

Types of Child Evidence Issues

- Child taking stand
- Others taking stand to repeat what child said (or other statements)
- Others taking stand to give opinion about child (or other opinions)

Values, Not Just Rules

Avoid unreliable evidence
 o Rules re personal knowledge, hearsay, opinion, competency

- Minimize prejudicial distractions • Rules re relevance
- Promote social policies • Rules re privilege
- Ensure fairness • Predictability and notice

Competency Procedures (p. 11) ()

- Mr. Parker has issued subpoenas for both children; attorney advocate objects.
 - What is the legal standard for determining whether a child (or other witness) may testify?
 - $\circ~$ How do you determine whether the standard has been met? $\circ~$ Are there other grounds for objection?

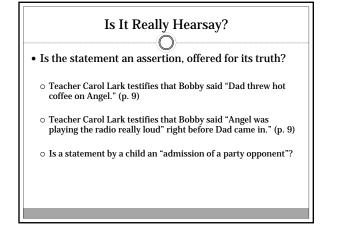
 - $\circ~$ If a child is competent to testify, what steps may you take when the child testifies?

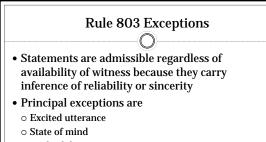
Mechanisms for Taking Testimony

- Remote testimony
- Excluding bystanders
- Excepting witnesses from sequestration order
- Oath
- Leading questions
- · Positioning on witness stand
- Recesses
- In camera testimony with judge only???

Now I Get It! \bigcirc

- Hearsay is an out-of-court statement offered to prove the truth of the matter asserted.
- When the out-of-court statement is being used to prove its truth . . .
 - \circ the evidence's value depends on the credibility of the outof-court declarant.
- When the out-of-court statement is not being offered for its truth . . .
- \circ the evidence's value usually depends on the credibility of the in-court witness.

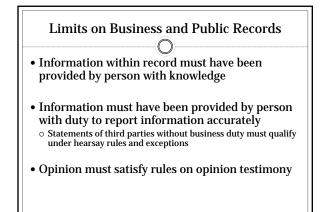


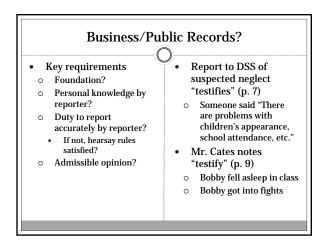


- \circ Medical diagnosis or treatment
- \circ Business records
- Public records

Business and Public Records Rules \cap

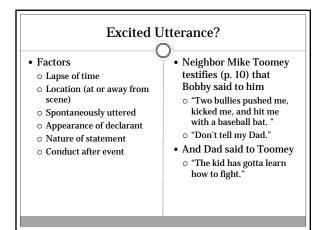
- First set of requirements concerns method and circumstances of preparation
 - Proponent must establish foundation, including authenticity, by qualified witness
- The following do not disqualify record: • Maker of record need not lay foundation; another
 - employee of organization may do so
- Record prepared in regular course of business also may be prepared in anticipation of litigation

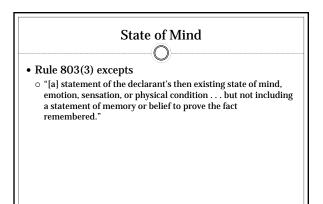






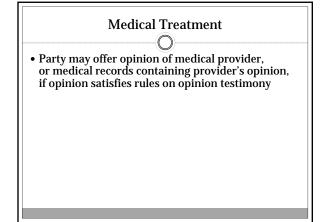
- Basic requirements
 - sufficiently startling experience, and
 spontaneous reaction
 - Special rules for children
 - Special characteristics of young children that prolong stress, fear, and spontaneity





State of Mind?

- "[O]ur courts have created a sort of trichotomy in applying Rule 803(3)."
 - Statements that recite only emotions are admissible
 - $\circ\,$ Statements that recite emotions and the facts underlying those emotions are likewise admissible
- o Statements that merely recite facts are not admissible
- GAL testifies that Bobby said to me "I was just joking when I said my father hit me and threw the coffee on Angel." Bobby looked really ashamed when he said that (p. 11).

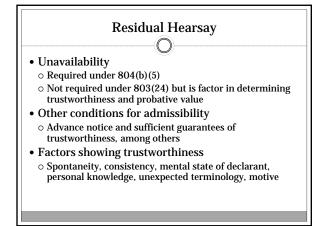


Medical Treatment \bigcirc • If provider recounts patient's statements, or medical records contain statements of patient, proponent of evidence must establish: declarant made statements understanding that they would lead to medical diagnosis or treatment, and o statements were reasonably pertinent to diagnosis or treatment

Medical Treatment? (p. 8)

• Medical records "testify"

- o Bobby has an old arm fracture and numerous bruises
- o Bobby said to me "Dad got mad at me and beats me"
- Mandy has untreated cold and ear infection
- o Angel has recent splash burn, which is not of accidental type
- o Bobby said to me "Splash not accidental"
- Mandy is developmentally delayed
- o Children are underweight
- o Children's demeanor playful
- Alternatively, nurse Gloria Stone testifies to above





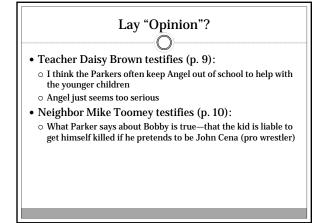
Corroboration

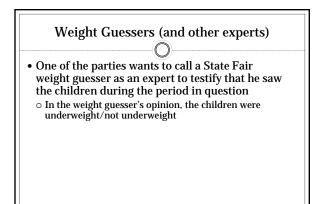
- Impeachment
- Proponent may impeach own witness but may not call witness knowing that witness would not reiterate prior statement
- In both instances
- Witness must have taken stand
- $\,\circ\,$ Prior statements do not constitute substantive evidence

Lay "Opinion"

- A lay witness's testimony in the form of an opinion or inference is permitted if it is:
 - $\circ\,$ rationally based on the perception of the witness, and
 - helpful to a clear understanding of the witness's testimony or a determination of a fact in issue
- Shorthand statements of fact are not necessarily opinion

 $[\]circ~$ Out-of-court statements are admissible as corroboration if consistent with witness's in-court testimony





Weight Guessers (cont'd)

• The proponent argues that the opinion satisfies the requirements for expert opinion, asserting that the:

- $\circ~$ expert is qualified in that method
- $\circ\;$ testimony is relevant, that is, it would assist the trier of fact
- $\circ~$ opinion is not excessively uncertain
- $\circ~$ opinion is not legal conclusion

Rule 702(a)

- If scientific, technical or other specialized knowledge will assist the trier of fact . . . a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion . . . if all of the following apply . . .
- Sufficient facts or dataReliable principles and methods
- Reliable application of principles and methods to facts of case

Daubert and Howerton • "Subject of an expert's testimony must be 'scientific . . . knowledge.'" Daubert

- Howerton rejected Daubert as test in North Carolina
- But, *Howerton* continued to require that judge be satisfied that expert's opinion is sufficiently reliable as area for expert testimony
- Rule 702 adopts Daubert

Shortcuts: Prior Cases

- Blood spatter interpretation • Yes
- Barefoot impression analysis \circ No
- Penile plethysmograph
- Definitely no
- Credibility
- $\circ \mathrm{No}$

Admissible Expert Opinion?

- Social worker testifies children are underweight (p. 7)
- Social worker testifies to x-ray results (p. 7)
- GAL testifies that neglect is clear (p. 11)