

Exorcism of Ignorance As a Proxy for Rational Knowledge: The Lessons of Handwriting Identification "Expertise"

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Exorcism of Ignorance

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Exorcism of Ignorance

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- Does Handwriting Identification Expertise Exist?



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- There exist almost no studies of its claims in any academic literature.
- Studies conducted raise serious questions about its validity.

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- There is no verification that handwriting identification expertise exists.
- Footnote criticizes graphologists as exaggerating their abilities. Page 733
- Footnotes take up as much space as the article.

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- If the trier of fact overvalues the assertion of the expert, the testimony may be harmful.



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- Empirical testing is needed to validate.
- Empirical research enables people to discard ineffective or harmful techniques;
- Empirical research enables people to retain effective ones.

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- Literature search failed to reveal any studies for the past 50 years.
- Found one flawed study from 1984.
- 1939 Inbau Study to determine if non-experts can identify handwriting.
- Document examiners were added as an afterthought.

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- Inbau Study
 - Test failed to produce meaningful data.
 - Sample size was too small for the type of test.

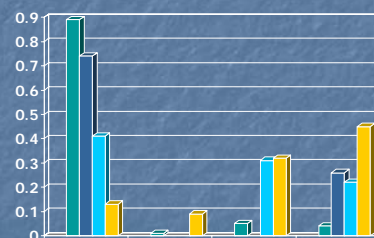
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- FSF Studies
 - Certification or experience did not enhance accuracy.
 - Collaborative Testing for experts only.
 - No lay group.

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- Authors relied upon skewed data.
 - They chose five tests and ignored the rest.
 - 1975
 - 1984
 - 1985
 - 1986
 - 1987

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- 45% of the reports reached correct conclusion.
- 36% errored partially or completely
- 19% were unable to draw conclusions.
- No lay people were involved.

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- Ignoring inconclusives document examiners were correct 57% and
- Incorrect 43%.

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- Disguised handwriting fooled them all.
- Forged printing fooled 2/3 of examiners.

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- Problems with their methodology:
 - They chose 5 tests out of at least ten.
 - They ignored those tests that didn't support their hypothesis.
 - They didn't have sufficient data.
 - No private examiners participated.

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- If a jury can compare handwriting equal to examiners, no expertise exists.



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- Kindest statement "No available evidence demonstrates the existence of handwriting identification expertise."

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- Courts should cease to admit expert testimony.

History of Handwriting Expertise in Court

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- First Folkes v Chadd – first expert testimony in 1782.
- Common Law Procedure Act of 1854 provided that “comparison of disputed writing with any writing provided.

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- Courts accepted witness who had seen the writer write.
- Later accepted opinion of inspectors of franks whose job it was to authenticate signatures of Parliament and other officials.

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- Common Law Procedure Act of 1854
Comparison of a disputed writing with any writing proved to the satisfaction of the judge to be genuine shall be permitted to be made by witnesses; and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

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- In 1871 Charles Chabot published *The Handwriting of Junius, Professionally Investigated* in England.
- First book in English to claim that a science of handwriting identification existed.

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- A. Hayward, Esquire examined the methodology and found them largely unsupported. He wrote, "*On almost every occasion when their evidence is adduced, it is adduced on both sides. The process is invariably the same. To prove identity, they pick out all the similar words, letters and marks, to disprove it, the dissimilar...*"

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- Crusade for Respect of Handwriting Expertise
- Osborn and John H. Wigmore
- Wigmore promoted forensic science, specifically handwriting identification.

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Choices for the Future,
Exclusion
and
Other Alternates

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- Motion in limine under Frye
- No cases have been examined much less determined, whether these experts can do what they claim.
- No tests have been done to support their claims either legal, scholarly, or scientific.

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- Suggestions:
- Submission of Disputed Documents and Exemplars under blind test regime.
- Instead of document examiners looking at one set of exemplars, multiple sets should be used.
- No handwriting expert would agree to it.

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- Suggestions:
 - Require blind tests during cross.

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- One is tempted to say, the law does not know how to deal with science or with things asserting themselves as scientific.
- Frye test requires acceptance from the scientific community as a condition of admissibility of evidence.

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- What we can do if we are opposed.
 - Professors should be excluded as experts because:
 1. They have no training, knowledge, education, skill or experience in handwriting identification.
 2. They are not qualified.
 3. There is no expertise in determining if anyone can identify handwriting.

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- Proficiency Testing validates our expertise.
- Some cases demonstrate proof of our conclusions.