

Syllabus for Law 718 M001 (#71989)

Evidence

Syracuse University College of Law
Visiting Assistant Professor William C. Snyder
Summer 2011

Course Description:

Evidence law is about the limits we place on the information juries hear. This course examines these limits, their boundaries, their ambiguities, and how they work in practice. We will attempt to master the Federal Rules of Evidence. It is essential to know what the Rules say and how judges enforce them. It is just as important to know when the meaning of a rule is unclear and on what grounds courts decide close calls.

We will also address some policy issues, such as: Why have evidence rules anyway? Why should we put limits on the information juries hear?

This course centers around the Federal Rules of Evidence, which govern in the great majority of federal judicial proceedings. At last count, forty-two states and Puerto Rico have adopted the Federal Rules in whole or in great part. Even those eight states that have adopted distinct evidence codes or have not codified their evidence law -- California, Georgia, Illinois, Kansas, Massachusetts, Missouri, New York, and Virginia -- adhere to similar evidence principles. Stunningly, New York has not codified its law of evidence at all.

Our textbook often uses state cases to illustrate the operation of the Federal Rules. Underlying almost all American evidence law is the common law tradition, and the Federal Rules borrow heavily from that tradition.

Written with the belief that students typically prefer to look at the courtroom world through the criminal law lens, the casebook we will use emphasizes the criminal context, while using civil cases when illustrating rules that apply mainly in the civil context.

You can see the specific topics later in this syllabus, but in summary we will cover: procedural and substantive rules of evidence, judicial notice, presumptions and burdens of proof, rules governing the receipt of oral and documentary evidence, impeachment, direct and cross-examination, competency, hearsay, privileges, and the best evidence rules.

Class Meeting Times:

Class meets on Mondays, Tuesdays, Wednesdays and Thursdays from 1:00 to 2:40 p.m. in Room 200.

Required Reading:

#1

Title: **Fisher's Evidence, 2d** (University Casebook Series®)

Author: Fisher, George

Publisher: Foundation Press

ISBN-13: 9781599410319

ISBN: 1599410311

Series: University Casebook Series

Copyright: 2008

#2

Title: **Fisher's Federal Rules of Evidence 2010-2011 Statutory & Case Supplement**

Author: Fisher, George

Publisher: Foundation Press

ISBN: 1599418339

ISBN-13: 9781599418339

Series: Academic Statutes

Copyright: 200

All materials other than the primary texts will be available on the course website at www.FedREvid.com. All required readings are essential. Note: unlike in other courses of mine, not everything projected in class will be available on the website. **We will often use video clips to illustrate a problem, and, in most cases, copyright restrictions prevent me from posting those for you to download.**

Grading:

This is an exam class. In-class participation will not be a specific percentage of the final grade. Classroom participation will be taken into account in determining a final course grade only under exceptional circumstances. Ordinarily, performance on the **anonymously-graded, closed-book, in-class final examination** will constitute 100% of the final course grade. Students are expected to act responsibly and professionally in preparing for and participating in class. You will learn more if you participate, and that increased knowledge should shine through in your answers on the examination. The stakes for your education and your career are higher than the incremental incentive of ten or twenty percent of your grade being based on class participation. Also, this is not a skills class, such as Trial Advocacy. I do call on students in class, and I intend to give you strong, substantive incentives for participating.

You may use computers or bluebooks to answer exam questions. I do not yet know for when the examination is scheduled.

Attendance Policy:

Regular and punctual attendance is required. You might need to miss a class for reasons that are personal and none of my business. I will respect that. However, you are requested to notify me (preferably by email) of an absence if at all possible, even if your notice is sent at the last moment before class. If you miss more than four class hours, you will need to meet with me about whether there is a systemic problem interrupting your attendance. **If you miss more than six class hours, I reserve the option to drop you from the course with the approval of Dean Tomás Gonzalez.** Note that each class session is two class hours.

Do not avoid class because you are unprepared and fear being called upon to speak. The goal here is your education, and you will learn more by attending class unprepared than by avoiding class altogether. Just be sure that you catch up on the readings.

If you miss a class, I will assume that you make it up by listening to a recording of the lecture.

Audio Recording:

All lectures will be digitally recorded. Barring technical glitches, audio files of all lectures will be posted on the course web site in MP3 format. In the past, I have provided CD's of the lectures to students upon request, and I expect to continue that practice. You are welcome to make your own recordings of class, if you prefer.

Availability:

My office is Room 268. You are welcome to stop by anytime that my door is open. If you want to go over something in detail, however, please make an appointment. To schedule a meeting, please see me at class or contact me by email. In addition, you are encouraged to ask questions in class or by sending me an email. Also, we can arrange telephone conferences. My email is wcsnyder@syr.edu. An alternate email is wcs@williamsnyder.com. My office telephone number is: (315) 443-6655 and my cellular telephone number is (518) 257-2435. (Please use the cell phone sparingly.)

My figurative "door" is open to you for as much communication as possible about the topics of the course as well as almost anything law school or career related. We now have many methods to communicate. In addition to physical meetings, email and telephone, we have available video conference capabilities and perhaps a blog. I do not use any kind of instant messaging (IM) or text (MMS) messaging, but my cellular telephone receives email sent to wcsnyder@syr.edu without delay. As a matter of policy, I do not accept Facebook or LinkedIn friend or connection requests from students until after their graduation. Students are my first priority, and I will make myself available to you outside of regular office hours. But, no IM or social networks sites, please.

Use of Internet:

Live access to the Internet during classes is permitted and encouraged. Some documents and exhibits will be distributed only in electronic form, and accessing them during class will be helpful. A constantly updating syllabus, copies of all handouts, and many useful links will be available throughout the course at www.FedREvid.com, for which you will receive a username and password necessary to access copyrighted materials or to take attendance. Announcements and updates will be sent by email. You can subscribe to the course Twitter feed named FedREvid, but I will not subscribe to your Twitter feed. In other words, for purposes of this course, Twitter will be one-way communication (like a RSS feed, which will also be available.)

Feedback

Feedback and criticism by you to me is encouraged. It is too late for me to correct a problem if you wait until the course evaluation to tell me. If you want to maintain anonymity, you can log into an email account I created at Google and send a message to me at wcs@williamsnyder.com. I will have no way of knowing who logged into the account or from where. The username is “**law718**” and the password is “32044**F**all09.” You can sign in at <http://mail.google.com>. Of course, only one person can log in with that username at a time, so if you get an error message it may be that someone else is sending me feedback at the same time.

Note:

If you have a disability that may affect your performance in this class, please contact Assistant Dean Tomás Gonzalez in Suite 444 as soon as possible to discuss necessary accommodations.

Also, the Syracuse University Academic Integrity Policy holds students accountable for the integrity of the work they submit. Students should be familiar with the Policy and know that it is their responsibility to learn about instructor and general academic expectations with regard to proper citation of sources in written work. The policy also governs the integrity of work submitted in exams and assignments as well as the **veracity of signatures on attendance sheets and other verifications of participation in class activities**. Serious sanctions can result from academic dishonesty of any sort.

- William Snyder

Contact information:

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Also, see www.FedREvid.com and/or <http://FedREvid.mobi>.

Twitter username: FedREvid.

Skype: search for William Snyder in Syracuse, verify with professor's photograph.

Administrative assistant (shared) is:
Marlene Diamond
mhdiamon@law.syr.edu
(315) 443-2284

Assignments:

Below are all the topics we will cover. Day by day assignments are provided for the first week, only. **At the end of each class, you will be told what to read for the next class. Also, the course web site will have a constantly updating syllabus from which you can always determine the next assignment or two or three. I will try to stay a week ahead of the class with posted assignments.**

Wherever below is stated “Focus on FRE _____,” that means for you to read the portion of the 2009-2010 Supplement pertaining to that rule. All other page numbers in parentheses are to the main 2008 textbook by Fisher.

For Lesson #1 on May 17, 2011, please read pages 1-30 and 989-992.

INTRODUCTION (p.1)

Tanner v. United States: Historical Prelude (p.5)

Focus on FRE 606(b) (p.7)

Tanner v. United States (p.7)

Tanner v. United States: Afterthoughts (p.15)

Evidence Law and Jury Mistrust (p.989)

UNIT I: RELEVANCE

CHAPTER 1 GENERAL PRINCIPLES OF RELEVANCE (p.18)

A. Probativeness and Materiality (p.18)

Focus on FRE 401 & 402 (p.20)

1. Probativeness (p.20)

George F. James, Relevancy, Probability and the Law (p.20)

Problem 1.1 “Show me the body” (p.21)

Problem 1.2 Brotherhood (p.22)

Problem 1.3 Polygraph Consent (p.22)

2. Materiality (p.23)

Problem 1.4 Knowledge (p.23)

Problem 1.5 Voluntary Intoxication (p.24)

United States v. James (p.25)

United States v. James: Afterthoughts (p.28)

Problem 1.6 Violin Case (p.30)

For Lesson #2 on May 18, 2011, please read pages 30 to 61:

B. Conditional Relevance (p.30)

Focus on FRE 104(b) (p.30)

Problem 1.7 Threat to Disclose (p.31)

Bill D'Agostino, Fitzhugh Case: Judge Allows Paternity Motive (p.31)

Cox v. State (p.32)

Cox v. State: Afterthoughts (p.34)

C. Probativeness Versus the Risk of Unfair Prejudice (p.38)

Focus on FRE 403 (p.38)

Rule 403, Phrase by Phrase (p.38)

1. Photos and Other Inflammatory Evidence (p.39)

State v. Bocharski (p.39)

Problem 1.8 Photo of Guns (p.43)

Andrew Ross Sorkin, This Tyco Videotape Has Been Edited for Content (p.44)

Commonwealth v. Serge (p.45)

United States v. James (p.50)

Excerpts from the Ruling on the Fuhrman Tapes (p.52)

2. Evidence of Flight (p.54)

United States v. Myers (p.54)

United States v. Myers: Afterthoughts (p.58)

Problem 1.9 Fleeing Trouble IM (p.59)

Problem 1.10 Fleeing Trouble II (p.60)

Problem 1.11 Staying Put (p.60)

3. Probability Evidence

People v. Collins

People v. Collins: Historical Postscript

4. Effect of Stipulations

United States v. Jackson

Old Chief v. United States

CHAPTER 2 THE SPECIALIZED RELEVANCE RULES

Specialized Relevance Rules: Analytical Charts

Specialized Relevance Rules Flowchart

A. Subsequent Remedial Measures

Focus on FRE 407

Problem 2.1 Wolf Attack

Tuer v. McDonald

Problem 2.2 Wood Chipper I

Problem 2.3 Wood Chipper II

Notes on Rule 407: Subsequent Remedial Measures

B. Compromise Offers and Payment of Medical Expenses

Focus on FRE 408 & 409

Bankcard America, Inc. v. Universal Bancard Systems, Inc.

Problem 2.4 Hotel Inspection

Notes on Rule 408: Compromise and Offers to Compromise

Ray Henry, States Encourage Docs to Apologize

Comparing Rules 408 (Compromise) and 409 (Medical Expenses)

C. Liability Insurance

Focus on FRE 411

Williams v. McCoy

Problem 2.5 Claims Adjuster

Problem 2.6 Malpractice Insurer

Problem 2.7 Failure to Report

Shari Seidman Diamond & Neil Vidmar, Jury Room Ruminations on Forbidden Topics

D. Pleas in Criminal Cases

Focus on FRE 410

Problem 2.8 Prosecutor's Offer

United States v. Biaggi

Problem 2.9 Mariotta's Retrial

Notes on Rule 410: Pleas, Plea Discussions, and Related Statements

The Specialized Relevance Rules: Afterthoughts

CHAPTER 3 CHARACTER EVIDENCE

A. The Character–Propensity Rule

Focus on FRE 404

Man, Girl Sought in Street Fight Fatal to Youth

Girl Wife Held with Husband in Fatal Shooting

Zackowitz Goes to Death Chair Week of May 5

People v. Zackowitz

People v. Zackowitz: Afterthoughts

The Propensity Box

Character Evidence Flowchart

~~Miguel A. Mendez, Character Evidence Reconsidered: “People Do Not Seem to be Predictable Characters”~~

B. Routes Around the Box

1. Proof of Knowledge

Problem 3.1 Hacker

Problem 3.2 Drug Seller

Problem 3.3 Train Crash

2. Proof of Motive

Problem 3.4 *U.S. v. Peltier I*

Problem 3.5 Streetcar Mishap

3. Proof of Identity

Problem 3.6 *U.S. v. Peltier II*

- Problem 3.7 Lottery Lists
- Problem 3.8 Cycling Brochures
 - United States v. Trenkler*
 - United States v. Stevens*
- Problem 3.9 Misreading Stevens
- 4. Narrative Integrity (*Res Gestae*)
 - Problem 3.10 Russian Roulette
 - ~~*United States v. DeGeorge*~~
- 5. Absence of Accident
 - Problem 3.11 Cleaning His Gun
 - Problem 3.12 Cruelty to Dogs
 - Alan Gathright, Rebuttal OKd If Burnett Testifies That Leo Bit Him
- ~~6. Doctrine of Chances~~
 - ~~The Brides Case, Prisoner on Trial at the Old Bailey~~
 - ~~Brides in Baths, Prisoner Sentenced to Death~~
 - ~~*Rex v. Smith: Afterthoughts*~~

- C. The Huddleston Standard
 - Huddleston v. United States*
 - Problem 3.13 Past Acquittal

- D. Propensity Evidence in Sexual Assault Cases
 - Focus on FRE 413, 414, & 415
 - ~~*Lannan v. State*~~
 - State v. Kirsch*
 - Problem 3.14 Coon Plan and Domestic Violence
 - Notes on Rules 413, 414, and 415
 - Floor Statement of the Principal House Sponsor, Representative Susan Molinari, Concerning the Prior Crimes Evidence Rules for Sexual Assault and Child Molestation Cases
 - Report of the Judicial Conference of the United States on the Admission of Character Evidence in Certain Sexual Misconduct Cases
 - Sally Quinn, Baggage Check; How Far Should We Go?
 - Katharine K. Baker, Once a Rapist? Motivational Evidence and Relevancy in Rape Law
 - United States v. Guardia*
 - United States v. Mound*

- E. Proof of the Defendant's and the Victim's Character
 - Focus on FRE 404(a)(1), 404(a)(2), & 405
 - Michelson v. United States*
 - Michelson v. United States: Afterthoughts*
 - Problem 3.15 "I wouldn't shoot anybody"
 - Problem 3.16 Character of Victim I
 - Problem 3.17 Character of Victim II
 - Problem 3.18 Character of Victim III

- F. Evidence of Habit

Focus on FRE 406
Halloran v. Virginia Chemicals Inc.
Halloran v. Virginia Chemicals Inc.: Afterthoughts
Problem 3.19 Steroids

CHAPTER 4 IMPEACHMENT AND CHARACTER FOR TRUTHFULNESS

A. Modes of Impeachment

Impeachment Evidence Flowchart

B. Impeachment by Opinion, Reputation, and Cross-Examination about Past Lies

Focus on FRE 404(a)(3) & 608

United States v. Whitmore

H. Richard Uviller, *Credence, Character, and the Rules of Evidence: Seeing Through the Liar's Tale*

Problem 4.1 Bar Fight

Character and Credibility: Study Guide (Part I)

Problem 4.2 Lawyer's Lies

Jonathan D. Glater, *Character to Be a Major Issue in Tyco Trial*

C. Impeachment with Past Convictions

Focus on FRE 609

1. The Theory and History of Rule 609

H. Richard Uviller, *Credence, Character, and the Rules of Evidence: Seeing Through the Liar's Tale*

Rule 609 and Defendant Testimony: Historical Prelude

Theodore Eisenberg & Valerie P. Hans, *Taking a Stand on Taking the Stand: The Effect of a Prior Criminal Record on the Decision to Testify and on Trial Outcomes*

2. Rule 609 in Force

Problem 4.3 Impeachment Modes

United States v. Brewer

Character and Credibility: Study Guide (Part II)

Problem 4.4 Weighing Tests

Problem 4.5 Meter Fixing

Rule 609: Case Notes on Appellate Review

Roselle L. Wissler & Michael J. Saks, *On the Inefficacy of Limiting Instructions: When Jurors Use Prior Conviction Evidence to Decide on Guilt*

D. Rehabilitation

Problem 4.6 Rehabilitating the Witness

Character and Credibility: Study Guide (Part III)

Problem 4.7 Bolstering

- E. Use of Extrinsic Evidence
 - Problem 4.8 Offering Proof
 - Character And Credibility: Study Guide (Part IV)
 - Problem 4.9 Selfish Lies

CHAPTER 5 THE RAPE SHIELD LAW

- A. Historical Backdrop
 - People v. Abbot*
 - State v. Sibley*
 - John Henry Wigmore, A Treatise on the Anglo–American System of Evidence in Trials at Coon Law
- B. The Shield Law
 - Susan Estrich, Real Rape
 - Focus on FRE 412
 - Sherry F. Colb, “Whodunit” Versus “What Was Done”: When to Admit Character Evidence in Criminal Cases
 - Harriett R. Galvin, Shielding Rape Victims in the State and Federal Courts: A Proposal for the Second Decade
- C. The Law in Force
 - 1. Past Sexual Behavior With the Accused
 - Problem 5.1 Emails
 - 2. Explaining the Source of Physical Evidence
 - Problem 5.2 Fingerprints
 - 3. Past Allegedly False Accusations
 - State v. Smith*
 - Problem 5.3 Smith on Remand
 - Problem 5.4 Old Accusation
 - 4. 404(b)–Style Uses of Evidence of Past Sexual Behavior
 - a. Proof of Bias
 - Olden v. Kentucky*
 - Olden v. Kentucky*: Afterthoughts
 - Problem 5.5 Bryant’s Accuser
 - Steve Henson, Bryant Defense Goes on Offense
 - Dahlia Lithwick, The Shield That Failed
 - b. Narrative Integrity (Res Gestae)
 - Stephens v. Miller*
 - c. Defendant’s State of Mind
 - United States v. Knox*
 - United States v. Knox*: Afterthoughts
 - 5. A Glance at Civil Cases
 - Problem 5.6 *Jones v. Clinton*
 - Neil A. Lewis, President’s Accuser May Be Questioned on Her Sexual Past

UNIT II: RELIABILITY

CHAPTER 6 COMPETENCY OF WITNESSES

Historical Prelude: Rules of Witness Competency and the Clash Between North and South

Focus on FRE 601, 602, 603, & 610

Competency Rules Today

CHAPTER 7 THE RULE AGAINST HEARSAY

A. Historical Prelude

The Trial of Sir Walter Raleigh, Knt. at Winchester, for High Treason (1603)

B. Defining Hearsay

1. The Basic Rule

Focus on FRE 801(a)–(c) & 802

An Introduction

Hearsay Evidence Flowchart

Problems

Problem 7.1 Affidavit

Problem 7.2 Gesture

Problem 7.3 Quoting Herself

Problem 7.4 Blood Test

Problem 7.5 Boasts

Problem 7.6 Horse Theft

Problem 7.7 Ineffective Assistance

Problem 7.8 Declarations

2. Defining Assertions

Judson F. Falknor, The “Hear–Say” Rule as a “See–Do” Rule: Evidence of Conduct

Problem 7.9 Ship Inspection

Problem 7.10 Amchitka Holiday

The Nature of Assertions

Hearsay Quiz

3. Exceptions to the Hearsay Rule: An Introduction

C. Statements of Party–Opponents

1. The Party’s Own Words

Focus on FRE 801(d)(2)(A)

Problem 7.11 Billables

Problem 7.12 “Take My Blood”

2. Adoptive Admissions

Focus on FRE 801(d)(2)(B)

Problem 7.13 Buddies

Problem 7.14 Jailhouse Meeting

3. Statements of Agents

Focus on FRE 801(d)(2)(C) & (D)

Pet Wolf Bites Boy in U. City

Mahlandt v. Wild Canid Survival & Research Center, Inc.

Problem 7.15 Shovel and Bucket

4. Coconspirator's Statements

Focus on FRE 801(d)(2)(E) & 104(a)

Bourjaily v. United States

Bourjaily v. United States: Afterthoughts

Problem 7.16 Translation

D. Past Statements of Witnesses and Past Testimony

1. Introduction

Past Statements of Witnesses and Past Testimony (Chart)

Edmund . Morgan, Hearsay Dangers and the Application of the Hearsay Concept

2. Inconsistent Statements Offered to Impeach

Focus on FRE 613

United States v. Barrett

Problem 7.17 Retraction

United States v. Ince

Problem 7.18 Why Such Excitement?

Fletcher v. Weir

~~Hearsay: Miranda and Silence~~

3. Inconsistent Statements Offered Substantively

Focus on FRE 801(d)(1)(A)

Problem 7.19 Domestic Violence

Problem 7.20 Domestic Violence IIM

4. Past Consistent Statements

Focus on FRE 801(d)(1)(B)

Tome v. United States

5. Statements of Identification

Focus on FRE 801(d)(1)(C)

~~*Commonwealth v. Weichell*~~

United States v. Owens

Problem 7.21 Domestic Violence III

E. Hearsay Exceptions Under Rule 804: "Declarant Unavailable"

1. Past Testimony

Focus on FRE 804(a) & 804(b)(1)

Problem 7.22 Domestic Violence IV

Problem 7.23 Roadway Incident

~~*United States v. DiNapoli*~~

Lloyd v. American Export Lines, Inc.

2. Statements Against Interest

Focus on FRE 804(b)(3)

Problem 7.24 Ask Magnolia

Williamson v. United States

Problem 7.25
Alice's Restaurant
Problem 7.26 Accomplices
Problem 7.27 "Bucky Wasn't Involved."

3. Dying Declarations

Focus on FRE 804(b)(2)
William Shakespeare, On Truth and Dying
Problem 7.28 Clyde Mattox
~~Shepard v. United States~~
Focus on FRE 806
Shepard v. United States: Afterthoughts
Bryan A. Liang, Shortcuts to "Truth": The Legal Mythology of Dying
Declarations

4. Forfeiture by Wrongdoing

Focus on FRE 804(b)(6)
United States v. Gray
Rule 804(b)(6): Forfeiture by Wrongdoing
Public Comments

F. Hearsay Exceptions Under Rule 803: "Availability of Declarant Immaterial"

1. Present Sense Impressions and Excited Utterances

Focus on FRE 803(1) & (2)
Problem 7.29 Dog Mauling
Problem 7.30 Dog Mauling II
Problem 7.31 Domestic Violence V
Problem 7.32 "Joe Puleio"

2. Statements of Then-Existing Condition

Focus on FRE 803(3)
Mutual Life Insurance Co. v. Hillmon
Problem 7.33 Kidnapper
~~Shepard v. United States~~
~~*Mutual Life Insurance Co. v. Hillmon*: Historical Postscript~~

3. Statements for Medical Diagnosis

Focus on FRE 803(4)
Problem 7.34 Elder Abuse
United States v. Iron Shell
Problem 7.35 Child Abuse I
Problem 7.36 Child Abuse IIM
~~Melody R. Herbst, Margaret S. Steward, John E. B. Myers, & Robin L. Hansen,
Young Children's Understanding of the Physician's Role and the Medical
Hearsay Exception~~
Problem 7.37 Food Poisoning

4. Refreshing Memory and Recorded Recollections

Focus on FRE 803(5) & 612
Problem 7.38 License Plate
Johnson v. State

5. Business Records

Focus on FRE 803(6) & (7)
Palmer v. Hoffman: Historical Backdrop
Palmer v. Hoffman
Problem 7.39 Lawn Mowers
~~*United States v. Vigneau*~~

6. Public Records and Reports
Focus on FRE 803(8) & (10)
~~*Beech Aircraft Corp. v. Rainey*~~
Police Reports and Business Records
United States v. Oates
United States v. Hayes
United States v. Weiland

G. Residual Exception

Focus on FRE 807
New Courthouse Badly Damaged by Fire This Morning—Dome Burned Off
Dallas County v. Commercial Union Assurance Co.
Dallas County v. Commercial Union Assurance Co.: Afterthoughts
~~*United States v. Laster*~~

CHAPTER 8 CONFRONTATION AND COMPULSORY PROCESS

A. The Confrontation Clause and Hearsay

Mattox v. United States
Confrontation Clause and Hearsay: Case Notes
Crawford v. Washington
Crawford v. Washington: The Court's Contested Originalism
Robert Tharp, Domestic Violence Cases Face New Test Ruling That Suspects Can
Confront Accusers Scares Some Victims from Court
Crawford v. Washington: Afterthoughts
Davis v. Washington & Haon v. Indiana
Davis v. Washington: Afterthoughts
Hearsay and Confrontation Flowchart
Problem 8.1 Deliver after Death
Carrie Antlfinger, Court Considers Letter Predicting Death
Problem 8.2 Confession in Blood
Problem 8.3 DOVE Interview
The Confrontation Frontier: Recent and Remaining Battles in the Crawford Revolution
Problem 8.4 Child's Statements
Problem 8.5 Forfeiture Motion
Giles v. California: Case Note
Crawford, Davis, & Giles: Have They Helped or Hurt Criminal Defendants?
INSERT FROM SUPPLEMENT p. 403: *Melendez-Diaz v. Massachusetts*
The Trial of Sir Walter Raleigh: Historical Postscript

B. The Bruton Doctrine

Bruton v. United States

Problem 8.6 “Dog O’ War”

Jaxon Van Derbeken, Witness Links Attorneys to Prison Gang Testimony in Dog-Mauling Trial

Cruz v. New York

~~*Gray v. Maryland*~~

Problem 8.7 “He, She, or They”

C. Compulsory Process

Chambers v. Mississippi

Chambers v. Mississippi: Historical Postscript

Holmes v. South Carolina: Case Note

CHAPTER 9 LAY OPINIONS AND EXPERT TESTIMONY

A. Lay Opinions

Focus on FRE 701

Problem 9.1 Despondently

Problem 9.2 How Old?

Lay Opinions: An Introduction

Problem 9.3 White Powder

~~*United States v. Ganier*~~

United States v. Ganier: Afterthoughts

Problem 9.4 Hieroglyphics

B. Expert Testimony

1. Who Qualifies as an Expert?

Focus on FRE 702

Problem 9.5 Horticulturist

Brian Richardson, Man Says He Helped Bring Drugs to State

~~*United States v. Johnson*~~

Jinro America, Inc. v. Secure Investments, Inc.

Problem 9.6 Drug Argot

2. (Im)proper Topics of Expert Testimony

Focus on FRE 702 & 704

a. Matters of Coon Knowledge

Problem 9.7 Fading Memory

Problem 9.8 Confusion?

Problem 9.9 Housing Ads

b. Opinions on Law and Opinions on Ultimate Issues

Problem 9.10 Defendant’s Intent

Hygh v. Jacobs

c. Opinions on Credibility

Problem 9.11 Officers’ Truthfulness

State v. Batangan

State v. Batangan: Afterthoughts

- d. Opinions on Eyewitness Identification
 - United States v. Hines*
- 3. Proper Bases of Opinion Testimony
 - Focus on FRE 703 & FRE 705
 - Rule 703: An Introduction
 - Problem 9.12 Stashing Guns
 - Problem 9.13 Doctor's Note
 - In re Melton: Case Note
- 4. Assessing the Reliability of Expert Scientific Testimony
 - a. The Doctrine
 - Frye v. United States*
 - Daubert v. Merrell Dow Pharmaceuticals, Inc.*
 - Daubert v. Merrell Dow: Afterthoughts*
 - Daubert v. Merrell Dow Pharmaceuticals, Inc.*
 - B. Expert Testimony—Continued Gina Kolata, Judge Rules Breast Implant Evidence Invalid
 - Susan Haack, An Epistemologist in the Bramble-Bush: At the Supreme Court with Mr. Joiner
 - ~~b. A Focus on Polygraph Evidence—~~
 - ~~*United States v. Crumby*~~
 - ~~Problem 9.14 Polygraph Consent IIM~~
 - ~~D. Michael Risinger, Navigating Expert Reliability: Are Criminal Standards of Certainty Being Left on the Dock?~~
 - ~~*United States v. Scheffer: Case Note*~~
 - ~~Henry T. Greely & Judy Illes, Neuroscience-Based Lie Detection: The Urgent Need for Regulation~~
- 5. Assessing the Reliability of Non-Scientific Expertise
 - a. The Doctrine
 - Kumho Tire Company v. Carmichael*
 - Rule 702 Public Comments on 2000 Amendment
 - Problem 9.15 Hedonics
 - Michael J. Saks, The Aftermath of *Daubert*: An Evolving Jurisprudence of Expert Evidence
 - b. A Focus on Syndrome Evidence
 - Holly Hogan, The False Dichotomy of Rape Trauma Syndrome
 - ~~*State v. Kinney*~~
 - William . Grove & R. Christopher Barden, Protecting the Integrity of the Legal System: The Admissibility of Testimony from Mental Health Experts Under *Daubert/Kumho* Analyses
 - Case Notes on Syndrome Evidence
 - Problem 9.16 Separation Violence

CHAPTER 10 AUTHENTICATION, IDENTIFICATION, AND THE “BEST EVIDENCE RULE”

A. Authentication and Identification

Focus on FRE 901 & 902

Introduction

1. Documents

Problem 10.1 “To Send Money”

Problem 10.2 Handwriting Opinion

United States v. Stelmokas

Problem 10.3 Anonymous Note

2. Phone Calls

Problem 10.4 “Star 69”

State v. Small

Carey Goldberg, Rulings in Simpson Trial Fuel Second–Guessing

3. Photographs

Sis v. Dixon

Problem 10.5 Staged Photo

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UNIT III: PRIVILEGES

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CONCLUSION: Evidence Law and Jury Mistrust Redux