his prepared testimony on direct examination.

Q. And out of all the words and letters (in the fourteen ransom notes), you brought in here possibly two dozen (which are shown in your photographic illustrations): is that correct, for comparison?
A. I HAVE ONLY SHOWN ABOUT TWO DOZEN.
Q. That is right.
A. I HAVE ABOUT—I HAVE 12 MORE SETS HERE IF YOU WOULD LIKE TO GO THROUGH THEM. I DON'T THINK ANYBODY ELSE WOULD.
Q. No, not today, some other day.

. . .

Q. . . . would it be possible (for some other person) to copy (the defendant's) writing in such a way as is done in the ransom notes, so that it would appear as it appears in the ransom notes?
A. I THINK THAT IS A PROBABILITY THAT IS SO FAR-FETCHED THAT IT IS ABSOLUTELY RIDICULOUS.
Q. Is it a possibility, Mr. Osborn?
A. WELL, IT IS A POSSIBILITY THAT THE SUN WON'T RISE TOMORROW MORNING, BUT I FEEL IT WILL.

. . .

Q. As a matter of fact, if you invert a specimen of writing and continue it from the back, taking the last letter first and going through to the first letter, don't you get a great bit of similarity in handwriting?
A. THAT IS PROBABLY THE WORST WAY OF DOING IT. SOME HAVE A MISCONCEIVED IDEA THAT THAT IS THE WAY TO MAKE A FORGERY, BUT IT ISN'T, BECAUSE YOU CAN'T WRITE FREELY AND NATURALLY LIKE WHEN YOU ARE (not) FOLLOWING AN OUTLINE. WHY, YOU COULDN'T ANY MORE MAKE THESE FOURTEEN LETTERS IN THAT WAY THAN YOU COULD FLY. YOU COULDN'T DO IT.

. . .

A highly unusual and very interesting circumstance developed during the cross-examination of Mr. Albert D. Osborn. Some years before, Mr. Osborn had been engaged in another case by Mr. Fisher, the defense attorney who was cross-examining him, and Mr. Osborn had testified in court for Mr. Fisher. The case was lost. By coincidence, the attorney for the opposing party in that case, a Mr. Large, was also present during the Hauptmann trial and was sitting at the prosecutor's table as one of the assistant prosecutors.

Even though Mr. Fisher was the attorney in the case Mr. Osborn had been a witness on that was lost, Mr. Fisher went into it in an attempt to discredit him by showing his opinions were not always correct. Mr. Fisher, however, had evidently forgotten a concession by Mr. Large after Mr. Osborn had testified.

The cross-examination went as follows:

Q. That is your opinion isn't it? (concerning identity of the defendant)
A. ABSOLUTELY.
Q. Yes, and it was your opinion up in Bergen County that they had the right woman in Miss Mowel, wasn't it?
A. AND IT IS STILL MY OPINION.
Q. And the jury disagreed with you, didn't they?
A. OH, YES, I DON'T WIN EVERY CASE I AM IN.
Q. No.
A. NEITHER DO YOU. (Noise in the courtroom.)
Q. No, I didn't win one with you on my side one day, did I?
(Objection by the prosecutor.)
MR. FISHER: I will reframe the question.
Q. Due either to poor lawyering or poor experting, a case in which we were jointly involved was decided against us, wasn't it?
A. THE CASE IN WHICH I TESTIFIED, MR. LARGE WAS ON THE OTHER SIDE. AFTER MY TESTIMONY HE ADMITTED THAT HIS CLIENT HAD WRITTEN THE LETTERS. THAT IS WHAT I WAS THERE FOR. THEN HE WENT AHEAD AND WON THE CASE ANYWAY. I DON'T FEEL THAT THAT IS MY FAULT.
Q. Do you think that Mr. Large admitted that Judge Freck wrote the letters in the Freck case?
A. THAT WAS MY UNDERSTANDING.
Q. All right.
A. AND HE WENT AHEAD AND WON THE CASE ANYWAY.
Q. Very good, very good. Now, I ask you to look at . . .

Humor

Naturally, in more than 800 pages of testimony by eight document examiners which took the best part of four days of the trial, some levity crept into the examinations, and especially the cross-examinations. The transcripts showed that certain of the defense attorneys had a sense of humor . . . good humor . . . which of course brought about some humorous responses on the part of the witnesses. Another provocation for some humor was the occasional sarcastic or personal question put to the witness.

The average layman who testifies in a court of law, usually for the first time, is of course nervous in this unfamiliar element and perhaps awed by the court procedure and trial tactics. Most of the time lay witnesses are unable to cope with an experienced attorney's humor or sarcasm or unnecessary insinuations. Often, lawyers realizing their great advantage over such a witness, have a field day.

Apparently, the defense counsel in the Hauptmann trial did not fully realize the document examiners for the prosecutor were all veterans to such cross-examination tactics. Many of the defense attorneys' questions put forth to unsettle the witness and cause him to answer in a poor or erroneous manner were responded to in such a way that it not only strengthened their direct examination testimony but put the defense counsellor in a poor light.

There was little levity in the cross-examination of the first four witnesses, although the following repartee, begun by Mr. Reilly between him and Mr. Albert S. Osborn, is interesting.

Q. You have seen (paper) punches, have you not, Doctor, or rather Professor—
A. —NEITHER; NEITHER DOCTOR NOR PROFESSOR.
Q. Well, you have been long enough in this business to rate both of those.
A. YOU THINK I AM ENTITLED TO THEM, DO YOU?
Q. I think you are.
A. I SEE. I THANK YOU.
Q. There have been so many titles given out in this case, it won't do any harm to give you one.
A. MAY I CALL YOU JUDGE?
Q. Not yet, please.
A. I SEE.

The defense counsel asked Mr. Albert S. Osborn a series of questions in an attempt to draw an admission from him that the ransom notes could well be disguised writing of some other individual than the defendant. To the last question Mr. Osborn replied:

A. SHALL I TELL YOU WHAT (indications of disguise) ARE?
Q. No, no.
A. I CAN TELL YOU.
Q. I suppose you can—in your opinion.
A. NO, MY BUSINESS.
Q. Your business, yes.
A. YES.
Q. Well, now, you have written a couple of books, haven't you?
A. I HAVE.
Q. And you don't want us to get the impression that you are the only one that has written a book?
A. I REALLY HAVE WRITTEN THREE. ONE OF THEM IS PUBLISHED IN GERMAN.
Q. Do you speak German?
A. I CAN SAY A FEW GERMAN WORDS. I LEARNED TO WRITE IN GERMAN WHEN I WAS A YOUTH AND I THINK I CAN REPEAT THE ALPHABET NOW (laughter), AND I CAN WRITE MY OWN NAME IN GERMAN, BUT I AM NOT A GERMAN SCHOLAR AND I DO NOT SPEAK GERMAN.

Several of the document examiners were presented with a totally strange document while under cross-examination and asked if they would say the writing on it was by the same person, or by different persons. The answers for the most part were standard, but some levity on the part of Attorney General David Wilentz, Acting Prosecutor, crept into this part of the cross-examination of Albert D. Osborn.

Q. Look at these and see if any of (these papers) are in the same handwriting, whether they are duplicates, or that many different people write that way.
A. I WOULDN'T ANSWER THAT QUESTION OFFHAND. THAT IS THE WAY BANK TELLERS DO IT AND I SPEND ABOUT HALF MY TIME EXAMINING THEIR MISTAKES. I DON'T DO IT THE SAME WAY.
Q. Well, now, as a bank teller . . . using the same ability that he uses . . . tell me whether you think any of them are in the same hand?
MR. WILENTZ: I object to him testifying as a bank teller, if your Honor please (laughter).

Humorous but insignificant? Quite to the contrary. Mr. Wilentz understood that some of the witnesses ready to appear for the defense were bank employees.

Mr. Clark Sellers as well as Mr. Albert S. Osborn had an aversion to false titles . . .

Q. Well, I am only referring to the type. What do you mean by execution, Professor? I don't think I quite understand.
A. I AM NOT A PROFESSOR. I DON'T RATE THAT TITLE.
Q. I understood you to say that you lectured in some college out there (on the west coast).
A. I DO, BUT THAT DOESN'T CONFER ON ME THE TITLE OF PROFESSOR.
Q. Well, then, I am giving it to you now, then.
A. THANK YOU.

The jury and defense counsel were first given an idea of Mr. Harry E. Cassidy's singular manner of expressing himself when he testified on direct examination. Mr. Cassidy was most

highly respected and had the complete confidence of his colleagues, despite his unusual methods of expression. His rare similes and way of speaking were a real asset toward persuading listeners to believe in the soundness of his convictions. Yet, he combined humor with humility that made his testimony all the more irresistible.

At the time Mr. Cassidy took the witness stand, the jury surely must have resigned themselves to believing his testimony would be 99% repetition of the testimony they had already heard. While his basic reasoning was, in fact, repetitious, his testimony could be described as anything but dull.

Mr. Cassidy referred to his first photographic comparison chart on direct examination and said:

> NOW I HAVE A LIST SHOWING JUST WHERE THESE (words in the photographs) CAME FROM. A COMPLETE LIST OF THEM, BUT I DON'T THINK IT IS NECESSARY TO TAKE UP THE TIME OF THIS COURT TO SHOW ALL THAT. I WILL JUST LEAVE (the list) HERE ... AND IF ANYBODY DON'T BELIEVE HOW MANY STARS IS IN THE SKIES THEY CAN COUNT THEM.

The following is a rather different way of expressing an individual's personal handwriting identity ... a la Cassidy:

Q. Go to the next one, please.
A. WELL, I WANT TO NOTE HERE THAT NONE OF THESE "t's" ARE CROSSED (in the requested specimens of writing), AND THE WRITER OF THESE RANSOM NOTES, AND THESE REQUEST WRITINGS, SEEMS TO BE A VERY CONSCIENTIOUS OBJECTOR TO CROSSING ANY "t's."

Instead of the word "conscientious," perhaps the word "unconcious" might have been more accurate, but the jury could hardly misunderstand what Mr. Cassidy meant.

Q. How many sets of photographs illustrative of your opinion have you, Mr. Cassidy?
A. I PADDLED AROUND IN WATER MAKING THOSE PHOTOGRAPHS UNTIL I WAS AFRAID I WAS GOING TO GET WEBBED-FINGERED, BUT I DID IT, AND THERE THEY ARE AND YOU CAN HAVE THEM.

Under cross-examination, there are few document examiners who would think of, let alone respond to the following questions as Mr. Cassidy did.

Q. ... now we will go the letter "d," the last letter in that word. Is there any similarity in what you term the loop?
A. THE LOOP OR DO YOU MEAN THE OVAL?
Q. The oval; whatever you call it.
A. I BELIEVE THAT IS THE TECHNICAL NAME FOR IT.
Q. All right.
A. THERE ARE LOTS OF EXPERTS LISTENING TO ME AND I LIKE THEM TO KNOW THAT I KNOW SOMETHING ABOUT IT, YOU UNDERSTAND.

What juror could not appreciate a witness in a specialized field giving an answer like that? Evidently sarcasm did not bother Mr. Cassidy ...

Q. Does the jury have this exhibit? (exhibit produced)
A. THERE IS ONE FOR EVERY TWO OF YOU. THAT IS ALL (the extra copies) I MADE.
Q. That is because of the (country's) depression?
A. WELL, YOU CAN CALL IT ANYTHING YOU WANT TO. I GOT TIRED.

As mentioned previously, one inference the defense continued to bring up on cross-examination was the possibility that some other person wrote the 14 ransom notes by imitating Mr. Hauptmann's handwriting and habits of misspelling many words in peculiar ways. One ar-

gument against such a theory was that, to begin with, the individual would have to have a great deal of writing by the defendant containing all of the same misspelled words. On cross-examination, Mr. Cassidy was asked:

Q. Without more than one specimen (of Hauptmann's handwriting), couldn't (some other person) misspell the same words (that were misspelled in the ransom notes)?
A. WELL, IF THEY HAD ONE SPECIMEN AND ALL THESE MISSPELLED WORDS OCCURRED IN IT, I GUESS ONE SPECIMEN WOULD BE SUFFICIENT. ONE WELL WILL MAKE A RIVER IF IT IS BIG ENOUGH.

Another continued line of cross-examination was in regard to the requested specimens of handwriting, written by the defendant after he was apprehended by the police. The insinuation by the defense was that the defendant was told to misspell words as they were misspelled in the ransom notes, or that he was told to actually copy the handwriting in the ransom notes. Therefore, the requested specimens were not really proper representations of the defendant's handwriting. Of course, none of the document examiners were present at the time the requested specimens were furnished.

Q. Now, you don't know then how Hauptmann wrote, do you? I mean by that whether he was given a piece of paper to copy, whether words were dictated to him, or in what manner he was told to make the request writings?
A. WELL, I AM GOING ON FAITH. I HAVE GOT A CERTAIN AMOUNT OF FAITH IN HUMANITY AND I JUST CAN'T THINK ALL THOSE OFFICERS (present when the specimens were written) WOULD DO A TRICK LIKE THAT.
Q. Let's get off the faith ...
A. ... I HOPE THEY DIDN'T.

Most people familiar with the testimony in this case know the most classic response by Mr. Cassidy on cross-examination. It was again concerning the methods used and the situation under which the requested specimens were written after the defendant had been apprehended by the police.

Mr. Cassidy quite obviously was aware that Flemington, NJ is not far from where General Washington make his historic crossing of the Deleware River.

Q. You weren't present, I understood you to say, when the test or request writings were written, were you?
A. I WASN'T PRESENT WHEN WASHINGTON CROSSED THE DELEWARE BUT I'VE GOT A PRETTY GOOD IDEA HE GOT OVER ON THE JERSEY SIDE.

Some document examiners might criticize such an answer as unresponsive and in bad taste from an expert who knew well the rules of court procedure. However, the circumstances gave Mr. Cassidy almost a right to answer as he did instead of simply replying "no." It had been repeatedly established by previous testimonies that none of the document examiners were present at the time Hauptmann wrote the request specimens. As a matter of fact, Mr. Cassidy's response was neither objected to by defense counsel nor did the judge reprimand him.

Clark Sellers—The "Anchor Man"

One cannot help, studying and comparing the testimony of the document examiners for the prosecution, to admire the effective manner in which Mr. Clark Sellers completed this part of the evidence in the state's case. Years later, Mr. Albert D. Osborn was asked if it was by design that Attorney General Wilentz chose to have Clark Sellers as the last handwriting expert. Mr. Osborn replied, "It was. Mr. Wilentz decided he would have two of the best experts appear first and last in the case ... which he did."

Mr. Sellers' explanation for the basis of identification to the jury and his use of similes to handwriting identification were most persuasive. The defense had cross-examined practically every witness on the fact that some letterforms in the questioned writing did not look at all like certain of the corresponding letterforms in the specimens.

On direct examination, Mr. Sellers commented on this as follows:

> NOW, I COULD GO ON HERE FOR HOURS POINTING OUT TO YOU THE DIFFERENCES BETWEEN THE WORDS "the" AS MADE BY MR. HAUPTMANN, JUST THE SAME AS I MIGHT GO ON FOR HOURS POINTING OUT THE DIFFERENCES BETWEEN A PERSON'S RIGHT EYE AND THEIR LEFT EYE. BUT THAT IS NOT THE WAY TO MAKE AN IDENTIFICATION.
>
> HANDWRITING IS IDENTIFIED IN EXACTLY THE SAME WAY AS AN AUTOMOBILE IS IDENTIFIED. THAT IS; BY FINDING A GROUP, A SUFFICIENT GROUP OF CHARACTERISTICS, AND THE ABSENCE OF FUNDAMENTAL DISSIMILARITIES. BUT, ONCE YOU HAVE MADE THE IDENTIFICATION, IF IT IS CORRECT, THERE IS NO USE OF YOU GOING FURTHER AND EXAMINING ALL THE OTHER AUTOMOBILES IN THE WORLD TO SEE WHETHER THAT ONE MIGHT BE YOURS, TOO.
>
> IN OTHER WORDS, I THINK IT IS POSSIBLE, IF YOU IDENTIFY CORRECTLY A HANDWRITING, TO SAY NOT ONLY THAT ONE PERSON WROTE IT, BUT THAT NO ONE ELSE DID. AND, THAT IS EXACTLY WHAT I AM SAYING HERE ABOUT THE HANDWRITING IN THESE RANSOM LETTERS.
>
> I AM NOT ONLY SAYING THAT NO ONE ELSE DID ... AND I HAVE NOT EXAMINED ALL THE HANDWRITING IN THE WORLD EITHER ... BUT I AM SAYING THAT ON THE SAME LOGICAL BASIS THAT IF YOU IDENTIFY YOUR OWN AUTOMOBILE YOU DON'T HAVE TO GO SEARCHING THE REST OF THE WORLD AND EXAMINE EVERY OTHER AUTOMOBILE BEFORE YOU COME BACK AND SAY, "YES, THAT'S MY AUTOMOBILE."

Mr. Sellers was cross-examined closely on his description of the basis for identification of handwriting and all people or things. It was evidently defense counsels' intention at one point to show the jury a person did not have to be qualified to identify people, but did have to be qualified to identify handwriting. An interesting part of this cross-examination went as follows:

Q. Mr. Sellers, one of the illustrations which you used a moment ago was the possibility of identifying you by a little scar on your cheek and by other features.
A. YES.
Q. Now, may I ask you this question: even without the scar, after your appearance here today and your very interesting discussion of this subject, don't you think that it is quite probable that any member of this jury would be able to identify you a week from today or two weeks from today or three weeks from today as the gentleman from California who spoke so interestingly upon the subject of handwriting in court?
A. WELL, I WOULD HOPE THEY WOULD, BUT I HAVE BEEN FORGOTTEN BEFORE.
Q. Well, don't you think they could?
A. THEY MAY.
Q. Don't you think it would be quite easy for them to identify you within the course of a few days as the man who appeared before them as a handwriting expert in this case?
A. WELL, I HOPE I HAVE AN INDIVIDUALITY OF MY OWN. I DON'T KNOW HOW MUCH THEY COULD REMEMBER IT.
Q. And ...
A. ... *I THINK THIS: THAT THERE HAS BEEN MANY MORE MISIDENTIFICATIONS BY PERSONAL EXPERIENCE THAN THERE HAVE BEEN BY QUALIFIED EXPERTS ON HANDWRITING.*[8]
Q. But that would not be unusual, would it?
A. WHAT WOULD NOT BE UNUSUAL?

[8]Author's underline.

Q. For the ordinary person to recognize you after they had seen you and associated with you for a couple of hours and particularly when you had appeared as a distinguished witness in a very important trial?
A. WELL, OF COURSE THAT EMBODIES THAT I AM A DISTINGUISHED WITNESS. I DON'T SAY THAT.

Defense counsel presented to Mr. Sellers a document having handwriting on it which he had never seen before, as had been done with preceding witnesses. He was then asked to give an opinion as to whether all of the writing was done by one or more individuals. Mr. Sellers' final response to the question was more poignant than some of the others.

Q. Can you tell me whether there is more than one handwriting on that sheet of paper: that is, written by more than one person?
THE COURT (following the prosecutor's objection): Well, the Attorney General is suggesting that this is rather an unfair or perhaps an improper question because it involves the examination of a very considerable handwriting here. Now I suppose that primarily that question can be best answered by having the witness look at this paper and say whether or not he is prepared at this time to answer your question.
Q. May I say to the witness that I am not expecting him to give an opinion, sir, which he is willing to be bound by. We are just merely asking for an offhand opinion. He has had no opportunity to examine it and study it. We do not expect that.
A. WELL, I PRESUME YOU WANT MY BEST OPINION.
Q. Yes.
A. OF COURSE, MY BEST OPINION CAN'T BE GIVEN UNDER THESE CIRCUMSTANCES. IF A MAN BROUGHT A DOCUMENT—IF YOU BROUGHT THIS DOCUMENT TO MY OFFICE AND LAID IT ON MY DESK, OR A SET OF DOCUMENTS, AND SAID TO ME, "MR. SELLERS, I WANT TO KNOW ON THE SPOT, RIGHT NOW; WERE THESE ALL WRITTEN BY THE SAME PERSON?" AND I ATTEMPTED TO TELL YOU, YOU'D SAY I WAS A FAKE AND TAKE UP YOUR PAPERS AND LEAVE, BECAUSE YOU'D KNOW THAT I WAS ATTEMPTING TO DO SOMETHING THAT WAS UNREASONABLE. AND I DO NOT NOW, OR CANNOT, *EITHER IN FAIRNESS TO YOU OR TO THIS JURY OR TO THE COURT,*[9] ANSWER A QUESTION INVOLVING THIS AMOUNT OF WRITING.

Conclusion

This case, perhaps more than any other case in the history of the United States, has been the basis for articles, books, and debates by both laymen and members of the legal profession. Authors have written about evidence never presented to the jury, given opinions completely exonerating Hauptmann of the crime, or, at the least, concluded that he had one or more accomplices. The trial itself has been described as a disorderly, shameful exhibition of proper court procedure. Most of these people never heard or read the testimony or attended the trial, never saw the evidence presented to the jury and have no idea how, in reality, the trial itself was conducted in an orderly, judicial manner.

The records of the trial clearly illustrate that each of the document examiners gave an opinion and presented the reasons for his opinion in a dignified, correct manner.

There can be no question but that the extent of the evidence on the handwriting identification, and the convincing, unbiased manner in which it was presented to the jury, was one of the strongest parts of the state's case. The evidence these men presented was, in three words used by Albert S. Osborn, "irresistible, unanswerable, and overwhelming."

The case presented by the defense only strengthened the evidence given by the document examiners for the prosecution. Where 14 witnesses had made preparations to contradict and rebutt their testimony, only one man actually gave his opinion the ransom notes were not written by the defendant. The others chose or were asked to not appear. Certainly, one of the

[9]Author's underline.

strongest reasons for this must have been because of the way the evidence was first presented to the jury.

The trial *State of New Jersey v. Bruno Richard Hauptmann* was a great milestone in the scientific examination of questioned documents. The convincing manner in which the ransom notes were proven to have been written by the defendant, without doubt contributed more to the credence and recognition of the science than any other single case in the history of the country and perhaps in the history of the world.

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