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Review Fact Pattern in Materials

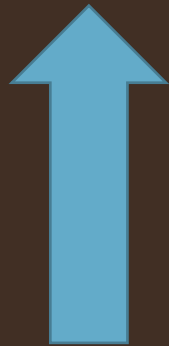
Values, Not Just Rules

- Avoid unreliable evidence
 - Rules re personal knowledge, hearsay, opinion, competency
- Minimize prejudicial distractions
 - Rules re relevance
- Promote social policies
 - Rules re privilege
- Ensure fairness
 - Predictability and notice



Now I get it!

Hearsay is an out-of-court statement offered to
prove the truth of the matter asserted.



For the Truth

Out-of-court statement

+ Offered to prove the truth of what was said

The value of the evidence depends on the credibility of the out-of-court declarant.

To test the declarant's credibility,

- i. the declarant must be subject to cross-examination, or
- ii. the statement must satisfy a hearsay exception.

"The father's drug counselor told dad that as part of his case plan, he must submit to screens."



Social
Worker



Not for the Truth

Out-of-court statement

+ Offered for reasons other than the truth

The value of the evidence usually depends on the credibility of the in-court witness.

An in-court witness' credibility is tested by being subject to cross-examination.

"The father's drug counselor told dad that as part of his case plan, he must submit to screens."



Social
Worker



Hearsay Exceptions

Category 1:
Declarant Availability Irrelevant



Category 2:
Declarant Must Be Unavailable



Hearsay Exceptions

Category 1: Declarant Availability Irrelevant

Remember the values behind the Rules. These statements are admissible because they carry inference of **reliability** or **sincerity**.

Common exceptions in child welfare cases

- Business and public records
- Medical diagnosis or treatment
- Excited utterance
- Residual hearsay

Bonus exception where declarant availability is immaterial: admission by party opponent.

Business and Public Records

If a record is admitted under this exception, does that mean the entire record—every line of it—necessarily comes in? Even hearsay within the records?

Example: medical records with proper affidavit of records custodian attached. Records contain a written note from a nurse that “Jonny told me his dad did this.”



Reconceptualizing Business and Public Records

Applies if the records satisfy both the requirements concerning

- the method and circumstances of preparation, and
- the contents of the records.



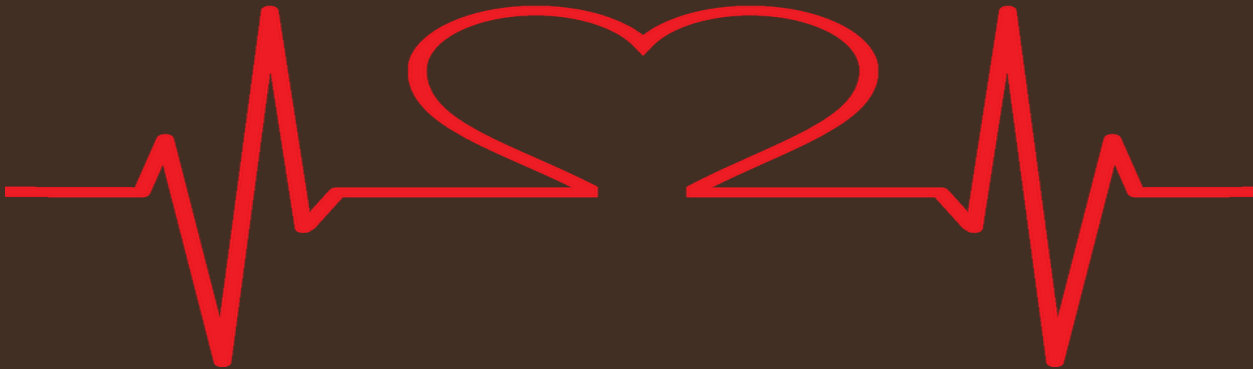
Business and Public Records

Is this exception consistent with the values behind the Rules?

Medical Diagnosis or Treatment Exception

Requirements include that the

1. declarant made the statements understanding they would lead to medical diagnosis or treatment, and
2. statements were reasonably pertinent to diagnosis and treatment.

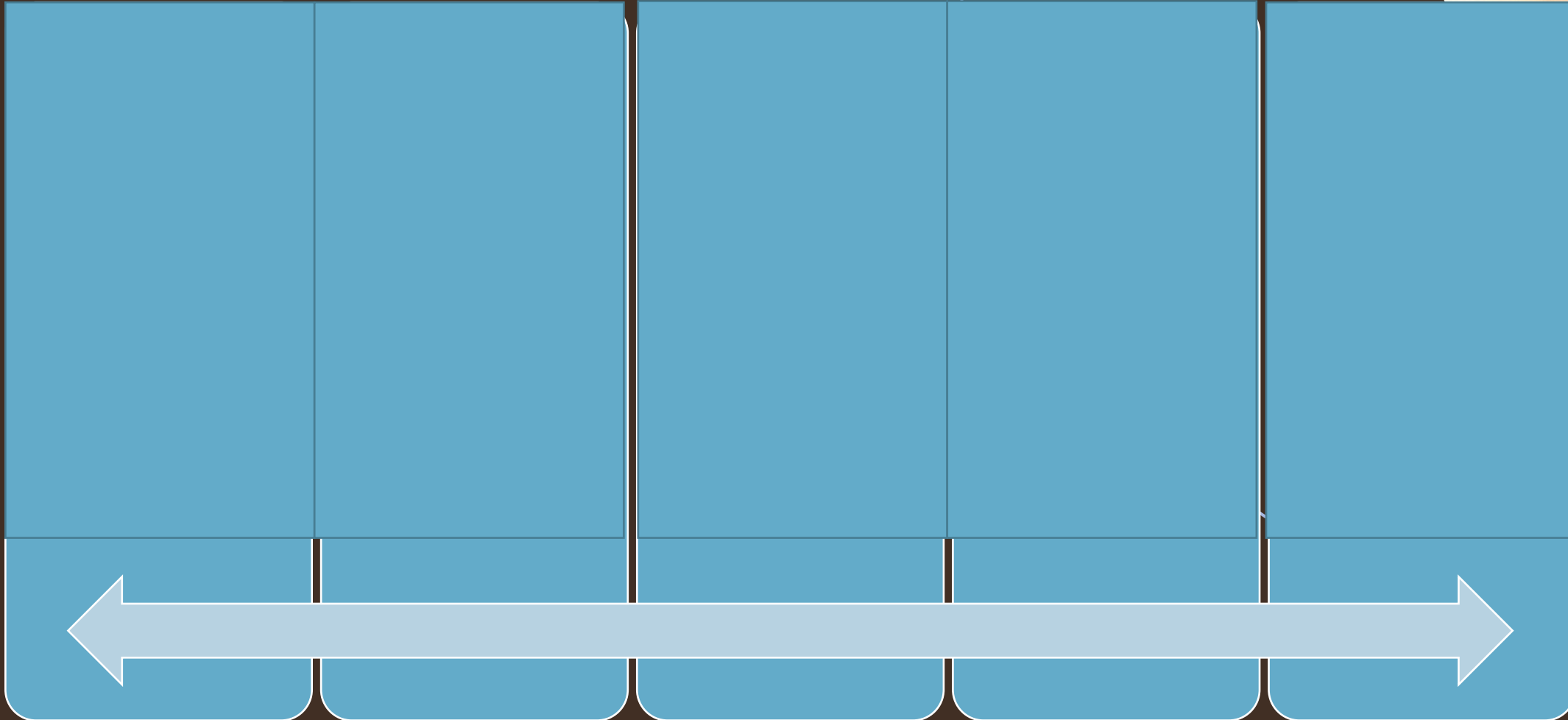


Medical Diagnosis or Treatment Exception

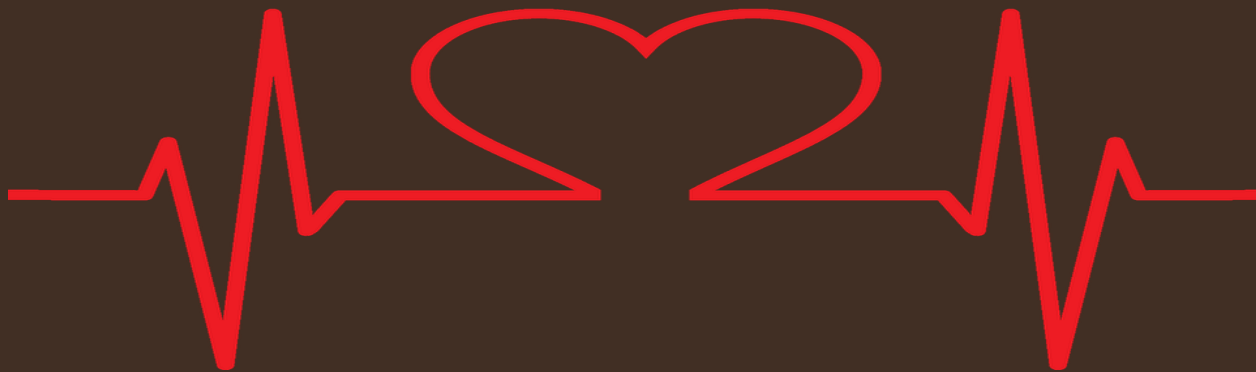
Requirements include that the declarant made the statements **understanding** they would lead to medical diagnosis or treatment.

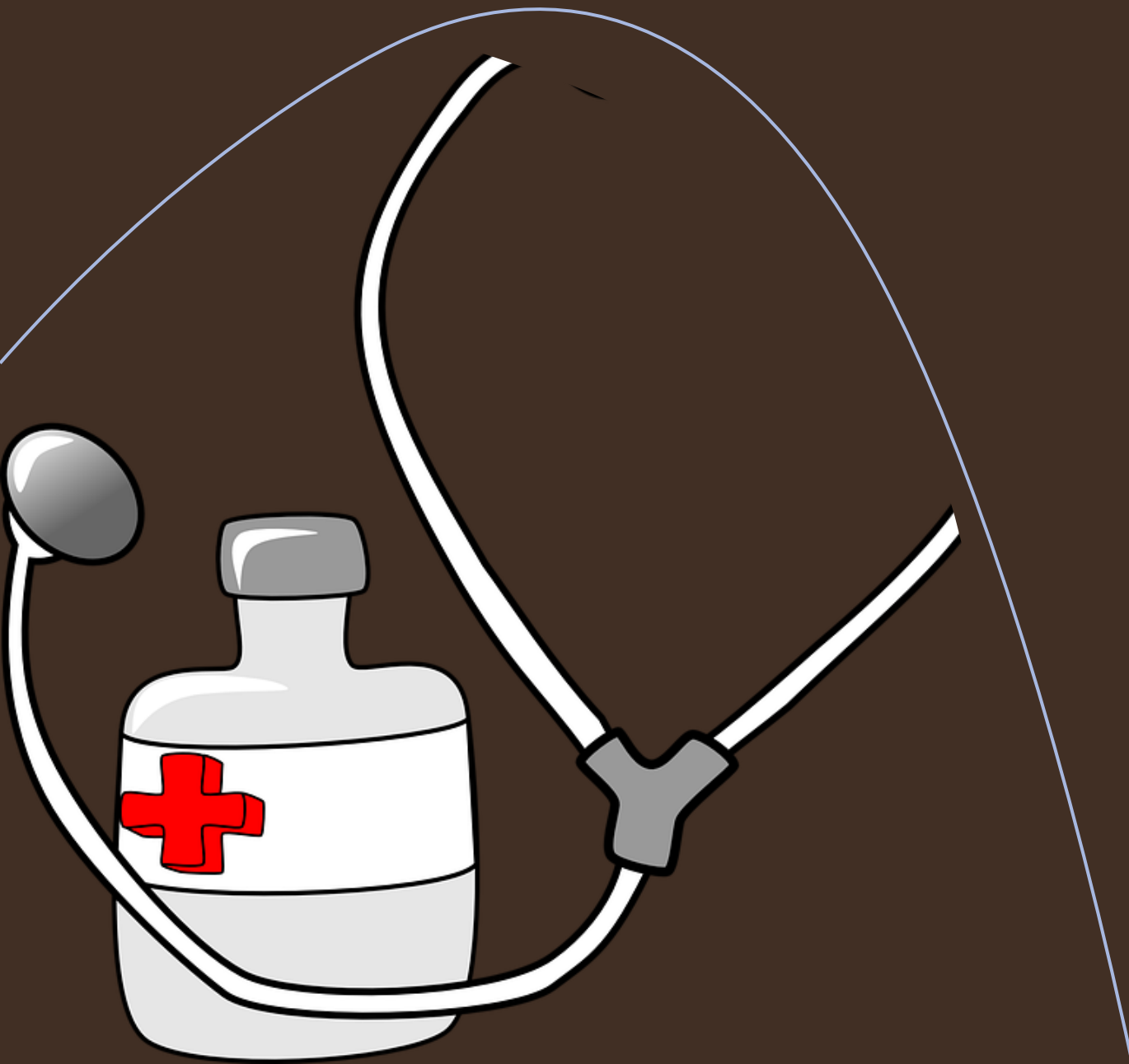


Circumstances indicate whether
a young declarant had a
medical treatment motive.



Does the declarant have to be the patient for this exception to apply?





Medical Diagnosis or Treatment Exception

Is this exception consistent with
the values behind the Rules?

Other Hearsay Exceptions under Rule 803

Present Sense
Impression
Rule 803(1)

"Hello, 911? A red Ferrari *just* hit another car."

Excited Utterance
Rule 803(2)

"Oh no, you just hit another car!"

Mental, Emotional,
or Physical
Condition
Rule 803(3)

"I cannot believe I have to drive home; I am exhausted."

Reputation as to
Character
Rule 803(21)

"He is known around town for being dishonest."

Records of Vital
Statistics
Rule 803(9)

E.g., certificates of birth, death, or marriage.

Hearsay Exceptions

Category **1B**: Declarant Availability Irrelevant

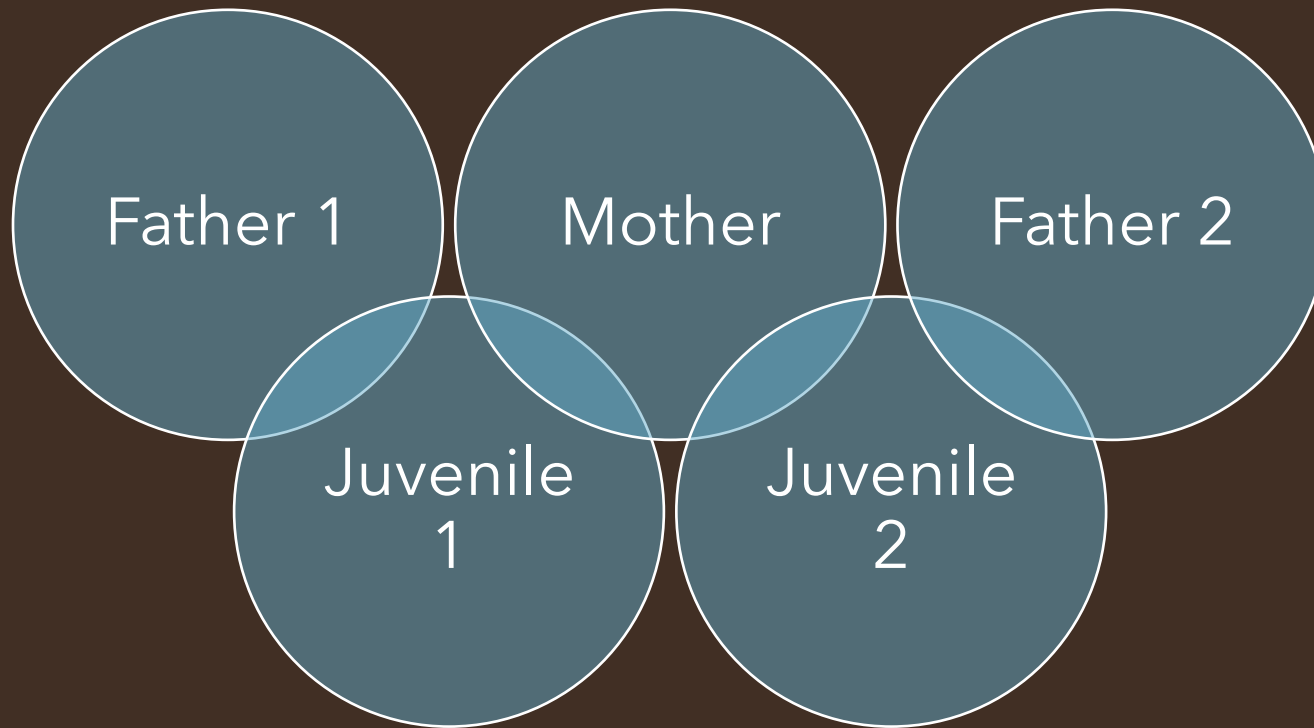
Another value: fairness.

Admission of “Party-Opponent”

- Declarant availability irrelevant.
- Rule 801(d) - not Rule 803
- Basic elements:
 - Declared or endorsed
 - By *party-opponent*
 - Offered *against* that party

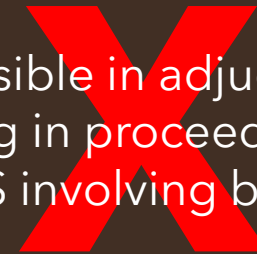
Any statement ~~made~~ or endorsed by
any party to the case can come in for
any purpose?

What if...



"Your Honor, I saw Father 1 at the grocery store recently. He said, 'I just know that the kids' mom is using cocaine.'"

Admissible in adjudication
hearing in proceeding brought
by DSS involving both juveniles?



Admission of “Party-Opponent”

- Statements of parent ☒
- Statements of DSS worker, law enforcement officers, and other government agents ☒
- What about statements of child?

Hearsay Exceptions

Category 2: Declarant Unavailability Required

Remember, Rule 803 Exceptions: inherently reliable.

Now, Rule 804 Exceptions: important; declarant unavailable.

Hearsay Exceptions under Rule 804

Unavailable means the declarant is

- I. privileged from testifying,
- II. refusing to testify despite a court order to do so,
- III. claiming, under oath, to having a lack of memory about the statement,
- IV. unable to testify because of a physical or mental illness, or death, or is
- V. absent and reasonable means to procure the declarant have been unsuccessful.

Hearsay Exceptions under Rule 804

Former Testimony Rule 804(b)(1)

The unavailable declarant previously testified that he drove his red Ferrari to the store the day someone's car was hit in the parking lot.

Impending Death Rule 804(b)(2)

At issue is whether Dan hit a woman with his red Ferrari. The victim's son testifies that he came out of the store and found his mom on the ground, in pain. He testifies that when he asked his mom who did this, she "pointed at Dan as he drove away." She died before the ambulance could get to the scene.

EXTRA! EXTRA!

Residual Hearsay

Required Showing	Rule 803(24)	Rule 804(b)(5)
Circumstantial guarantees of trustworthiness exist	✓	✓
Statement offered as evidence of a material fact	✓	✓
More probative than other reasonably available evidence	✓	✓
Purpose (<i>values!</i>) of Rules and interests of justice served by admission	✓	✓
Witness is unavailable	?	✓
Advanced notice was given	✓	✓

For more, *see* A/N/D Manual, Ch. 11, Section H, beginning on page 11-46.

To Summarize: don't panic.

If the correct rule comes to you immediately, great. If not:

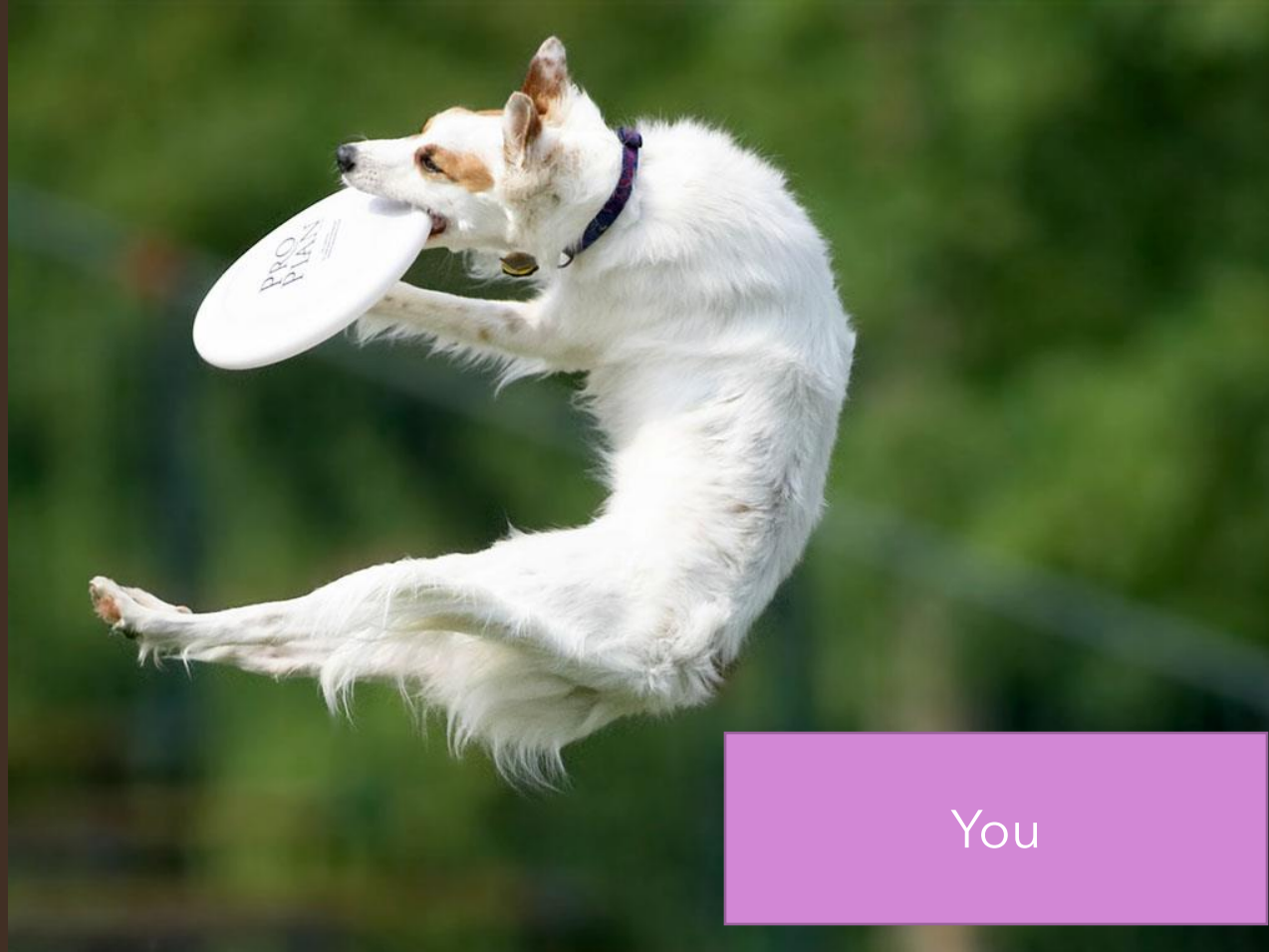
- Is it hearsay? (out-of-court + offered for truth)
- Whose credibility matters? (hearsay = out-of-court declarant; non-hearsay = usually in-court witness)
- What values are in play? How is proposed evidence consistent or not with those values?
- Answers should guide your arguments on admissibility.
- Ask for time to research issue (particularly in lengthy trial and if critical issue).



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You