COMFORT AMAGASHIE, et al., Appellants, *v.* REYNOLD MENSAH-TORMETIE, Appellee.

APPEAL FROM THE CIRCUIT COURT, SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued March 11, 1976. Decided April 23, 1976.

1. The prevailing trend in handwriting analysis is to examine the characteristics of the writing, without regard for any punctuation, including periods.
2. The genuineness of a signature may be ascertained by comparison of the disputed signature with an admitted genuine one.
3. In the case of wills, any doubt arising as to the genuineness of a testator's signature, should be resolved in favor of the respondents seeking probate.
4. Parties to litigation should not be excluded from the courtroom during the hearing of their cases, and it makes no difference whether or not they intend to testify.

The appellee interposed objections to the probate of his father's will in Probate Court, contending the signature on the will was forged. The issue was tried before a jury, which returned a verdict for the appellee. An appeal was taken to the Supreme Court.

The Court thoroughly reviewed the evidence, concentrating on the handwriting expert for the objector. The Court was of the opinion that there were many unanswered questions and that doubt did arise on a number of points. Therefore, the matter was *reversed* and the case *remanded* to be tried before another jury.

MacDonald Acolatse for appellants. *C. Abayomi Cassell* and *Beauford Mensah* for appellee.

MR. CHIEF JUSTICE PIERRE delivered the opinion of the Court.

This case has come up on appeal from the Sixth Judicial Circuit Court, where the contested will of the late

J. D. Mensah-Tormetie was passed upon by a jury and declared a forgery. Before his death decedent made two wills according to the record certified to us from the court below; one on September 27, 1971, and the other on November 21, 1972. After making this latter will, as the record shows, he departed from Liberia for Ghana, and there died on December 22, 1972. It is this second will which was sent to the Civil Law Court for the jury to pass upon, having been objected to in the Probate Court in Monrovia.

According to the record, the second will had been left with Senator Boto Barclay, and he had presented it for probate in the Probate Court. There is testimony to the effect that G. Walton Tay is supposed to have taken the will to Senator Boto Barclay upon the testator's request. This fact, which has not been denied by either side, is to play a very important part in the determination of this case. In the record is a document signed by Senator Barclay stating that he had been served with a copy of the objections to the will.

Reynold Mensah-Tormetie, the son of the testator and one of the beneficiaries under the will, filed objections to its probation on the ground that his father's purported signature appearing thereon was forged. Comfort A. Mensah-Tormetie Amagashie, the daughter and nominated executrix, and also beneficiary under the will, and G. Walton Tay, one of the executors, filed an answer in defense of the will. This matter came on for trial before Judge Alfred B. Flomo on April 16, 1974, when a jury was selected and sworn, to try the case. Reynold Mensah-Tormetie, the objector, testified to the effect that the signature appearing on the will in question was not his father's, since it did not match other known signatures of his father appearing on a number of documents which he produced. He said further that he had been informed by Samuel Johnson that after the testator's death, G. Walton Tay, one of the respondents, had taken this will to

Johnson to sign as an attesting witness, and that he had affixed his signature to it. We will say more about this later.

The next witness was Samuel Johnson. He testified that he was acquainted with the testator through his late wife, and that he was also acquainted with Christian Tay, one of the witnesses who signed and witnessed the testator's signature, but did not know the other attesting witness, Geoffrey K. Avrokliya. He admitted that his name also appeared as one of the three attesting witnesses, but that he had affixed his signature to the will upon the invitation of G. Walton Tay, after the testator's death.

Then followed the further examination of this witness, who had voluntarily testified that he witnessed the signature of the deceased testator, the year after his death, and at the insistance of G. Walton Tay.

"Q. Who else besides you and Mr. Tay was present when the request was made to you to sign this instrument?

"A. No one was present beside Mr. Tay and myself when he presented the document to me and I signed.

"Q. Did you read the document you signed?

"A. He explained to me and asked me several questions saying: 'You and your wife used to visit Mr. Mensah during the time he was sick before leaving for Ghana?' I said, yes, several times. Then he said: 'You can sign this document.' And that is all.

"Q. From your last answer then I presume that you are acquainted with the signature of the late J. D. Mensah-Tormetie. Am I correct?

"A. I never saw the signature of the late J. D. Mensah-Tormetie in my life, nor did I see him signing any document in my presence.

"Q. When did you inform Reynold Mensah-

Tormetie of a request made to you by Walton Tay to witness this document?

"A. It was earlier this year.

"Q. Do you realize the gravity of your statement to the effect that you, knowing that the testator had died, and in the face of that fact, agreed to witness a document purported to be carrying his signature?"

This question was objected to and the objection was sustained. We feel very strongly that an answer to this question was necessary for two reasons: (1) the witness might not have known the gravity of what he had done, and in order to be fair to him, he should have been allowed to say so; (2) he might have known he was doing wrong, and this might have determined how much confidence to put in a witness' testimony who would do a thing like that, knowing it to be wrong. However, because of the position we have taken in this matter, we will say no more on this point. His examination continued:

"Q. You said your wife told you that Mr. Mensah wanted to see you. Do you mind telling the court and jury when your late wife died?

"A. My wife died the last day of 1973.

"Q. I also suggest to you that at the death of your wife, a confusion arose between you and Tay's family concerning burial. Am I correct?

"A. It was concerning the burial the confusion came from. The confusion came when immediately after my wife died the brother-in-law who is G. Walton Tay, immediately entered my premises and knocked my room door where my wife and myself live. There is where the confusion came from."

The testimony of this witness is unsupported, and it shows the following, among other things: (1) that he was acquainted with the testator; (2) that he was married to the sister of G. Walton Tay, and that he and his wife

paid several visits to the testator during his illness, and before he left for Ghana, where he died on December 22, 1973; (3) that the witness' wife, G. Walton Tay's sister, also died in December, after the testator's death; (4) that at his wife's death he and his brother-in-law, G. Walton Tay, quarreled; (5) that notwithstanding the quarrel, early in 1974, G. Walton Tay had invited him to his house, and there asked him to sign as a witness to the will of the testator who had died the year before.

It must be realized that this witness also testified that when he signed, there were already two other signatures as witnesses to the will; but he still agreed to sign below these two signatures, even though he knew he had not seen the testator sign, according to him. A very unlikely story from the standpoint of human reaction. But the jury and the judge must have given it more credit than they gave to the corroborated testimony of the other two attesting witnesses, who testified that all three of them had witnessed the testator sign the will, and that they had then signed in his presence and in the presence of each other. As to how much weight must be given to such an unlikely story told by Johnson, each person must judge for himself, but we find it extremely difficult to believe such a story.

Is it reasonable that after G. Walton Tay and the witness had quarreled in December 1973, that early in 1974 Mr. Tay would invite him to his house and ask him to witness a document of a man who had died the year before? And after having signed his name to the document which he claims Mr. Tay invited him to sign, he then undertook to report his action to Reynold Mensah-Tormetie. Unless he felt there was something unusual about the request Mr. Tay had made of him, why did he make this report of his signing to Reynold Mensah-Tormetie? And if he felt there was something unusual about Tay's asking him to sign, why did he agree and

sign? The answers to these questions might never be known, but the circumstances seem very strange, and they leave doubts in our minds.

Among the documents offered in evidence by the objector was the will which had been objected to, and which the respondents were defending; yet they entered objection to its admission. This was an inconsistent position, and the court correctly overruled the objection and admitted the document.

Christian Tay was the first witness who testified for the respondents, and his testimony was to the effect that the late J. D. Mensah-Tormetie was his uncle, and that he with two other persons had witnessed the signature of the testator. The two others were Geoffrey Avrokliya and Samuel Johnson. He said the three of them had signed after seeing the testator sign his name to the will. He said the signing took place in the latter part of November 1972 at the home of the testator in Sinkor. He was handed several documents, including the will in dispute marked by the court PX/1, and he identified the signature as that of the testator.

On cross-examination, this witness testified that there was no difference in the signatures appearing on the will in question, and those appearing on the other documents also marked by the court. He also testified that the will was signed by the three of them as witnesses in the living room of the testator, the exact time of day he did not remember. The Court asked the witness the following questions:

"Q. I pass you the will in question marked by the court PX/1, look at it and compare with the one just identified by you, and tell the court and jury if the two signatures are the same or there is any difference between the two?

"A. The two signatures are the same.

"Q. We observe from the will of November 1972

that it is signed as "J. D. Mensah-Tormetie," please look at the one previous to that and say if it is signed in the same manner?

"A. It is signed in the same manner, but there are no periods in the will of 1971.

"Q. And so you consider the two as being the same?

"A. Yes.

"Q. Please look at the documents marked by Court RE/1, RE/2, RE/3, and RE/4, and say whether the signature of the late J. D. Mensah-Tormetie you have identified thereon as being genuine, are signed respectively in the same manner as that of the will of 1972?

"A. Yes, they are signed in the same manner."

It is to be observed that this was the first time that the facts of periods being between letters in the signature was brought into the case, and this was under examination by the judge.

Another witness was Comfort Amagashie, and she said that the testator was her father and that she had witnessed his signature when he signed the will in question. But here is the text of her testimony-in-chief:

"About that particular will, my father, J. D. Mensah-Tormetie, told me that he had changed his will, and his reason for changing it was he sold land to Beauford Mensah which was in his first will, and secondly, his property which he has in Ghana was not included, so he included it in the second will. And on the 27th day of November, 1972, it was 6 o'clock when he called me to pack his things, because we were travelling to Ghana the following day, which was the 28th of November, 1972. As I was packing the things, my cousin Walton Tay came and sat down and he said: 'Cousin James you sent for me?' And he said: 'Yes.' So he told him that he should take him to Robertsfield on Tuesday. Then he haul the cover . . . and took two envelopes out, he gave Walton the sealed envelope

and asked him to deliver it to cousin Gabriel Tay who is Walton's father. Walton took the sealed envelope and said: 'Cousin James, this envelope you are giving me to give to Pa, Pa cannot see well and you do not have any other cousin to give this envelope, to deliver the document to?' Then my late father said: 'Yes, you can give it to Hon. Boto Barclay. . . . That I was going to Ghana for medical treatment; I don't know what will happen to me. If something happens, then he can present it to the court.' The other envelope which was a white envelope closed, he gave to me, and on top he wrote: 'Comfort, I am giving you this envelope, when anything happens to me, this is the duplicate copy of what I have given to Walton to give to Boto Barclay.' So I told him, Pa, I was not taking you to Ghana to go and die, I was taking you for medical treatment. So he said, 'You don't know what will happen.' That is the end of that, and I took my bath and took my envelope in my bag. After I am completing packing his things, I went and . . . packed my things, because we will be leaving early in the morning."

She was further examined and cross-examined, and her other testimony was to the effect that she recognized her father's signature on the will in question, and on five other documents handed to her. She said that she still had the white envelope in her possession which her father had given her. The following question was then asked her by the Court:

"Now, Mrs. Witness, you cannot tell what happened to that brown sealed envelope which was supposed to have contained your father's last will and testament, between the time it unfortunately got into the hand of one G. Walton Tay to be delivered to Boto Barclay, and Boto Barclay to present it to the Probate Court for probation and registration; can you?"

This was ~~an~~ unusual question to have been asked by

the judge. What could the judge have meant by "unfortunately got into the hand of one G. Walton Tay?" There had been nothing testified to in the record to make the delivery of the document to G. Walton Tay unfortunate. Did the judge know something that was not in the record? But Boto Barclay, who might have been able to clarify the question of whether or not delivery of the document to G. Walton Tay had been unfortunate, was not called to testify. We still wonder at such a question regarding Walton Tay, and that some unfortunate thing might have impliedly happened to the document entrusted to him did not influence the verdict of the jury. The following is the witness' answer to that unusual question of the judge:

> "As the envelope to G. Walton Tay . . . delivered to me, the following day my late father and myself left for Ghana. The only time that I opened the envelope was the time we went to the Probate Court, and now as I see the signature of that PX/1, and the one I had in my envelope are the same; as to what happened to the brown envelope and its contents, I cannot say anything about it."

The judge asked another question.

> "Q. I do not get the impression that you are a handwriting expert, and therefore competent to testify to the identity of disputed handwriting. Am I correct?
>
> "A. I am not handwriting expert. But I witnessed several of his signatures, so I can tell that that is his signature."

It might have been wise to have put the contents of the white envelope given to the testator's daughter in evidence also, to see whether its contents tallied with the contents of the brown envelope, since both are alleged to have been delivered to Amagashie and to Tay respectively the same time by the testator. But this was not

done. The jury asked this witness some very interesting questions, and one is set forth.

"Q. Tell us who was present when the envelope you testified to was delivered to you?

"A. Mrs. G. Walton Tay."

The record does not show that Mrs. G. Walton Tay was called to the stand. She could have said whether or not she had seen the testator give any envelope to these people, Walton Tay and Comfort Amagashie. The judge returned to the examination of the witness:

"Q. Mrs. Witness, how many wills of your father do you know of.

"A. He made one in 1971; after he sold a portion of the property he changed it, and then included the property in Ghana."

We have checked both wills, and find that in the 1971 will, he left seven lots of land to Comfort Mensah-Tormetie Amagashie, and in the 1972 will this quantity was reduced to only five lots to the said Comfort. There is no mention of property in Ghana in the 1971 will, but there is a devise to his sister of a two-story building in Ghana in the will in dispute, dated November 1972. This in effect is the testimony of Comfort Amagashie; she and witness Christian Tay, who is one of the attesting witnesses, agree in their general testimony. Witness Geoffrey Avrokliya, the other attesting witness, also testified, and his testimony corroborated that of Christian Tay. He said the three attesting witnesses had witnessed the testator sign the will marked PX/1, and that they had thereafter signed their respective names as witnesses in the presence of the testator and before each other.

After these witnesses had testified, a handwriting expert was called to the stand, to testify as to the genuineness of the purported signature of the testator appearing on the will in dispute, as compared with his known signature found on several other documents. All of these had been

offered in evidence at the trial, and had been marked by the court. Examination of this witness proceeded:

"Q. What is your name and place of residence?

"A. My name is Michael W. Sarteh, I live in New Krutown.

"Q. Are you employed, and if so, state the name of your employer and capacity in which you are employed?

"A. Yes, I am employed by the Liberian Government, Ministry of Justice . . . as Assistant Document Analyst.

"Q. Do you hold any special qualification for this position?

"A. Yes, I have a certificate from Albert W. Somerford, as my chief possession.

"Q. In that capacity could you tell us briefly how do you perform as documents analyst?

"A. As a document analyst, my work of performance is to analyze, examine and determine whether or not a given document is genuine or not.

"Q. In that case, we pass you this batch of documents, could you kindly examine them, analyze same and say whether or not any of them differ from the others, and in what respect?

"A. I cannot examine these documents on the spot, except I take them to the laboratory and go through the laboratory process which takes about three or four days."

This record was made on April 23, 1974, and the court granted time. The case was resumed on April 25, 1974. Why only two days, instead of the three or four days asked for by this witness was granted, is not shown in the record. But the shortness of the time for the analysis was to be very important as will be seen later in this opinion. The witness resumed the stand and his examination continued:

"Q. Have you now completed your examination of

the documents handed you and now in (your) possession, to give your opinion thereon? If so, please say.

"A. Yes. I completed the examination of the documents that were given to me and have prepared a report to that effect, which I am about to read; which I have the honor to now present to court. And in addition to the report there are photo charts to demonstrate in support of my opinion. (The report was marked by Court EWR/1.)

"Q. Mr. Witness, you said in your report that the signatures appearing on the last will and testament of the late J. D. Mensah-Tormetie, were written by one and the same person, but that these signatures do not match the known specimen given to you; and the point of difference according to your report, is that periods are not consistently placed between the letters 'J' and 'D' while the last pages carry periods at each of these letters mentioned herein. Which last pages do you have reference to?

"A. The last two pages of the will, that is, page three and page four.

"Q. But do pages one and two of the document bear the periods in question?

"A. No, pages one and two of the document in question do not carry periods after the letters 'J' and 'D'.

"Q. But do you give the court and jury to understand, in keeping with count four of your report, that essential point of departure between the documents PX/2 and RE/1 through RE/4, is the placing of the periods between 'J' and 'D'?

"A. Yes. That is very significant in handwriting comparison analysis for positive identification; there must be a great number of significant simi-

larities between the disputed document and the known specimen without absence of any significant dissimilarities.

"Q. Mr. Witness, if the presence of a period or lack of it is crucial in your work, then how do you reconcile this fact with the fact that according to your own report that the signatures appearing on the first two pages of that document are the basis of your analysis; that is, that there are no periods between the 'J' and 'D' on those pages of the last will and testament?"

This question was objected to, and the court sustained the objection on the ground of misquotation. This question was very important, and should have been allowed to be answered. After all, the expert had written a technical report, and if the party felt that certain portions of it seemed to him inconsistent, why shouldn't the expert be allowed to explain, and thereby clarify the seeming inconsistency? However, to continue the examination of this expert witness:

"Q. Mr. Witness, I had your document marked by court PX/1, which was one of the documents used by you in your analysis; please look at it and tell the court and jury whether there are any periods between the 'J' and 'D' on the first and second pages of that document?"

Again there was objection to the question, and again the court sustained the objection, this time on the ground of not the best evidence. The respondents' counsel then rested with the witness, and asked the court to subpoena another handwriting expert, since this witness' report did not show that it had been approved by the witness' superior. We are of the opinion that this request of the respondents was properly overruled, since there had been no challenge as to the competence of this expert witness. Besides, this was a witness brought by the respondents, who questioned the report which they claim had not been

approved by a superior expert, after the witness' testimony. But before the witness left the stand, the court asked the following questions:

"Q. In your report Mr. Witness, you stated that the signatures appearing on the four sheets of PX/1 being the documents in question are written by the same person. Tell us, can you say it is the same person who signed PX/1 also signed RE/1, RE/2, RE/3, and RE/4?

"A. Even though it has been stated in my report that the document in question was written by one and the same individual, but according to handwriting principles and for positive identity, a given document in question comparing with another given document as a specimen of comparison, there must be a great number of significant similarities with the absence (of) significant dissimilarities. It is in this case that the document in dispute bearing the signature J. D. Mensah-Tormetie appeared in this condition, that the two first page one and page two carry no periods between 'J' and 'D' on pages three and four PX/1 and RE/1 through RE/4 and PX/2 were not written by one and the same person."

Bearing in mind the premise laid by this expert witness, to the effect that one person made the signatures on pages one and two, as well as on pages three and four of the document PX/1 and that these signatures did not correspond with those made on PX/2 and RE/1 through RE/4, this answer seems very confusing. But let us see how the examination continued:

"Q. You said in your testimony that the signature or handwriting on PX/1 are those of one and the same person and of these, dissimilarities exist between those on pages one and two and pages three and four; please look at the writing on pages one and two of PX/1 without periods be-

tween 'J' and 'D,' and comparing them with the known signature say whether or not they are written exactly like those of the known signature?

"A. The signatures appearing on PX/1 on the pages one and two, and the others appearing on pages three and four of the same document, appear not to have been written by one and the same person with disparities of dots appearing on pages one and two, and those appearing on Court's exhibit RE/1 through RE/4 and PX/2 are written by and they are written alike.

"Q. Mr. Witness, what do you mean when you say they are written alike, that is, because the periods do not occur in the known signatures and those on pages one and two of PX/1, or that the letters are written exactly the same?

"A. Yes, they are written alike because the dots in PX/1 appearing on page three and page four do not exist in those two signatures."

This expert witness said several things about the signatures appearing on all of the documents, but one must wonder if the different things he said agree with the premise, that one person signed the document in dispute, PX/1; yet, the signatures on two pages of the four-page document are like those on the specimen documents given him for comparison, and still the signatures on the said PX/1 are said to be forged.

Except for calling attention to the presence or absence of the periods between the "J" and "D" on the documents, no other effort seems to have been made to analyze the signatures or the handwriting of the testator. We shall say more about handwriting later; but we must wonder why no effort was made to analyze the formation of the letters in the various signatures. Why wasn't the character of the handwriting investigated? What proof do

we have that the periods were not placed between the "J" and the "D" in the signature on the will in dispute after the testator's death? So that, rather than dwell exclusively on the placement of the dots between the letters, the expert might have followed universal procedure in handwriting examination, that is to say, to analyze the character of the writing, which includes examining the different letters and how the writer makes them in his signature. The report does not mention anything about that. Now here is the written report of the expert:

"Subject: Signature Identification—Required by Judge Alfred B. Flomo of Civil Law Court, Mo. Co., April 23, 1974.

"Problem: To examine and determine the following:

"1. Whether or not the signature 'J' 'D' Mensah-Tormetie appearing on each sheet of the four-page will of the late J. D. Mensah-Tormetie, was written by one and the same individual.

"2. Whether or not the signature 'J. D. Mensah-Tormetie' appearing on all four sheets of the four-page document in dispute, can be associated with any or all of the known signature specimens of the deceased appearing on court exhibits marked RE/1 through RE/4 and PX/2, respectively.

"Findings: According to the detailed comparison analysis that was conducted between the two sets of signatures, the one appearing on the last will and testament of James Dorforjie Mensah-Tormetie marked by court Exhibit PX/1, which is in dispute and marked RE/1 through RE/4 and PX/2, which all containing known signature specimen of the late J. D. Mensah-Tormetie revealed the following:

"1. That the signature 'J. D. Mensah-Tormetie' appearing on each page of the four-page will in dispute was by one and the same individual.

"2. That the signature 'J. D. Mensah-Tormetie' ap-

pearing on the will in dispute does not match the known and submitted signature specimens of the deceased.

"3. That the signature 'J. D. Mensah-Tormetie' appeared on two sheets/pages of the four-page document in dispute without periods being placed after the letters 'J' and 'D' while the last two pages carried periods after each of these letters mentioned herein.

"4. That the style of writing this signature with periods preceeding each of the letters mentioned *supra,* does not exist in any or all of the known and submitted signature specimens for comparison and elimination purposes.

"Comments: In any event where expert testimony is required by a court of law in order for us to give basis for our findings, please inform us one week ahead of time so as to enable us to prepare photographic charts for court demonstration as supporting evidence. . . .

"Respectfully submitted:

"[Sgd.] MICHAEL W. SARTEH,

Assistant Documents Analyst."

This document shows clearly that the only disparity found by the expert, when he compared the document in dispute with those given him as specimens, was the presence or absence of periods or dots between the letters "J" and "D" in the signatures. As we have said earlier in this opinion, no effort was made to identify the handwriting peculiarities, if there are any, between the signatures on the document in dispute, and those on the other documents used as specimens. So that suppose if someone took a pen and placed dots or periods after the "J" and "D" on all of the documents used for comparison, according to the expert's reasoning, the signatures would then match, and there might be an end to the dispute. Naturally, this cannot be the intent or purpose of the law governing handwriting analysis.

Then we come to the "comment" found at the end of

the report, to the effect that when and where expert testimony is required by courts for examining handwriting, a week's time should be allowed for preparation of photographic charts as demonstrative and supporting evidence. It must be recalled that the witness had asked the court for three or four days, and the court had only given two days; the request for time was made on April 23, 1974, and the court heard the witness' expert testimony on April 25, 1974. The question which is presented now is: had this witness had more time, would he have written a different report? Or, would his testimony have been different? This leaves a doubt as to the correctness of his testimony, and also as to the accuracy of his report.

In pursuing common law authority on handwriting, we have not been able to find any case where periods, or dots between letters, or punctuation have been taken into consideration with respect to establishing the genuineness of a writing.

> "§ 426. *Handwriting:* Whenever the genuineness of a disputed writing is a relevant or ultimate issue, handwriting experts are permitted to compare a disputed writing with a genuine specimen and to express an opinion as to the genuineness of the disputed writing. The validity of this practice is founded on the reason that in every person's writing there is a peculiar prevailing characteristic which distinguishes it from the handwritings of every other person, and therefore, an expert, by studying characteristics as they appear in the writing of the person, may be able to determine with some degree of certainty as to whether a writing sought to be proved contains any of the characteristics of that of which he has examined and studied." Fisch, NEW YORK EVIDENCE, 275, 276 (2d ed., 1967).
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> "The view is adopted by some decisions that an expert may state whether a particular signature or handwriting is in the normal handwriting of the person alleged as author, basing his decision upon the signature

or document itself. In support of this view, it is said that the flow of lines is so different when one writes in his accustomed style, naturally and without effort, from that of one carefully seeking to conceal his natural handwriting or to imitate that of another, that one may require no knowledge of the handwriting of the supposed author to declare the paper to be in a natural or an imitated hand. . . . And, certainly, it is evident that such testimony, to be of any value, must come from a qualified expert, but the witness need not be a 'professional expert'; practical experience in judging handwriting is sufficient to justify the trial judge in admitting the evidence." 31 AM. JUR. 2d, *Expert and Opinion Evidence,* § 75 (1967).

As can be seen, the prevailing trend in handwriting analysis is to examine the characteristics of the writing, without regard for periods or any other punctuation. No two persons can make a signature with identical characteristics; but who cannot place a dot behind a letter in a signature even after it might have been made without a dot? We cannot be sure that the dots after the "J" and "D" in the signature on the disputed will were not placed there after the signature had been made. But we can always be definitely sure that no one could write the testator's signature like he did, and therefore it is this kind of analysis that is required to resolve the issue of the genuineness of a signature on a disputed will.

In order to clarify the point we seek to make in this opinion, we have quoted from a technical treatise on handwriting, prepared by a handwriting authority, William R. Harrison, in his work on SUSPECT DOCUMENTS, THEIR SCIENTIFIC EXAMINATION, 341, 342 (1958). Although this is just a text, the quotation so clearly supports our view on the issue at bar that we have not been able to refrain from using it in the decision of this case.

"The Comparison of Handwriting

"Theoretical considerations. From the foregoing,

it may fairly be assumed that a developed handwriting, being the product of a long period of modification and adaptation to the needs and abilities of the writer, will be peculiar to the individual; in view of its complexity, the probability of any two persons having handwritings which are so similar that the presence of one or more consistent dissimilarities cannot be demonstrated, is extremely small.

"Although this is so, it does not follow that the comparison of various specimens of handwriting to determine whether or not they have been written by the same person is necessarily simple and straightforward, even when there is no possibility of disguise having been introduced. The comparison of handwritings can never be accomplished mechanically as though pieces of a jig-saw puzzle were being compared with the spaces which remain to be filled. Human beings never function with the regularity and precision of machines, which is why natural variation will be a characteristic of every specimen of handwriting which is the subject of examination and comparison. . . .

"It follows from this that because two specimens of handwriting, even when written by the same person, can never be replicas, a measure of judgment is called for on the part of the examiner when he has to decide whether:

"(1) the differences in the handwritings being compared can be regarded as being due to variation, or if they are indicative of different authorship;

"(2) in the absence of any consistent differences which cannot reasonably be attributed to natural variation, the sum total of resemblances in letter design and in details of structure uncovered by the examination can be explained only on the grounds that the writings are of common authorship, and that the possibility of the resemblances occurring by chance can be discounted."

We insist, therefore, that the handwriting expert should have gone beyond depending upon the presence or absence of periods or dots between letters in the signature, to determine by his examination of the signature of the testator that the will in dispute was forged.

> "The genuineness of a signature may be ascertained by comparison of the disputed signature with an admittedly genuine one; and when upon such comparison the two signatures are so much alike in the many features of their construction that they agree or correspond in lines, angles, slant, and space occupied, the fact of such correspondence is deemed to be evidence of highly probative value that one is a tracing of the other, or a drawing from a model." 29 AM. JUR. 2d, *Evidence,* § 806, n. 16 (1967).

According to what we have read in the record, and heard in the arguments before us, we are not convinced that the handwriting expert made any effort to analyze or examine the signature of the testator appearing on the several documents given him for investigation. The question of the periods between the "J" and the "D" in the signature on two pages of the disputed will was not raised by him until the judge first brought it out in his questions put to witness Christian Tay as well as to Comfort Amagashie. And this was the only basis of the expert's written report, as stated in his testimony at the trial. In other words, the judge's examination of witnesses Tay and Amagashie had accomplished just as much as the expert witness, insofar as establishing the alleged forgery of the testator's signature.

We are not convinced that that is all that is required of an expert witness who is asked to analyze the disputed signature of a testator. There are still doubts as to the genuineness of the signature appearing on the will marked PX/1, the document in dispute; but in whose favor should the doubt operate in cases of wills? We are inclined to hold that any doubt arising as to genuineness of a testator's

signature should operate in favor of the respondents in a proceeding.

Earlier in this opinion we mentioned that Senator Boto Barclay had had custody of the will, and that it was he who had presented it in the Probate Court. It is strange, therefore, that although a copy of the objections to probation had been served on and acknowledged by him, he was not called to testify at the trial. We feel that this was particularly necessary, since he would have been able to say under what circumstances he had come into possession of the will, especially since G. Walton Tay, who was alleged to have taken the will to him from the testator, was not allowed to testify at the trial.

The question of G. Walton Tay being denied the right to testify was very heatedly argued before us. Normally, the rule is that after witnesses have been qualified for one side, they should be sequestered, and should any remain in the courtroom and listen to the testimony of the others, they could not thereafter be allowed to testify. *Togai* v. *Johnson,* 14 LLR 187 (1960). Respondents contended that this rule did not apply to parties, and that since G. Walton Tay had remained in the courtroom after qualification, it was error for the court to have denied him the right to take the stand. Objectors claimed that under such circumstances the party should testify first, but if he didn't and still remains in court during the testimony of the other witnesses on his side, the sequestration rule also applies to him as a party. Both sides cited law to support their positions.

"*Exclusion of witness.*

"A party has the right at all times to be present during the trial and neither he nor his counsel may be excluded from the courtroom. In both civil and criminal proceedings, however, the court has the power to exclude any prospective non-party witness. This power, which seems always to have existed in the court, is exercised to prevent the witness from being

furnished with a false memory. It serves the additional function of protecting against the conformation of testimony to that already introduced by eliminating the possibility of instruction of the witness by what he has heard." Fisch, NEW YORK EVIDENCE, § 347 (2d ed., 1977).

"Parties to the litigation will not generally be excluded from the courtroom, their presence usually being necessary to a proper management of the case. In fact, it is generally held that the rule does not apply to parties even though they expect to testify. The same is true of one who is a party in interest though not a party to the record, and also of an agent of a party, if the presence of such agent is necessary, as where he has gained familiarity with the facts to such extent that his presence is necessary for the proper management of the action or defense of his principal." 4 JONES, EVIDENCE, § 23:15 (6th ed., 1972).

We are, therefore, of the considered opinion that parties to litigation should not be excluded from the courtroom during the hearing of their cases, and it makes no difference whether or not they intend to testify. Therefore the judge erred when he excluded the testimony of G. Walton Tay, who was a party.

Because of the many unanswered questions in this case, doubts have arisen on several points. For instance, why wasn't Senator Boto Barclay called to testify as to the circumstances under which he received the will in dispute, and which he presented to the court for proving? Why was not Mrs. G. Walton Tay called to testify as to whether it was true that she had witnessed the testator hand G. Walton Tay and Comfort Mensah-Tormetie Amagashie two envelopes alleged to have contained his will and a copy of his will, respectively? Certainly, had she been called she would have been able to say if it were true that the testator had indeed handed two envelopes to these persons in her presence, and this could have cleared

up a lot of the doubt that still exists. But why wasn't G. Walton Tay allowed to testify; he might have been able to say under what circumstances he had had anything to do with the will in dispute, as has been alleged. The judge himself has referred to Tay's handling of the will as unfortunate. If he handled the will, what was unfortunate about it?

In view of the foregoing, we are remanding this case to the Civil Law Court, for it to be heard by another jury, and for another handwriting analyst to investigate the signatures on the will in dispute, and compare them with those appearing on the specimen documents, and make a proper report. Costs will abide final determination of the case.

Reversed and remanded.