

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07-CR-30193-JPG
	)	
TARA PRINCE,	)	
	)	
Defendant.	)	

**DEFENDANT'S MOTION FOR PRETRIAL HEARING AND DETERMINATION  
PURSUANT TO DAUBERT v. MERRELL AND FOR A PRETRIAL  
DETERMINATION OF ADMISSIBILITY PURSUANT TO FEDERAL RULE OF  
EVIDENCE 104**

Comes now Defendant, by her attorneys, John D. Stobbs II, and Grant Shostak and for this Motion states:

1. On August 31, 2009 the undersigned received Exhibit A from the Government indicating the witnesses it intended to call as "experts" under the agreement reached between the parties. The full agreement is set out in Defendant's Motion to Withdraw Defendant's Motion to Compel Government to Disclose (Document 192)
2. The agreement only pertains to those individuals listed in Exhibit A.
3. On September 3, 2009 the Government sent to the undersigned Exhibit B indicating that it intended to call James L. Hayes as a handwriting expert.
4. This was the first notice that Defendant had that the Government intended to call any expert witness regarding handwriting samples taken over 2 years ago. As such this Motion was not filed in a more timely manner.
5. In essence the Government wants Mr. Hayes, who apparently has purchased Mr. Storer's business to get Mr. Storer's report into evidence. The report is hearsay and is inadmissible.

6. The undersigned is leery of the reliability of this testimony for several reasons, chief among them doubt that Mr. Hayes “conducted an independent review of the material and is prepared to testify to the contents of Mr. Storer’s report.”

***Daubert***

With regard to *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993), the trial judge must determine at the outset, pursuant to Rule 104(a), whether the expert, here Mr. Hayes is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. *Daubert*, at 592-93 It is Defendant’s position that the Government cannot meet this burden under 104 because Mr. Hayes did not conduct any sort of examination on the evidence taken. He has simply “signed off” on Mr. Storer’s report.

Defendant intends to contest the taking of her handwriting sample and Mr. Hayes cannot comment on this. A true independent examination would entail Mr. Hayes actually taking the samples and using them for his own report. It is Defendant’s position that what Mr. Hayes proposes to do does not constitute scientific knowledge and would not assist a jury in determining that beyond a reasonable doubt the signatures are those of Tara Prince.

Under *Daubert*, the trial court must make a two-step inquiry: First, the proffered expert must be qualified to express an expert opinion. Secondly, the proffered expert opinion must be reliable. Here, Mr. Hayes is not a qualified expert and his testimony is not reliable under *Daubert*.

***Handwriting Analysts Are Not Experts***

In *United States v. Fujii*, 152 F.Supp. 2d 939 (N.D. Ill. 2000), Judge Gottschall outlined the problems with the admissibility of handwriting analysis evidence. According to Judge Gottschall:

Handwriting analysis does not stand up well under the *Daubert* standards. Despite its long history of use and acceptance, validation studies supporting its reliability are few, and the few that exist have been criticized for

methodological flaws. . . Further. . . there has been no peer review by an unbiased, financially disinterested community of practitioners and academics. The acceptance of handwriting identification expertise has been largely driven by handwriting experts. Its Potential rate of error is almost entirely unknown. *Id.* at 940.

Under the *Daubert* requirements for reliability of principles and methods, handwriting analysis is not admissible under Rule 702. According to *Daubert*, an expert opinion regarding scientific evidence is admissible pursuant to Rule 702 only if the reliability of the principles and methods upon which it is based can be established. *Daubert* 580. As stated above, the *Daubert* factors for evaluating reliability include (1) whether the expert's theory or technique can be or has been tested or is capable of being tested in an objective sense; (2) whether the technique or theory has been subjected to peer review; and (3) the known potential rate of error of the technique when applied. *Id.*

Judge Gottschall's opinion points out that there have been no meaningful or effective tests conducted to determine the reliability of handwriting analysis. In fact, she notes that the only testing and peer review that exists has been conducted by self-interested parties, such as Mr. Hayes and subject to serious methodological criticism. No conscientious, objective peer review has ever been done. Thus, handwriting analysis does not meet the first or second of the *Daubert* requirements enumerated above. Further, Judge Gottschall points out that the standard for error is utterly unknown. Hence, the third *Daubert* requirement is not met either. While handwriting analysis does have a long history of acceptance, the reliability of its principles and methods has never been accounted for by any objective analysis. *Fujii*, at page 940. Therefore, Judge Gottschall suggests, it cannot meet the *Daubert* standard.

In the wake of *Kuhmo Tire Company v. Carmichael*, 526 U.S. 137, 141 (1999), District Courts have begun subjecting the potential testimony of handwriting experts to *Daubert* analysis. These courts have barred the testimony of handwriting experts that is offered for the purpose of identifying the authorship of a writing. Many courts have ruled expert opinions based upon handwriting analysis to be too unreliable to qualify under the

*Daubert* standards, and only allowed handwriting experts to testify about handwriting in general, so as to better allow the jury to determine the authorship of a writing on its own. See *United States v. Rutherford*, 104 F. Supp. 2d 1190, 1192-93 (D. Neb. 2000); *United States v. Scintillan*, 1999 WL 1201765, \*2-4 (N.D. Cal. 1999); *United States v. Hines*, 55 F. Supp. 2d 62, 67-69 (D. Mass. 1999).

In determining the reliability of the expert testimony, the Supreme Court has provided a non-exhaustive list of factors which will assist the trial court, including:

- a. whether a method consists of a testable hypothesis;
- b. whether the method has been subjected to peer review;
- c. the known or potential rate of error;
- d. the existence and maintenance of standards controlling the technique's operation;
- e. whether the method is generally accepted;
- f. the relationship of the technique to methods which have been established to be reliable;
- g. the qualifications of the expert witness testifying based on the methodology; and
- h. the non-judicial uses to which the method has been put.

The Government though wants this Honorable Court to believe that Mr. Hayes' testimony is reliable because he "independently" went through Mr. Storer's report and gave it his "seal of approval." Mr. Hayes has conducted no tests. Mr. Hayes was not involved in taking the handwriting samples. Mr. Hayes has not even prepared his own report.

*Daubert* and its progeny hold that the test of admissibility is not whether a particular scientific opinion has the best foundation or whether it is demonstrably correct. "Rather, the test is whether the particular opinion is based on valid reasoning and reliable methodology. Moreover, conclusions and methodology are not entirely distinct from one another. A court must examine the expert's conclusions in order to determine whether they could reliably flow from the facts known to the expert and the methodology used."

After Judge Gottschall's opinion in *Fujii*, the following courts have barred handwriting experts from testifying about any issues; *United States v. Saelee*, 162 F. Supp. 2d 1097, 1101-03 (D. Alaska 2001); and *United States v. Brewer*, 2002 WL 596365, \*7-8 (N.D. Ill. 2002). In *Brewer*, Judge Lefkowitz found that if a handwriting expert is to testify at

all, then the expert's "proposed testimony must meet the reliability standards of Rule 702." *Id.* at \*7. Further, she ruled that the Government could not establish that handwriting analysis evidence is sufficient under *Daubert. Id.* at \*8.

Rule 702, as amended December 1, 2000, provides as follows:

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case."

Rule 702 requires that the trial court make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue. *Daubert* uses Rule 702 to create gatekeeping role for the trial court which extends to all cases where the testimony reflects scientific, technical, or other specialized knowledge.

Here, the Government cannot cross the primary threshold of Rule 702, because the test here is not scientific and furthermore the testimony is not reliable.

Because Mr. Hayes is "credentialed" the Government will no doubt claim that his testimony is therefore "scientific." The problem with that reasoning is that the only individuals who credential handwriting experts are other handwriting experts. Being a handwriting analyst is not the same as being a chemist who conducts tests to determine whether something is an illegal narcotic. In actuality, a bank teller would probably be as "scientific" and "reliable" as Mr. Hayes. A bank teller is required to know, and is trained to know, whether or not someone's signature is a forgery. Of course in order to compare apples to apples, the bank teller would have to review another bank teller's report and then testify that the first teller was correct.

Even in that context though, *Daubert* still requires the trial court to determine whether the evidence is genuinely scientific, as distinct from being unscientific speculation offered

by a genuine scientist. "If the opinion is not squarely grounded in the principles and methodology of the relevant discipline, the opinion is inadmissible no matter how imposing the credentials of the proffered expert." Mr. Hayes two page resume (which is difficult if not impossible to read) is impressive. A bank teller's resume would be equally as impressive, but certainly she would not be able to give scientific testimony as to whether or not someone's signature is real or forged.

WHEREFORE, Defendant requests that this Honorable Court conduct a pretrial hearing pursuant to Federal Rule of Evidence 104 (a) and *Daubert* and its progeny to determine whether or not any testimony can be elicited regarding the test conducted by Mr. Storer and to which Mr. Hayes desires to testify.

TARA PRINCE

STOBBS LAW OFFICES

BY:

/s/ John D. Stobbs, II

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Respectfully submitted

/s/ Grant J. Shostak

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 11, 2009 a copy of the attached *Defendant's Motion for Pretrial Hearing and Determination Pursuant to Daubert v. Merrell and for a Pretrial Determination of Admissibility Pursuant to Federal Rule of Evidence 104* was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following:

Mr. Steve Weinhoef  
Assistant U.S. Attorney  
Nine Executive Drive  
Fairview Heights, Illinois 62208

STOBBS LAW OFFICES

/s/John D. Stobbs, II  
307 Henry St. Suite 211  
Alton, Illinois 62002



U.S. Department of Justice



United States Attorney  
Southern District of Illinois

Nine Executive Drive  
Fairview Heights, Illinois 62208

(618) 628-3700  
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August 31, 2009

Mr. John D. Stobbs, II.  
Stobbs Law Offices  
307 Henry Street, Suite 211  
Alton, Illinois 62002

BY: FACSIMILE (618) 462-8585

Re: *United States v. Tara Morgan, 07-CR-30193-002-JPG-CJP*

Dear Mr. Stobbs:

This letter is sent to confirm our meeting concerning expert witnesses and our reciprocal discovery obligations under Fed. R. Crim. P. 16. I appreciate yours and Grant's willingness to meet in person to discuss and review the anticipated testimony of potential expert witnesses, including the content of the anticipated testimony, the foundation for the witnesses' testimony and the qualifications of the witnesses.

Melissa Palmer was identified as a pure expert witness who will explain the worker's compensation industry, but not opine on the evidence. I have now learned that Ms. Palmer has previously testified on approximately three (3) occasions as an expert on behalf of NCCL.

The rest of the witnesses we discussed are primarily fact witnesses, whose testimony may also include specialized knowledge, within the scope of Fed. R. Evid. 702, including: Raymond Linzee, Laura Krpan, Gary Hill, John Gatlin, Dale Emerson, Delores Williams, Michael Rowley (Muirfield Underwriting Vice President), Patricia Hanner (Attorney for Virginia Surety), Marilyn Szkodzinski, Bob Fouts, Bill MacDonald, and Elizabeth McCluskey. Ron Schied is expected to provide testimony pertaining to finances, including summaries.

The defense team only anticipates the potential to call one retained expert witness, Ed Priz. Additionally, we understand that if Tara Prince chooses to testify that some of her testimony may include specialized knowledge, in the same way that Laura Krpan's testimony may include specialized knowledge.

I believe both sides have a solid understanding of the nature and basis for each witness' anticipated testimony. I also believe that this meeting will render pending motions pertaining to expert witnesses moot. If your recollection of our meeting differs from mine, please contact me at your earliest convenience. Thank you for your time and consideration.

Exhibit

A

Very truly yours,

A. COURTNEY COX  
United States Attorney



STEVEN D. WEINHOEFT  
Assistant United States Attorney

cc: Mr. Grant Shostak

# Exhibit B

**WILLIAM H. STORER**  
FORENSIC DOCUMENT EXAMINER  
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ST. LOUIS, MISSOURI 63017

FELLOW, AMERICAN ACADEMY  
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July 25, 2007

Case No. 20697

## REPORT ON THE EXAMINATIONS OF DOCUMENTS

### The Problem

To determine if possible:

- 1) whether or not the K-1 through K-7 writers were the writers of their respective questioned signatures on Specimens Q-1 through Q-7;
- 2) whether or not either of the writers of Specimens K-9 (Laura Kipan) or K-10 (Tara Morgan) was the writer of the questioned signatures on Q-1 through Q-7.

### The Examinations

The examinations were conducted with all necessary optical aids offering varying degrees of magnification.

### The Findings and Conclusions

- 1) The K-1 writer (identified as Wayne Funkhouser) was not the writer of the Wayne Funkhouser signature on Q-1a.  
The K-1 writer was the writer of the Wayne Funkhouser signature on Q-1b.
- 2) The K-2 writer (identified as Basil Adams) was not the writer of the Basil Adams signatures on Specimens Q-2a and Q-2b;
- 3) The K-3a writer (identified as Wayne Bozarth) was not the writer of the Wayne Bozarth signature on Q-3a, nor was the K-3a writer the writer of the Jackie Bozarth signature on Q-3b;
- 4) The form comprising Specimen Q-3c including the signature of Gary Hill is a replica of the K-3b form with these exceptions:
  - a) K-3b shows typewritten entries in its Description of Operations block (starting with the words "Covering All"). Specimen Q-3c shows no entries in that block;
  - b) The typewritten entries in the K-3b Certificate Holder block (starting with the words "Degabli Construction") are different from the typewritten entries in that block in Q-3c block (starting with "7<sup>th</sup> Street");

**WILLIAM H. STORER**  
Forensic Document Examiner

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July 26, 2007

Case No 20697

- 6) The K-4 writer (identified as Barry Hughes) was not the writer of the Barry Hughes signature on Specimen Q-4a.  
The form comprising Specimen Q-4b is a replica of the form comprising Specimen K-4 except for the dates. The dates of 3-10-2004 & 3-18-2004 shown on K-4 were obliterated with liquid white-out. Then the dates 8-3-04 & 8-9-04 were written over the white-out areas to produce the document now shown as Q-4a.
- 6) The writer of Specimen K-5 (identified as Michael McLane) was not the writer of the Michael McLane signature on Specimen Q-5;
- 7) The writer of Specimen K-6 (identified as Robert Jones) was not the writer of the Bobby Jones signature on Specimen Q-6;
- 8) Although a definite conclusion cannot be reported, the handwriting evidence indicates that the K-1 writer (identified as Jack Shepard) was not the writer of the Jack Shepard signature on Specimen Q-7;
- 9) The writers of Specimens K-9 (Lara Krpan) and K-10 (Tara Morgan) can neither be identified nor eliminated as the writer(s) of the questioned signatures on Q-1 through Q-7.

**Remarks**

Should any questions exist or arise concerning these findings and conclusion, I will be pleased to attempt to answer them.

William H. Storer  
Document Examiner

**LIST OF EXHIBITS -**

Specimens Q-1 through Q-7: See attached photocopies labeled Q-1 through Q-7.

Specimens K-1 through K-10: Exemplar signatures submitted as those of:

K-1: Wayne Funkhouser	K-6: Robert Jones
K-2: Basil Adams	K-7: Jack Shepard
K-3: Wayne Bozarth	K-8: Ray Linzee
K-4: Barry Hughes	K-9: Lara Krpan
K-5: Michael McLane	K-10: Tara Morgan

◆ ◆ ◆ ◆ ◆

whs/s

*James L. Hayes & Associates*  
*Forensic Document Examiners*



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SCIENTIFIC EXAMINATION  
OF QUESTIONED HANDWRITING,  
TYPEWRITING AND RELATED PROBLEMS

**JAMES L. HAYES**

**A. Private Practice - Document Examination:**

July 1975 - October 1979 David J. Purcell & Associates  
221 North LaSalle Street  
Suite 1254  
Chicago, Illinois 60601  
(312) 236-5186

October 1982 Reentered same firm as partner

January 1989 James L. Hayes & Associates established

**B. Employment Background:**

October 1979 - October 1982 Document Analyst  
U. S. Postal Inspection Service  
Central Region Crime Laboratory

January 1969 - October 1979 Chicago Police Department  
1121 South State Street  
Chicago, Illinois 60610

January 1988 - Present Chicago Board of Election

**C. Educational Background:**

St. Xavier University  
Chicago, Illinois  
Bachelor's Degree/Criminal Justice

**D. Certification:**

American Board of Forensic Document Examiners  
Diplomate - 1985; Recertification: 1990, 1995, 2000, 2005  
Director - 1989 (1 Term)

**E. Memberships:**

- American Society of Questioned Document Examiners
- American Academy of Forensic Sciences
- Canadian Society of Forensic Scientists
- International Association of Master Handmen, Engravers and Teachers of Handwriting; Past President
- International Association for Identification

**F. Military:**

- November 1960 - November 1972 U.S. Air Force Reserve  
Military Aviator Command
- April 1973 - April 1975 U.S. Naval Reserve  
Naval Reserve Intelligence  
Security Program

**G. Special Qualifications:**

Attendance and participation at over 30 seminars and workshops by:

- American Academy of Forensic Sciences
- American Society of Questioned Document Examiners
- International Association of Master Handmen, Engravers and Teachers of Handwriting
- Southwestern Association of Forensic Document Examiners
- American Law Institute/American Bar Association
- United States Postal Inspection Service
- Printing Industry Training
- Federal Bureau of Investigation
- Internal Revenue Service
- Midwest Association of Forensic Scientists
- Canadian Society of Forensic Sciences

**H. Cases:**

Opinions have been rendered in State, Federal, Civil and Criminal Courts and Labor Arbitration Boards in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Ohio, South Dakota and Wisconsin.

Have authored the recognized books and read the published articles by the recognized authors in the field of Document Examination. Maintains a library of over 2,000 books and articles regarding Document Examination. Subscribes to recognized scientific and professional journals that relate to Forensic Document Examination.

**I. Publications:**

Security Management, September 1993, "Reading Between the Lines"