

# The Saga of the Dueling Anecdotes

## “THE BEST EVIDENCE”

by [Joseph DeMaio](#), ©2020



*John Adams, the [second](#) U.S. president*

(Oct. 19, 2020) — In the continuing saga of “dueling anecdotes” regarding the issue of what the Founders intended when they engrafted onto the Constitution in 1787 the “natural born Citizen” clause, Art. 2, § 1, Cl. 5, commenters Schuyler Colfax and Joanna Brady continue adding their [observations](#). Their most recent ones contend that the “Best Evidence Rule,” as related to documents, applies only in trial settings and separately, that the Founders “used the terms [‘]natural born citizen[’] and [‘]natural born subject[’] interchangeably.” These claims merit analysis.

First, as to the “Best Evidence Rule,” simply stated, the rule posits that if the original of a document is in existence and available, a copy, facsimile or abstract of the document purporting to prove its content is inadmissible in evidence in a trial. This original court-created rule has largely been replaced by Federal Rule of Evidence, [Rule 1002](#). That rule states: “Rule 1002. Requirement of the Original. An original writing, recording, or photograph is required in order to prove its content unless these rules or a federal statute provides otherwise.”

The issue of the rule’s application regarding the birth certificate of the Second Usurper in Chief (“SUC”), Barack Hussein Obama, Jr., has been addressed [here](#). The following analysis uses the SUC’s situation as a template for the discussion and as a backdrop to the issue of the constitutional eligibility of Kamala Devi Harris.

In addition to Rule 1002, [Rule 1003](#) provides: “Rule 1003. Admissibility of Duplicate. A duplicate is admissible to the same extent as the original *unless a genuine question is raised about the original’s authenticity* or the circumstances make it unfair to admit the duplicate.” (Emphasis added).

Yes, Virginia, there is a mountain of evidence out there drawing into “genuine question” the authenticity of the SUC’s “original” long-form Hawaiian birth certificate, let alone the authenticity of an image of that same document posted on the Internet.

Stated otherwise, the “best evidence” of the SUC’s purported birth in Honolulu, Hawaii on August 4, 1961 would be a hard certified copy – on safety paper with a registrar’s official seal – of the original birth certificate. The SUC claims to have that document, retrieved – purportedly – by his Perkins Coie lawyer, Judith Corley, in 2011... secured somewhere.

On the other hand, a true, accurate image of that original birth certificate would in the normal course of proceedings have been preserved in the Hawaii Department of Health and/or Vital Records repository on contemporaneously-created microfilm or microfiche. The SUC’s record of birth, along with microfilm/microfiche images of the Nordyke twins born *the [same day](#)* should have been right next to each other on the microfilm reel or microfiche film flats.

While certified copies of the Nordyke twins’ birth certificates were extracted from Hawaiian Vital Records microfilm or microfiche and supplied to their mother in 1966, no microfilm/microfiche image of the SUC’s purported original long-form birth certificate is found anywhere near the Nordyke twins’ records... or anywhere in the Hawaiian microfilm/microfiche records.

Yet notwithstanding that major anomaly, everyone is expected to unquestioningly accept as authentic a PDF or JPG picture of the SUC’s birth certificate posted on the internet. Really? One is reminded of the Magritte painting, *The Treachery of Images*, discussed [here](#).

Accordingly, while it is true that the Best Evidence Rule and its progeny in the Federal Rules of Evidence are court-created rules governing the admission of evidence and trial practice, their logic and principles apply everywhere. As but one example, just try to get a passport or apply for Social Security benefits with an uncertified paper copy of your original birth certificate or, even more unlikely, with a picture of it displayed to the passport officer on your iPhone. Not gonna happen.

The “best evidence,” and indeed the *only* evidence the passport officer or Social Security employee will accept is the original of your birth certificate or a genuine, sealed certified copy of same. And this does not even get into the issue of counterfeit or fraudulent birth certificates. Full stop.

Turning to the Brady comment that “the best evidence [of the Founders’ intent] is that the Founders used the terms [‘]natural born citizen[’] and [‘]natural born subject[’] interchangeably.” While there are anecdotal examples of that in extra-constitutional sources and spoken by contemporaries of the Founders, rather than the Founders themselves, there are other contrary examples as well confirming that the Founders acknowledged and well-

understood the difference between the two terms and decidedly did *not* use them “interchangeably” when they drafted Art. 2, § 1, Cl. 5 of the Constitution, the “Eligibility Clause.”

Chief among those examples is the recognition of the distinction between the terms articulated by John Adams in 1785. In a letter dated July 24, 1785 by John Adams (a “Founder”) to Thomas Jefferson (another “[Founder](#)”) regarding the proceedings and [drafts](#) of the “Prussian-American Treaty of Amity and Commerce” then being considered, Adams recognized the difference and rejected their “interchangeability.”

Specifically, Adams suggests to Jefferson that in order to address the problem of burdensome duties he saw in the draft’s references to “the most favoured Nation” status to be accorded to individuals subject to the treaty, different terms be used. Adams stated: “[T]o obviate this, I think of Substituting, the Words ‘natural born Citizens of the United States,’ and ‘natural born Subjects of Great Britain,’ instead of ‘the most favoured Nation.’”

These are unmistakable and unambiguous references to persons who, on the one hand, owed allegiance *only* to the United States as “natural born citizens” thereof and, in contradistinction, persons who owed allegiance *only* to Great Britain. Adams knew what he was saying to Jefferson and Jefferson, in return, understood what Adams was saying: the two terms were decidedly *not* interchangeable.

In addition, the draft of the proposed treaty was translated into French by Baron von Thulemeier – referenced in Adams’s [letter](#) to Jefferson – Prussian minister at The Hague, in January, 1785. Thus, both English and French versions of the treaty were readily available to Adams when he wrote his July 24, 1785 letter to Jefferson. Throughout the draft document, the term “citizen” is translated into the French word “citoyen” rather than the terms “indigene” or “naturel” and the term “subject” is translated into the French word “sujet.”

Moreover – and as an aside – without regard to what the proper French-to-English translation of “naturels” or “indigenes” may have been in 1785, de Vattel explains in § 212 of his treatise that whatever meaning one assigns to those terms, collectively they mean “... sont ceux qui sont nés dans le pays, *de parens citoyens*...” (emphasis added) or, in English: “are those who are born in the country, *of citizen parents*.” (Emphasis added).

Stated otherwise, whether denominated a “naturel,” an “indigene,” a “natural born Citizen” or a meerkat, the entity at issue – in order to match its antecedent – needed to be born in the country to parents (plural) who also were its citizens. Labels and debatable nomenclature aside, that *concept* is the crux of § 212. Thus, whether one is called “natural born,” “indigenous” or something else, in order to qualify as such, one needed to be born in the country where *both* parents – particularly the father – were also, at the time of birth, already citizens of the birth country.

Moreover, with regard to the Colfax comment that the term natural born citizen “does not appear in the 1760 English translation of [de] Vattel’s work,” assuming, for the moment, that to be true (retrieval of the 1760 translation on the Internet to confirm that assertion has

proven to be difficult), that term does, apparently, appear in another 1787 English translation [reposed](#) at the Library of Congress, but retrieval of that document has also proven difficult.

That impediment aside, at the time that Jay composed his July 25, 1787 “hint” letter to George Washington, there is ample evidence supporting the conclusion that he knew – whether from the 1760 translation, the 1787 translation or general familiarity similar to that acknowledged by John Adams in his correspondence to Thomas Jefferson – the difference between the terms “natural born citizen” and “natural born subject.” It is therefore logical to conclude that he consciously used the former term in his letter suggestion to Washington.

Returning to the Adams letter to Jefferson, while the translation of the terms in the draft Prussian-American Treaty of Amity and Commerce by von Thulemeier does not prove that he used de Vattel as a source for his translation of the terms “indigene” or “naturels” in the task, it does establish (a) that John Adams was aware of the distinction between the terms “natural born citizen” and “natural born subject” and (b) that he also understood that the French term “citoyen” was properly translated into English – in 1785, some two years to the day *prior* to Jay’s “hint” letter to George Washington – as “citizen” and not “subject.”

Thus, whether Adams’s suggested substitutions were ever ultimately adopted as changes in the final treaty (they apparently were not) is immaterial. The point is that, two years *prior* to John Jay’s July 25 “permit-me-to-hint” letter to George Washington suggesting that only a “natural born Citizen” should be eligible to the presidency, John Adams was communicating with Thomas Jefferson on a topic where Adams recognized (and presumably Jefferson understood) the linguistic and substantive difference between “natural born Citizens of the United States” and “natural born Subjects of Great Britain.”

This recognition in Adams, and presumed understanding in Jefferson, supports the conclusion that Adams and Jefferson – both clearly “Founders” – were quite familiar and comfortable with the term “natural born Citizen” as referencing a citizen of the United States born to two citizen parents, even in pre-Constitution days, and differentiated that term from a person owing allegiance to the monarchs of England, who were “natural born Subjects.”

Accordingly, credible and substantive evidence – arguably the “best evidence” – exists for the conclusion that the Founders knew and understood the difference between a “natural born Citizen” and a “natural born Subject” and did *not* consider the terms to be interchangeable.

Boom.