

Title: A weak forensic opinion helps win a case.
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You have hired a forensic examiner to analyze evidence for your civil case. After a thorough examination of the evidence, the forensic examiner delivers a weak forensic opinion toward favoring your theory of the case. Will the examiner's weak opinion help you in trial? When the opinion fails to show a preponderance of evidence, can you still prevail at trial?

In 2016 I was retained by the plaintiff in this civil wrongful death case in San Diego County: Zahau v. Shacknai. Previously, the county coroner ruled the decedent committed suicide. Her family believed she was murdered by Adam Shacknai.

My retention was to compare the writing on a door inside the Spreckels Mansion with the handwriting of the victim, Rebecca Zahau, and with the handwriting of the accused, Adam Shacknai. The hand printed message was "SHE SAVED HIM CAN YOU SAVE HER."



The scope of my work was determining whether either Ms. Zahau or Mr. Shacknai had written the words on the door. Several other examiners were retained to examine other technical aspects. These included a knot expert, a medical pathology expert, a forensic psychiatrist, and others.

The handwriting on the door was done in block printed text. This meant the exemplars also must be handprinted block letters. Cursive writing could not be used for comparison. A generally accepted practice in handwriting comparison is handwriting must be compared with the same type of writing. The only examples I had of Mr. Shacknai's handwriting were six verification pages he had signed. Typically, a signature is not a valid exemplar for hand printing. Fortunately, Mr. Shacknai wrote his signature as handprinted block letters. Therefore, I had writing to compare with the writing on the door. This limitation led to a weak forensic opinion on authorship.

Exemplars of Ms. Zahau that contain block print were application forms, immigration forms, and other documents on which she had handprinted. The exemplars were written in different physical locations between 2002 and 2009. These documents also contained Ms. Zahau's signature. The defense objected on foundation whether these forms were written by Miss Zahau.

I had compared the signatures on these documents with Ms. Zahau's known signatures. The result was the signatures on the exemplars were authenticated as having been written by Ms. Zahau.

The block printing on the exemplars was compared to determine whether the exemplars were all written by the same person. The exemplars were written by the same person. They had also been signed by Ms. Zahau. Using the signatures as foundation for the exemplars, the documents were admitted into evidence as having been handprinted by Ms. Zahau.

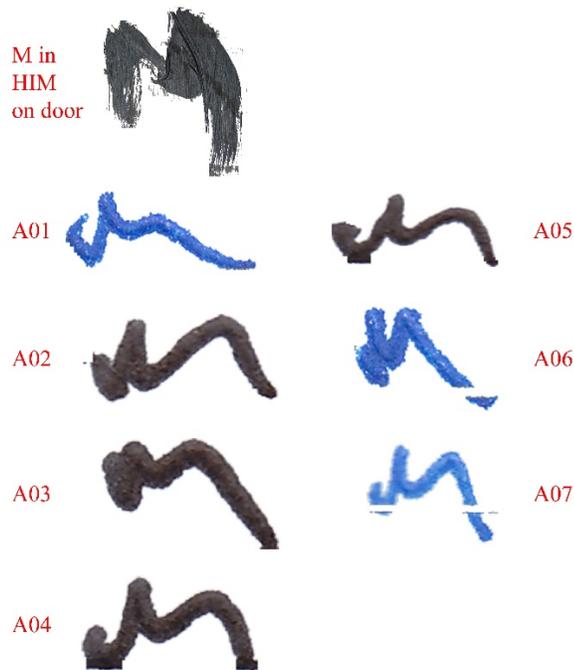
Comparing of the handwriting on the door with both Mr. Shacknai and Ms. Zahau required comparing letters in the handwriting that were common to both people and the writing in question on the door. Only two letters were common among all three writings. These were the letters "A" and "M."

I extracted these letters from photographs I had taken of the door, and digital scans of the exemplars. The photographs of the door were taken at the inspection in the San Diego crime laboratory. A comparison sheet was made for each common letter to show whether the writing of each person comports with the writing on the door.

Compare Rebecca's M to the M in HIM on the door



Compare Adam's M to the M in HIM on the door



The lack of exemplars, and having only two letters in common among the writings posed a difficulty with arriving at an unqualified opinion on whether either Ms. Zahau or Mr. Shacknai

had written the text on the door. These constraints led to a weak forensic opinion there are *indications* Mr. Shacknai wrote the text on the door. It was inconclusive whether Ms. Zahau had written text on the door. These opinions were relative to all potential writers.

An accepted standard used by forensic document examiners for expressing opinions is published by the Scientific Working Group for Document Examination, SWGDOC. The standard defines indications as:

“indications (evidence to suggest)—a body of writing has few features which are of significance for handwriting comparison purposes, but those features are in agreement with another body of writing.”

This is a weak forensic opinion. It does not meet the preponderance of evidence requirement in a civil case. In document examiner’s standard terms, an opinion must show it is more likely the handwriting is written by the suspected writer or not written by the suspected writer.

Two basic tenets of handwriting comparison are that no two people write alike and person writes exactly the same way twice. Handwriting examiners use exemplars to establish a range of variation in the way a person writes.

When the opinion was limited to only these two people, the comparison of their handwritings to the handwriting on the door lead to an opinion it was more likely the handwriting of Mr. Shacknai than the handwriting of Ms. Zahau.

Because my opinion was weak, the defense requested an evidentiary hearing for the court to determine whether my testimony would assist the jury. Could my testimony allow the jury to arrive at a decision there was a preponderance of evidence Mr. Shacknai wrote the words on the door?

The evidentiary hearing was held the first morning of my testimony. The Court ruled that I may testify before the jury. The reason I could testify was because when compared with only two people, rather than all potential people, I demonstrated it was more likely the handwriting was of Mr. Shacknai than Ms. Zahau. My testimony before the jury lasted almost a day and a half.

The defense’s document examiner offered no input regarding authorship of the handwriting on the door. The document examiner testified, “I concluded that ... collecting additional known writing would not be of assistance.” Although he was retained by the defense, he obtained no exemplars from Mr. Shacknai. He never performed a comparative handwriting examination. Yet, he arrived at an opinion it is inconclusive whether Mr. Shacknai, or any other person could be identified as the writer of the words on the door. The opposing document examiner testified, “This is just not suitable for comparison.”

After a month-long trial, the jury returned a verdict in a few hours. Their verdict favored the plaintiff. The verdict was Ms. Zahau was murdered by Mr. Shacknai.

Here, an initially weak forensic opinion was a valuable asset for the plaintiff. When the evidence was limited to two suspects, rather than all people, the weak opinion became a much stronger opinion. Plaintiff’s attorney, Keith Greer, presented jury with compelling evidence to support his

case. The defense tried unsuccessfully to exclude exemplars of Rebecca Zahau's handwriting. Over the defenses objections, Mr. Greer successfully laid the foundation for admitting this evidence. When the jury used the demonstrative exhibits to visually compare Ms. Zahau's handwriting and Mr. Shacknai's handwriting, the agreed there is a preponderance of evidence it was Mr. Shacknai's handwriting on the door.

When your forensic examiner delivers a weak forensic opinion as defined by their standards, examine your options. You may be able to reframe the opinion using legal standards to support your case. Here where the opposing side offered no evidence to refute their claim that Mr. Shacknai did not write the words on the door, plaintiff's attorney framed weak evidence into preponderance of evidence that Mr. Shacknai wrote the words on the door.

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