



Handwriting Analysis: Science or Art Form? A New York Federal Judge Weighs In

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Hey, wait! That's not my signature! I didn't sign that! You think so? Prove it!

I've had personal experiences in my trials with handwriting experts. Regarding the questionable signature, the expert—at best—will state his or her finding with a *reasonable degree of certainty*. Thus, inherent in their finding is a lack of conviction. A lack of scientific proof. **And the potential for error.**

A federal judge in the Southern District of New York State has put an end to this seemingly flawed system utilized in forgery cases.

The Use of Handwriting Experts

Whenever there is a question of forgery, handwriting experts are generally counted on to provide expert testimony. Lawyers utilize handwriting experts to support their respective stances, and the experts are savvy enough to ensure that their testimony is admitted.

To determine the authenticity of a signature, experts in this field examine multiple signatures from a variety of different sources, i.e. driver's license, checks, etc. from the

year in which the signature was penned. The expert will then compare the array of samples, including some from present day, to the questioned signature. In addition, if needed, the expert will also determine whether a signature has truly changed over time or if the person is attempting to disguise it as a result of the case.

Decades Worth of Trust Is No Longer Good Enough

Recently, handwriting expertise, as well as the methodology used, was brought under fire in New York State's Federal District Court. There have been many instances where a handwriting expert's testimony has been found inadmissible in courts within the district; however, the overarching question of reliability was still open...until now.

Judge Rakoff of the Southern District had the opportunity to elucidate the inarguable fact that, unlike physics, for example, handwriting analysis is *not* a science.

Putting an end to years of implied "trust" between the forensic document examiner community and the courts, Judge Rakoff rejected the expert testimony of Wendy Carlson—a preeminent handwriting expert—and held a Daubert hearing to determine whether her testimony was based on reasoning or methodology that can be properly applied to the facts before the court.

Interestingly, during the hearing, Wendy Carlson appeared to concede by confirming her chief reliance on *experience*, rather than on an objective, verifiable technique.

Ultimately, Judge Rakoff did not admit Wendy Carlson's expert testimony during this trial under Rule 702—subjectivity and vagueness severely diminished the reliability of an opinion testimony.

Forgery Cases: A Shift In Process

In a broader sense, Judge Rakoff ruled that handwriting analysis is a form of subjective expertise—unreliable and unscientific. Without a refined methodology, forensic document examination is a virtually untestable endeavor.

Explaining the issues with handwriting analysis, Judge Rakoff cited the **lack of:**

- Controlling standards and discipline;
- Standardization of training; and
- General acceptance in the expert community.

Moreover, he quoted a research study's findings to support his position: a layperson was able to locate a forgery 92% of the time compared to a forensic document examiner's accuracy score of 96%.

Going forward, attorneys will have to solely rely on the evidence from discovery to assist a jury in determining the authenticity of any questionable signature(s).

This Attorney's Analysis

For many years, attorneys have talked about the significant problems with handwriting experts, mainly that they provide an expensive, "get what you pay for" testimony.

Now in the Southern District of New York, juries will make determinations based on evidence, witness testimony, etc. as opposed to counting on forensic document expert testimony.

It's an important step for the legal community that a judge finally had the *chutzpah* to highlight the lack of scientific foundation for handwriting analysis.

Do you agree that forensic document examination is not a science? Is it possible that this ruling may have implications for other types of expert testimony? If you have any comments (or want to know if it was actually my signature at the beginning of this blog!), please [call me](#) at (212) 363-7701!

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