

# ***Daubert challenges to Forensic Handwriting Analysis***

## **Daubert Motions Denied: Federal Circuit Appellate Court**

- 1) **US v. Jawara**, No. 05-30266 (9<sup>th</sup> Cir, Sept 15, 2006).
- 2) **US v. Tunde Adeyi** (2<sup>nd</sup> Cir, 2006) No. 05-1722-cr.
- 3) **US v. Al James Smith**, (4<sup>th</sup> Cir, 2005), 2005 U.S. App. LEXIS 23798.\*
- 4) **US v Judson Brown**, (2<sup>nd</sup> Circuit, April 2003), 2005 U.S. App. LEXIS 22703.\*
- 5) **US v. Christopher Mornan** (3<sup>rd</sup> Cir, 2005), No. 04-1319.\*
- 6) **US v. Chris Rutland and Barbara Grams**, (3<sup>rd</sup> Cir, 2004), Crim. No. 02-494(DRD).\*
- 7) **US v. Demanjuk**, (6<sup>th</sup> Cir, 2004), 1:99CV1193, U.S District Court, Cleveland, Ohio.\*
- 8) **US v. Prime**, 02-30375, (9<sup>th</sup> Cir, 2004), D.C. No. CR-01-00310-RSL.\*
- 9) **US v. Crisp**, 324 F.3d 261, 271 (4<sup>th</sup> Cir, 2003) (fingerprints and handwriting).\*
- 10) **US v. Martha Elena Gonzales**, aka Marta Gonzales., 95-3261: **US v. Jose Ramiro Valenzuela-Obeso**, aka Ramiro Valenzuela, 95-3263: **US v. Juan Manuel Valenzuela-Obeso**, aka Kiki, and aka Miti, and 95-3370: **US v. Patricia Camerina Lopez**, (8<sup>th</sup> Cir, 2003).
- 11) **US v. Dennis J. Mooney**, 315 F.3d 54, 520-63 (1<sup>st</sup> Cir, 2002).\*
- 12) **US v. Hernandez**, (10<sup>th</sup> Cir, 2002), 2002 U.S. App. LEXIS 12153; 89 A.F.T.R.2d (RIA) 3049. Affirmed district court's decision to allow the FDE to describe physical mechanics of writing and similarities only.\*
- 13) **US v. Kehoe**, 310 F. 3d 579, 593 (8<sup>th</sup> Cir, 2002).\*
- 14) **US v. Johnson**, 39 Fed, Appx. 685, 2002 WL 44242 (9<sup>th</sup> Cir, 2002) (unpublished op.)
- 15) **US v. Elmore**, 56 M.J. 533 (Navy-Marine Ct. App 2001).\*
- 16) **US v. Jeremiah Bryant Och**, (9<sup>th</sup> Cir, 2001) U.S. App. LEXIS 17077,\*;16 Fed. Appx. 666, No. 00-10351.\*
- 17) **US v. Jolivet**, 224 F.3d 902, 905-06 (8<sup>th</sup> Cir, 2000).\*
- 18) **US v. Battle**, 188 F.3d 519, 1999 WL 596966 (10<sup>th</sup> Cir, 1999) (unpublished op.)
- 19) **US v. Paul**, 175 F.3d 906, 910-11 (11<sup>th</sup> Cir, 1999). Denbeaux excluded from trial.\*
- 20) **US v. Mohamed Ijaz Chohan**, (2<sup>nd</sup> Cir, 1997) U.S. App. LEXIS 17487, No. 97-1010.
- 21) **US v. Jones**, 107 F.2d 1147, 1156-60 (6<sup>th</sup> Cir, 1997).

22) **US v. Rosario**, 118 F.3d 160, 163-64 (3<sup>rd</sup> Cir, 1997).

23) **US v. Ruth**, 46 M.J. 1 (Armed Forces Ct. App. 1997).\*

24) **US v. Velasquez**, 64 F.3d 844 (3<sup>rd</sup> Cir, 1995), 848-50.\*

## **Daubert Motions Denied: US District Court**

- 1) **United States of America v. Anthony Pendleton** (9th Cir. 2009) U.S. District Court, Los Angeles, CA. August 6, 2009
- 2) **US v. Robert Gauden** DC Superior Court 2008 CF2-20509. Daubert by affidavit. Kathleen Storer wrote the affidavit, Dick Williams testified. Judge Robert E. Morin Affidavit January 2009, trial May 09.
- 3) **US V. Isaac Yass and Robert A. Blechman**, No. 08040008-JAR. Hearing 11-10-08. FDE Debra Campbell, USPIS. Denbaux testified for defense. Judge Julie A. Robinson
- 4) **State of Texas v. Norris Jeral DeVoll**, Texas State District Court, Comal County New Braunfels Texas, Cause No. CR 2008-091
- 5) **US v. Raymond Yono** (Eastern District Michigan) Criminal Co. 06-CR-20479, Judge Patrick Duggan, (June 25, 2008 examiner Rich Dusak) HW
- 6) **US v. Hanner** (3<sup>rd</sup> Cir, June 2007) HW, Pr Pro, TW
- 7) **US v. Stephen Yagman** (9<sup>th</sup> Cir, May 2007).\*
- 8) **US v. Weiss** (10<sup>th</sup> Cir, April 2007), Criminal Case No. 05cr00179LTB
- 9) **US v. David Lin** (9<sup>th</sup> Cir, Jan 2007), Case No. CR 01-20071 RMW.
- 10) **US v. Juan Pena and Maria D. Pena**, (5<sup>th</sup> Cir, Aug 2006)
- 11) **US v. William C. Campbell**, (11<sup>th</sup> Cir, Feb 2006), Civil Action No. 1:04-CV-0424-RWS, 2006 US Dist LEXIS 7442
- 12) **US v Ramon Fashola** (11<sup>th</sup> Cir, Feb 2006), Crim No 1:04-CR-372-JEC, NDGA.\*
- 13) **US v. Ferguson** (6<sup>th</sup> Cir, Aug 2004), Case No. 3:03cr019.
- 14) **US v. Pirchesky** (11<sup>th</sup> Cir, Aug 2004) Case No. 01-608-CR-SEITZ.\*
- 15) **US v. Jeffrey H. Feingold** (9<sup>th</sup> Cir, April 2004), CR 02-0976-PHX-SMM.\*
- 16) **US v. Shawn Joshua Johnson**, (5<sup>th</sup> Cir, April 2004), (hand printing identified).
- 17) **US v. William E. Lecroy, Jr.**, (11<sup>th</sup> Cir, Jan 2004), Criminal Indictment No. 2:02-CR-038).\*
- 18) **US v. Bobby R. Smart**, (11<sup>th</sup> Cir, Sept 2003).
- 19) **US v. Jose de Jesus Garcia-Flores, et al.**, (5<sup>th</sup> Cir, Aug 2003).
- 20) **US v. Henry Xie**, (9<sup>th</sup> Cir. 2003), California, CR 03-00137 CRB, Full testimony admitted, including issues involving hand printing and Asian class characteristics.
- 21) **US v. Jack Robert Urich**, (9<sup>th</sup> Cir, 2003) CR-S-02-454-RLH (LRL).

- 22) **United States v. Sanders**, No. 01-2646 (6<sup>th</sup> Cir, Mar 7, 2003) (unpublished).
- 23) **US v. Roberto Morejon**, (11<sup>th</sup> Cir, July 2003), Case No.99-717-CR-Seitz.
- 24) **US v. Janet Thornton**, 10<sup>th</sup> Cir, Wichita, KS (Jan. 2003).\*
- 25) **US v. Chris Rutland and Barbara Grams**, Feb 20, 2003, Crim. No. 02-494(DRD), District of New Jersey, Judge Debevoise.
- 26) **US v Judson Brown**, (2<sup>nd</sup> Cir, April 2003), 3;02CR302(JCH).
- 27) **US v. Giorgies**, 29 Fed. Appx. 472, 2002 WL 89728 (9<sup>th</sup> Cir, 2002) (unpublished op.)
- 28) **US v. Gricco**, 2002 WL 746037 (3<sup>rd</sup> Cir, 2002).\*
- 29) **US v. Broten**, (2<sup>nd</sup> Cir, 2002), NY, Case No. 01-CR-411 (DNH).\*
- 30) **US v. Frank M. Patti, Sr.and Alice G. Guy**, (11<sup>th</sup> Cir, 2002) Judge Lacey Collier (based in part on US v. Paul).\*
- 31) **US v. Lindsey**, US District (9<sup>th</sup> Cir, 2002), CR No. 00-00482DAE.\*
- 32) **US v. Laphonse Akilo Young**, Criminal No. 02-0075-CB, (11<sup>th</sup> Cir, 2002)
- 33) **US v. Ramos, EDNY 01 CR 0015 (ARR)**, September 30, 2002.\*
- 34) **US v. Michael Prime, 220 F. Supp. 2d 1203 (W.D Wash. 2002)** (9<sup>th</sup> Cir, 2002),
- 35) **Commodity Futures Trading Commission and Timothy D. Moratzka v. Leonard G. Nauman**, (8<sup>th</sup> Cir, 2002), US Bankruptcy Court, District of Minnesota, BKY No. 00-45285-NCD ADV. NO. 01-4272-NCD.
- 36) **U.S. vs. Terry Kirby**, (11<sup>th</sup> Cir, 2001),1:01-CR-642, US District Court, Georgia. Judge filed report on 5/10/02. Decision based in part on US v. Gricco.\*
- 37) **US v. Kenneth Richmond**, (5<sup>th</sup> Cir, 2001) WL 1117735, LA.
- 38) **US v. Steger** (9<sup>th</sup> Cir, 2001), Phoenix, AZ.
- 39) **US v. Och**, 16 Fed. Appx. 666, 2001 WL 867892 (9<sup>th</sup> Cir, 2001) (unpublished op.)
- 40) **US v. Brenda K. Johnson, Alexandria, VA.** (4<sup>th</sup> Cir, 2001). Judge admitted testimony and conclusion for handwriting, December 2001.
- 41) **U.S. v. Demanjuk**, 1:99CV1193, U.S District Court, Cleveland, Ohio. The judge indicated in his ruling complete trust in the document examinations that were conducted and indicated the ruling was in large part as a result of the document examiner's findings (May 2001).
- 42) **US v. Pham**, #CR99-297, (9<sup>th</sup> Cir, 2000).
- 43) **US v Gilreath**, US District Court, NDGA, NO. 1:96-CR-472 JTC, Dec 4, 1997. This was a federal magistrate court judge's favorable ruling for the admissibility of not only QD but FA/TM and tire impressions.\*

44) **US v Reginald Keith Humphery**, No. 1:94-CR-447-JEC, (11<sup>th</sup> Cir, 1997).\*

45) **US v. Starzecpyzel**, 880 F.Supp 1027 (S.D.N.Y. 1995).\* Forensic document examination expertise constituted technical or specialized knowledge outside the scope of Daubert. As a result, it explained that to prevent possible prejudice deriving from possible perception that forensic document examiner's testimony met scientific standards, the jury must be instructed that forensic document examiners offer practical, rather than scientific expertise and that evidence provided by forensic document examiners should be limited. The court further held that defendants should be permitted to attack the reliability of forensic document examination.

\* State v. Tracie Brewster 7/2/02 Morgan County WV, State court, handwriting/credit card fraud

State v. Marcum 8/21/07 Kanawha County WV State Court handwriting/foregery

**Daubert motions resulting in limited FDE testimony**  
**(conclusion not expressed):**

- 1) **Legacy Vision, LLC v. Gary Yeamans** (10<sup>th</sup>), CIV-04-1320-M, WD OK, June 2005.
- 2) **US v. Yb-Lem Oskowitz**, (294 F. Supp. 2d 379, 384 (E.D.N.Y. 2003)  
-AUSA did not inform FDE that Daubert motion had been filed.\* The decision by the judge was issued yesterday in Utica, NY, in the case of US vs. Plaza-Andrades. The judge excluded the handwriting testimony based on a previous NY case, US vs. Oskowitz (see attached). In Oskowitz, John Paul Osborn was allowed to testify to everything except his conclusions. The current case judge went one step further and decided to exclude all of the testimony. Apparently, at 11:58pm, Sunday, the defense filed a motion pertaining to the timeliness of the documents provided by the AUSA. The Judge asked about the written summary of the FDE's findings. The AUSA thought that the two-page lab report was sufficient and stated rule 702 provides that the FDE can provide testimony to the examination process. The Judge said the FDE did not comply with Rule 16. The FDE was NEVER contacted to provide a Rule 16, or testify to counter the judge's decision. The FDE has requested a copy of the judge's order, which we'll forward to you.
- 3) **Wolf v. Ramsey 1:00-CV-1187** (N.D. Ga. March 31, 2003). FDE allowed to testify but could not give an opinion (although there was no testimony because the judge granted summary judgment and dismissed the case).\*
- 4) **US v. Hidalgo**, Phoenix, AZ, US Dist., CR-01-1011-PHX-FJM, Proficiency of FDEs accepted; uniqueness of writing not proven.(2002)\*
- 5) **US v. Wanijiku Thiongo**, Concord, NH. Daubert hearing waived by judge. June 2002.
- 6) **US v. Kurtzke**, Jan 2002, Chicago, IL.
- 7) **US v. Janeek Wiggan**, April 2000, Federal District Court, Southern District of West Virginia, Charleston, WV., 4<sup>th</sup> Circuit. Wiggan was charged with drug violations. The judge limited the testimony of the FDE without having a Daubert hearing.
- 8) **US v. Rutherford**, (8<sup>th</sup> Cir, 2000), 8:99CR120, US Dist Ct, 8<sup>th</sup> Cir
- 9) **US v. Hines**, (1<sup>st</sup> Cir, 1999), Criminal No. 97-10336 NG, Massachusetts.
- 10) **US v. Santillan**, (9<sup>th</sup> Cir, 1999), WL 1201765 (N.D. Cal).\*
- 11) **US v. Brown**, No. CR 99-184 ABC, C.D. Cal. (unreported) check forgery case in which the defendant disputed the reliability of the government's handwriting expert's testimony that the defendant authored the forged signature. After holding a Daubert/Kumho hearing, the court (Judge Collins), adopts the Hines/McVeigh approach by permitting the proffered expert to testify without rendering "an ultimate conclusion on who penned the questioned writings." Dec 1999.
- 12) **US v. McVeigh**, No. 96-CR-68. Judge Matsch's decision in McVeigh has been influential even though it was promulgated without formal opinion. It was also influential in the McVeigh case itself, as the prosecution chose not to call its document examiner after the court made a ruling limiting his testimony. The oral argument that led to Judge Matsch's decision is reported at 1997 WL 47724, but it does not reveal sufficient facts to determine exactly what task was at issue in the case, beyond the fact that some documents were going to be attributed to McVeigh by a document examiner. Feb 1997.

## **Daubert motions resulting in complete exclusion of FDE testimony**

- 1) **US v. Fujii**, (7<sup>th</sup> Cir, 2000), No. 00CR17, WL 33357453, Sept 2000.
- 2) **US v. Saelee**, (9<sup>th</sup> Cir, 2001), NO. A01-0084 CR (HRH).
- 3) **US v. Terry L. Brewer**, No. 01 CR 892, N.D. Illinois, 2002 U.S. Dist. LEXIS 6689, April 2002. FDE not present for hearing and unaware that hearing took place. Decision criticized by judge in US v. Kirby.
- 4) **US v. Edward Lee Lewis**, Criminal Action No. 2:02-00042, in Southern District of West Virginia at Charleston, WV, Aug 2002, the judge, Honorable Joseph R. Goodwin.
- 5) **In Re Townsend vs. Morequity** (3<sup>rd</sup> Cir), April 29, 2004. Bankruptcy No. 01-26777 Chapter 13, Judge found examiner (Thelma Greco) was not qualified to testify as an expert because "she does not possess the requisite qualifications of a questioned document examiner to offer an opinion as to the genuineness of Debtor's signature on the mortgage; and secondly, on the basis that the methodology she employed for evaluating the questioned document was flawed and has not been accepted by her peers in the questioned document community." There was additional testimony by Ms. Greco that there are no national standards for "question forensic document examiners". However, there are at least two professional organizations in existence to which she does not belong. One is the American Academy of Forensic Science, the report of a committee of which was the basis for the American Society for Testing and Materials' ("ASTM") Standard Terminology for Expressing Conclusions of Forensic Documents Examiners. She admitted that she was not aware of the national ASTM standard but opined that it was not necessary to meet it.
- 6) **US vs Plaza-Andrades**, Utica NY, FDE not aware of or included in prep for motion in limine to exclude.

### **\* Hearings that involved ABFDE diplomates.**

Daubert decisions erroneously attributed to forensic handwriting admissibility

- 1) **US v. Vasquez-Ruiz**, Illinois, Feb 2002 (Rule16/Discovery issues)
- 2) **US v. Van Wyck**

## **MISCELLANEOUS**

- 1) **State v. Hull** – 10-29-08 Frye-Mack hearing Minneapolis, Minnesota. Handwriting. Denbeaux appeared as an expert critic and Lisa Hanson was the expert FDE. Judge ruled that the FDE could testify and that Denbeaux could not. General Acceptance was stipulated to. However defense attacked the “reliability of handwriting examinations as a science as well as the reliability of the scientist (FDE).
  
- 2) **US v. Robert Pettus**, Criminal Case No. 2004 FEL 5721, Judge Neal Kravitz, Daubert hearing March 25, 2008 – April 2, 2008. (Superior Court of the District of Columbia Criminal Division – Felony Branch) Professor Mark Denbeaux testified as an expert in “methodology”. Diana Harrison testified as the expert FDE. The judge ruled that the FDE could testify and render an opinion. At trial, Hector Moldenado testified as the examiner.
  
- 3) **State v. Marcum**, 8/21/07, Kanawha County WV State Court, handwriting/forgery FDE Kevin McDowell.
  
4. **State vs. Krueth- 4-21-06 Anoka County Minnesota**, Handwriting. Court asked for a Frye Mack hearing on the expert. Lisa Hanson. Questioned in regards to training, adherence to SOPs, Laboratory methodology, protocols, etc. FDE was allowed to testify and render opinion.
  
5. **US v. Garza**, (Appellate 5<sup>th</sup> Cir, 2006), No. 04-41244, exclusion affirmed for NADE examiner called by defense as not reliable under FRE 702 because she examined photocopies and could not confirm generation of copies. “...as the district court points out, in this case, the expert was not even sure how many times the signatures had been photocopied. Furthermore, even if the district court was in error for excluding the expert testimony, such error was harmless and did not effect Garza's substantial rights. To offset any potential prejudice to the defense, the district court allowed the copies of the signatures to be admitted into evidence so that the jury could compare the signatures and draw their own conclusions.”
  
- 6**US v. Nowlin, Sept 27, 2001, Appeal from Superior Court of the District of Columbia.** NOTE: This case is remarkable in that the Federal Appellate Court for the District of Columbia, in their reversal, chastises the Government for not having a FDE (handwriting expert) examine the writings and testify.
  
- 7**Gebrendrias v. Ashcroft**, (7<sup>th</sup> Cir, 2003) U.S. App. LEXIS 21013, No. 02-4254 (unpublished), the 7th Circuit Court of Appeals found that Daubert does not apply to immigration hearings. Gebrendrias, an Ethiopian woman seeking asylum, had challenged the testimony of FDE Larry Ziegler. The challenge failed and admissibility of the evidence was affirmed.
  
- 8**Progressive Business Systems, et al. v. Superior Federal Bank**, Crawford County Circuit No. CIV 2000-30 June 24-25, 2004. This was a civil case that had to do with the examination of signatures on copies of checks. **Denbeaux excluded from trial.**
  
- 9**State of Nevada vs. Warren, Tracy Morrell**, (2004) County No. 02F15712X, Metro No. 020828-0764, Daubert hearing, QD admitted, **Saks excluded from trial.**

**-Denbeaux excluded: US v. Paul, Progressive Systems v. Superior Fed Bank, Estate of Acuff v. Olinger**



**-Saks excluded: State of NV vs. Warren**

**10.** State v. Tracie Brewster, 7/02/02, Morgan County WV, State Court, handwriting/credit card fraud FDE Kevin McDowell.