



# **Journal of the National Association of Document Examiners**

Volume 31, Spring 2013

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## Some Opinions Elicited by the Israeli Courts Concerning Court-Appointed Handwriting Experts

by  
Pnina Arieli

**Abstract:** In Israel, those who are governmentally trained are called “document examiners” and are trained in fingerprint and other chemical analyses of documents, as well as the examination of machine-generated, typewritten, or handwritten documents. Private sector-trained document examiners, who primarily deal with machine-generated, typewritten, or handwritten documents, are termed “experts in judicial graphology” or “handwriting experts” (either is acceptable).

This article presents Israeli Supreme Courts’ positions regarding a few of the most pertinent issues for Israeli judicial graphologists (handwriting experts). Court citations have been translated from Hebrew into English by the author.

Issues about the range of responsibilities of judicial graphologists and document examiners have elicited opinions from the Israeli Supreme Court about:

- Whether or not handwriting experts may be court appointed;
- expert witness immunity based on testimony;
- reliability of expert testimony based on machine-generated copies/photocopies;
- the need for clarity in court-appointed expert reports;
- the weight of prior judicial opinions regarding experts; and
- cases involving a foreign language

### Basic Information Regarding the Israeli Courts and Judicial Graphologists

The Israeli legal system is based on the British legal system. There are no juries, nor are there depositions. Once the court receives the handwriting experts’ reports, rarely do both sides agree to compromise or to cancel the prosecution. Consequently, handwriting experts regularly testify in court.

Typically, a handwriting expert represents one of the two sides in a legal dispute. However, early in a case when both sides have agreed to a mutual expert, the court may appoint a single handwriting expert or document examiner who represents neither party.

An appointment may also occur after both sides have obtained opposing opinions from their own experts. The judge then decides on the appointment of a third expert, who is considered to be neutral, since this person represents neither side. This third expert can (and should) ask to see the other two experts’ opinion reports as well as examine the same documents as did the other two experts.

If a single expert was appointed by the court to represent both sides, one side may be disappointed by the opinion and would then be given the opportunity to question the expert before trial for clarification. This is done either by sending the expert written questions, or interrogating the expert on the witness stand.

In U.S. courts “graphology” is generally viewed with skepticism, since it is essentially a method of personality assessment often criticized for lack of scientific foundation. But in many countries outside the U.S., the terms “graphologist” or “judicial graphologist” are used interchangeably with “forensic handwriting expert” or “handwriting examiner.” In Romania, there are “judiciary experts in handwriting,” and in France, the term used is “*expert judiciaire en écriture et documents*” (judiciary expert in handwriting and documents). Similarly, in Greece document examiners are called “judicial graphologists.” As stated in this article, Israeli handwriting experts are termed “experts in judicial graphology” or “handwriting experts.”

By including this article, we acknowledge that graphology is defined differently outside America. However, we are in no way suggesting that character assessment is part of the forensic examiner’s work.

—Editor



## The Court's Evaluation of an Expert

"מקצוע הגרפולוגיה הגיע היום לדרגת מדע שימושי ואין עוד להטיל ספק בכושרו של הגרפולוג לגלות זיופים."  
ע"פ 352/71 אברהם טל נ' מדינת ישראל פ"ד כ"ו (2) 107

"The profession of graphology has reached the level of a practical science and nobody can cast doubt about the ability of a *graphologist* to reveal forgeries." *HCI, HHJ Zusman, CrA 352/71 Avraham Tal v. State of Israel*, PD 26(2)107 (Emphasis added.)

There continue to be issues brought up by opposing council as a way of getting the non-governmental handwriting expert disqualified. The basic contention is that the handwriting expert's opinion is not equal to that of document examiners who are trained by the forensic department of the police and who are currently either employed by the government or are retired government document examiners. Although the courts acknowledge the qualification of private handwriting examiners and appoint them as experts, the government document examiners continue to unjustly claim that their knowledge, training, and experience are superior to that of the non-governmental experts.

Since there are no academic courses for the non-government people who want to practice document examination, handwriting experts come from graphological backgrounds and bring pertinent aspects of handwriting dynamics to their work.

Renna Nezos, Principal of the British Academy of Graphology, relates in her book *Judicial Graphology* that "the graphologist who studied document authentication has the advantage of knowing the mechanisms of handwriting. He knows how a stroke has been drawn and what the driving movement behind it was. This is of extreme importance in judicial graphology. A skilled forger can imitate the forms and movements and can produce a very successful product, but he can never reproduce the individual driving movements—'the brain patterns'—of the original. Such a subtle difference can only be spotted by an experienced graphologist."<sup>1</sup>

Document examiner Karl Aschaffenburg agrees

with Nezos and states that graphologists normally consider such factors as "the genetic development of writing, the influences on writing of physical and mental illnesses, of aging, of injuries, of drugs." He further notes that any of these may be related to a document examiner's cases and that "A knowledge of all these areas could only be helpful to him."<sup>2</sup>

In his book *Evidential Documents*, James V. P. Conway lists standards for U.S. federal jobs for those handling analysis of documents and handwriting. Conway states that requirements for the highest federal classification level include "thorough knowledge of the history of handwriting, the development of handwriting, handwriting execution, the systems of writing employed in the United States, the principles and techniques of examining and evaluating handwriting individualities...a thorough knowledge of the volitional and non-volitional factors, for example, age, physical illness, intoxication, mental disease, deception and fraud, causing variations in handwriting..." All of these topics are studied by graphologists.<sup>3</sup>

In the intervening forty-two years since the *Avraham Tal v. State of Israel* case decision, most of the Israeli Courts have stood by the previous Supreme Court's 1971 opinion.

"על מקצוע הגרפולוגיה נאמר כי הגיע לדרגת מדע שימושי ולכן מותר ולעיתים קרובות אף רצוי לעשות שימוש בחוות דעתו של גרפולוג על מנת לבסס טענה בדבר אמיתותה (או אי אמיתותה) של חתימה."  
ע"א 5293/90 בנק הפועלים נ' שאול רחמים פ"ד מז (3) :262,263,240

"The profession of graphology has reached the level of a practical science; therefore, it is allowed and often advisable to make use of the opinion of a *graphologist* in order to establish a claim about the

2 Aschaffenburg, Karl. "Contribution of Handwriting Analysis to the Examination of Documents," NADE Seminar, Princeton University, 4 May 1980 (as reported by Teresa A. Hurt in "The Value of Graphological Training as It Pertains to Document Examination," NADE Journal, Vol. 18 No. 2, Fall 1995).

3 Conway, James V. P. *Evidential Documents*, Springfield, MO, Charles C. Thomas, 1959, p. 214.

1 Nezos, Renna. *Judicial Graphology*. Volume 3, p. 12.



authenticity of a signature.” H CJ, HHJ Shamgar, CA 5293/90, *Bank Hapoalim v. Shaul Rahamim*, PD 48(3) 240,262,263 (Emphasis added.)

A 1988 Israeli Supreme Court decision relates how the Israeli courts evaluate an expert:

”אין פסול עקרוני בהסתמכותו של בית המשפט על חוות דעתו של עד, אשר בדרך זו או אחרת, אם תוך עיסוק במקצועו או כחובב, או בדרך מקרית אחרת, רכש ידע כללי בנושא מסוים” השופט בך, ביהמ”ש העליון, ע”א 70/88 שושנה פז נ’ חנה אלון ואח’, פ”ד 32 (3)44

“In principle, there is no problem with the court accepting an expert’s opinion, who works in this field either as a professional or as an amateur, as long as he has enough knowledge or practice in a specific subject.” H CJ, HHJ Bach, CA 70/88 *Shoshana Paz v. Hana Alon and Others*, PD 44(3)32

In this verdict, the judge ruled that the expert does not have to be trained by a recognized institution and there is no problem that his qualification is a result of self-learning.

### Immunity of the Expert

The following is another example of the range of the professional responsibility of the expert. A handwriting expert came to the conclusion that a signature was forged. Based on this conclusion, the client started the long process of litigation, including the gathering of witnesses. This caused the client great financial expense. Although there was no issue of qualification, the court did not accept the opinion of the client’s expert, but accepted instead the opinion of the opposing expert. The client intended to prosecute his expert, claiming that the expert was somehow negligent.

The question of whether a client can prosecute a witness for causing him damage because of perceived negligence, which had been raised several times previously, elicited this 1976 decision from the Israeli Supreme Court:

”כדי לקיים משפט הוגן בין אדם לחברו או במשפט פלילי, יש להגן על העדים שיתנו את עדותם באופן חפשי ללא פחד מפני התנכלות להם...על המדינה לנצור מכל משמר את החופש של העדים ולשחררם מכל לחץ ואיומים.”

השופט העליון זוסמן, ע”א 752/74 מרדכי רויטמן נ’ בנק המזרחי המאוחד בע”מ פ”ד כט 057(2)

“In order to hold a fair trial between people, or in a criminal trial, witnesses should be protected, so they can give their testimony freely without fear of persecution...The state is obliged to hold, at all costs, the freedom of witnesses and release them from any pressure or threats.” H CJ, HHJ Zusman, CA 752/74 *Roitman v. Bank Hamizrahi and Others*, PD (2)057

In other words, when someone testifies in court, he has the immunity of the court.

In a later verdict, the District Court’s judge ruled that we should not relate to an expert witness as we relate to an ordinary one:

”מומחה מוסר עדות שרובה היא עדות סברה המתבססת על ניתוח מקצועי של הנתונים העובדתיים המובאים לפניו. היינו, העד המומחה חובש שני כובעים: בכובעו האחד של המומחה והשני של העד. אין חולק שכובעו כמומחה הוא כובעו העיקרי ואילו כובעו כעד הוא תפקידו המשני והנלווה, ומשום כך, לדעתי, אין לראות את עדות המומחה כעדותו של עד רגיל ולהסיק שכפי שמוקנית חסינות לעד המעיד בהליך משפטי, כך יכול גם המומחה לחסות תחת צילה של חסינות זו באופן מוחלט... סבורה אני שיש ליתן משקל לשמירה על מערך הרתעתי שיביא ליתר מודעות, ליתר תשומת לב וליתר זהירות של המומחה המחייבים הכרה באחריותו במצבים קיצוניים בהם יוכח, שנהג ברשלנות רבתי.” בימ”ש מחוזי, השופטת הילה גרסטל, ת”א 3754-10-07 ד”ר בני וגנר נ’ ד”ר אריק כהן אדד

“The majority of the expert’s opinion is a reasonable explanation, which is based on the professional analysis of the factual data. Namely, an expert witness wears two hats: one hat of an expert and a second hat as a witness. No one disputes that the specialist’s hat is the primary one and the hat as a witness is his secondary role. Therefore, in my opinion, an expert’s testimony is not the same as an ordinary witness and we shouldn’t conclude that, as immunity is granted for witness while testifying in a legal proceeding, the expert can also shelter under the shadow of this immunity... I believe that weight should be given to maintaining a deterrent system that will bring more awareness, more attention and more caution of the expert, requiring recognition of his responsibility in extreme situa-



tions in which his negligence is proved.” MC Tel Aviv, HHJ Gerstel Hila, CC 3754-10-07 *Dr. Beni Vagner v. Dr. Arik Choen-Adad*

### Opinions Based on Copies

Handwriting experts and document examiners encounter situations where original documentation is not available, for whatever reason. Nevertheless, they are still obligated to give professional, scientific opinions based on machine-generated or photocopied documents.

In 2005, the Israeli District Court ruled:

”קביעה של המומחה כי אדם לא חתם על מסמך מסוים, בעוד שהבדיקה נעשתה מתוך העתק צילומי... מן הראוי שהספק יוזכר במסקנותיו הסופיות של המומחה, כמו גם עובדה כי ישנם מאפיינים רבים שלא היה באפשרותו של המומחה לבדוק מצילום, כגון לחץ הכתיבה”  
כבי' השופטת רחל ערקובי, ת”א 25678/03 מגדל חב' לביטוח נ' סבן יואב 05 (11) 130

“When an expert makes a decision that the party in question did not sign a certain document, based on a copy of the original document...it is appropriate that the expert should mention a doubt in his final conclusion, including the fact that there are some characteristics he could not analyze from the copy, such as pressure of the writing.” MC Tel Aviv, HHJ Arkubi, CC 25678/03 *Migdal Insurance Company v. Saban Yoav*, 130(11)05

Handwriting experts who examine non-original documents may not be able to reach conclusive opinions, if the quality of the copies is poor. In such cases, they should include reasons for doubt, list identification characteristics that could not be analyzed, and indicate lower levels of certainty. Those who are employed by the forensic department of the police use seven levels of certainty (four positive and three negative); however, because there's no rule about it, handwriting experts may use different scales of certainty, according to individual preference. Most private-practice experts in Israel use five levels of certainty, each of which can be positive or negative, essentially resulting in ten levels of certainty.

Ordway Hilton relates that original documents may have evidence that has been erased, or sec-

tions that were deleted by white-out material, or assembled by cutting and pasting from other documents. Any of these manipulations can be difficult to detect when examining photocopies, making proof of fraud difficult.<sup>4</sup>

### Clarity of the Report

The Israeli courts accept the opinions of court-appointed experts, unless the experts' opinions are not presented in a clear, detailed and organized way. Below is a quotation of an Israeli court decision from 2005:

”כאשר מומחה שמונה על ידי בית המשפט מגיש חוות דעת שאינה ערוכה בצורה מאורגנת ובהירה, כך שאינה מאפשרת להתרשם ולהבין כיצד הגיע למסקנה, אזי בית המשפט יעדיף לקבל את חוות הדעת של אחד הצדדים, ולא את חוות הדעת של המומחה מטעמו” כבי' השופטת רחל ערקובי, ת”א 25678/03 מגדל חב' לביטוח נ' סבן יואב 05 (11) 130

“When an expert, who is appointed by the court, delivers an opinion in a way that is not clear enough and is not detailed or organized, it does not enable the court to understand how the expert reached his conclusion; then, the court can give preferential weight to the report of one of the sides, rather than to the report of the expert appointed by the court.” MC Tel Aviv, HHJ Arkubi, CC 25678/03 *Migdal Insurance Company v. Saban Yoav*, 130(11)05

### The Influence of the Judge's Opinion of the Expert in a Prior Case

Not all the judges are aware of the following Supreme Court ruling regarding an expert's credibility. Some judges still allow lawyers to attack opposing experts by quoting other judges' opinions from prior trials.

To avoid this unwarranted complication, a handwriting expert should always provide the lawyer this 1990 Supreme Court verdict which states the attitude of the Israeli courts that the credibility of the expert witness should not be affected by a prior trial, in which the judge discredited the expertise of the expert. HCJ, HHJ Heshin, CA 2275/90 *Lima v. Rozenberg*, PD 47(2)606, 614

<sup>4</sup> Hilton, Ordway. *Scientific Examination of Questioned Documents*, pp. 122, 348-388.



### Cases Involving a Language Foreign to an Israeli Judicial Graphologist/Document Examiner

A 1992 verdict in the Israeli Supreme Court states the following:

"אי ידיעת השפה בה נכתבה החתימה, אינה פוגמת או מחלישה את חוות הדעת"  
כב' השופט מצא, ע"א 4200/92 נינט אשרם מעלופ נ' וידאר איסקנדר מעלופ. פ"ד מ"ז (ד) 780

"The fact that the expert doesn't know the language the signature was written, does not impair or weaken the expert's report." H CJ, HHJ Maza, CC 4200/92 *Ninet Arsham Maaluf v. Vidar Iskandar Maaluf*, PD 47(4)780

This author believes that when a handwriting expert is retained to examine legible foreign language signatures or handwriting, it is his moral obligation to research the copybook writing style of the language that he does not know, to acquire more information for use in forming a reliable opinion. Sometimes it is also prudent to have the foreign language translated. The most important aspect of examining handwritings and signatures written in a foreign language is to understand the copybook formations, where the letters begin and end, and the direction of the lines and the writing.

### Summary

The Israeli courts regularly accept judicial graphologists as experts, whether or not they are court appointed. Most of the judges do not give preference to document examiners from the government agencies, and make decisions and rule by the quality of the report and testimony, even if given by an autodidactic graphologist. Witnesses who have testified in court have immunity from being sued, but experts cannot have the same immunity, if negligence is proved. While the Israeli courts accept opinions based on non-original documents, the expert should be responsible for expressing levels of certainty in these instances. In a few cases, the Israeli courts have not accepted the court-appointed expert's opinion, when the report was not detailed, clear and concise. Handwriting experts and document examiners can successfully analyze

handwriting in a foreign language, providing they have acquired knowledge of the copybook style and other pertinent writing characteristics of that particular language.

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*Pnina Arieli* has worked as a graphologist for nearly 25 years. She is the owner of The Institute of Graphological Analysis, which serves many large companies in human resource screening. During the last 12 years, she has specialized in scientific examination of documents and handwriting and presently works full-time in this field.

As a court recognized judicial graphologist, Ms. Arieli she has been appointed by the Israeli courts approximately 90 times and has testified over 70 times in the Israeli magistrate and district courts. She was a presenter at the 2010 National Association of Document Examiners conference in Portland, Oregon and has lectured at numerous Israeli area bar association meetings.

Ms. Arieli has published numerous articles in various attorney magazines and on general interest websites. She also functions as the adviser to a lawyer website, <http://www.mishpati.co.il>, in the judicial graphology forum.

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